

## CHAPTER IV

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# CONSULTATION TODAY: HOW DO WE PROMOTE IT AND BUILD UPON IT?

### [SECTION I]

#### TOWARD A THOROUGH REBUILDING

AS we saw in the first three chapters of this book, there are a number of issues of relevance to consultation which are not adequately understood, and areas in which the principles of consultation are not being adequately put into practice. Modern Islamic thinkers have devoted a good deal of attention to consultation and related issues, as a result of which we now have access to hundreds of articles and books on the subject. This development has contributed to a renewed appreciation of the importance of consultation and enabled us to move in the direction of establishing a consultative system. Nevertheless, there is still a need for further contributions toward establishing a solid framework for consultative practice and for more practical applications of consultation in numerous areas.

In order to understand consultation-related issues and principles in an integrated, effective manner that will enable us to keep pace with the requirements of modern life, recourse must be had to the authoritative foundations laid during the foundational phase of Islam – namely, the days of the Prophet and the rightly guided caliphate. These foundations consist in (1) the theoretical and practical guidance to be gleaned from the examples set by the Prophet, his Companions, and the rightly guided caliphs, (2) the principles and aims of Islamic law, and (3) the consultation-related systems and arrangements that have been implemented by Muslims over the course of their history and across the globe.

Our point of departure for establishing the practice of consultation is the realization that it is rooted in the Islamic religion and divine revelation. As such, it is a gift from God and one of the major foundations of the Shari'ah, or Islamic law. Consequently, to apply it is to apply the Shari'ah, and to neglect it is to neglect the Shari'ah. Next to revelation, consultation is the primary means of ascertaining which courses of action, both individual and collective, are consistent with wisdom and right guidance. Muslims are guided first through revelation and second through consultation. It is through these two sources of guidance that certain knowledge and understanding come, and with them, the ability to experiment and to engage fruitfully in independent reasoning and interpretation.

Whether the matter has to do with the requirements of revelation, or of consultation concerning things about which we have received no revelation, believers are described as those “who listen [closely] to all that is said, and follow the best of it.”<sup>1</sup> Similarly, they are described as those who “who respond to [the call of] their Sustainer and are constant in prayer, and whose rule [in all matters of common concern] is consultation among themselves; and who spend on others out of what We provide for them as sustenance.”<sup>2</sup> In essence, consultation is nothing but listening closely to all that is said, and following the best of it.

When the matter of concern has to do with something that is held in common by members of the society or which involves others' rights, there is a greater need still for consultation. Such consultation should include those whose rights are at stake (or those who are qualified to represent them), particularly when the matter at hand may have consequences that will affect them.

An individual has the right to act unilaterally in connection with things that he owns himself and in which no one else has a share. It is for this reason that God alone is the One who “allots to no one a share in His rule.”<sup>3</sup> The Qur'an reminds us that “when God judges, there is no power that could repel His judgment.”<sup>4</sup> For just as He has no partner in creation and in His dominion over what He has made, so also does He have no partner in governance and in the giving of commands. It is He alone who “govern[s] all that exists. There is none that could intercede with Him unless He grants leave therefore,”<sup>5</sup> and

“God’s will is always destiny absolute.”<sup>6</sup> As for others, they must manage their affairs in cooperation with one another through consultation and mutual understanding.

Whoever insists on managing people’s affairs single-handedly, refusing to grant others a share in anything, is in danger of falling into idolatry, since he wants to ascribe to himself a quality that belongs to none but God. There is no place in Islam for granting others a share in that which belongs to God alone; however, we have no choice but to grant others a share in our own affairs, and this is what consultation is all about. Through consultation we participate with others in thinking, planning, and managing. People owe it to one another to engage in this type of sharing, while those in positions of power and responsibility over others have a special obligation to allow those over whom they exercise such power to take part with them in the thinking, planning and managing process.

We recall here the rage expressed by ‘Umar ibn al-Khattab when he learned that someone had 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.” Upon hearing what this person had said, ‘Umar declared, “God willing, I will address the community this evening and warn them against people who want to manage the community’s affairs by force!” In the course of his address to the people, he stated, “He, who pledges allegiance to someone without consultation with the people, risks himself as well as the person he elects, to be killed.”<sup>7</sup>

This account makes clear that it is Muslims’ right to be consulted concerning their public affairs and their shared interests. Moreover, if people have the right to be allowed to participate, either directly or through individuals who represent them, in consultation concerning how to manage their affairs, then it goes without saying that to deprive them of this right is an injustice to them. Moreover, the greater the number of people who are deprived of this right and the longer this deprivation is allowed to continue with its negative cumulative effects, the more heinous the injustice. (“Learn a lesson, then, O you who are endowed with insight!”<sup>8</sup>) As Ibn Khaldun states:

Do not think that, as is commonly believed, injustice is limited to taking someone's wealth or possessions from him without reason or compensation. Rather, injustice is more inclusive than this. Whoever takes someone else's possessions, whoever extorts someone in his work, whoever demands something that is not his due, and whoever imposes on someone a duty not imposed on him by the law, has committed an injustice. And the baleful effects of such conduct will be suffered by the state in the form of ruin in the place of prosperity.<sup>9</sup>

It was undoubtedly with such unwholesome effects in mind that 'Umar spoke in the severe manner in which he did, going even so far as to threaten with death those who would dare deprive people of their right to be consulted about the affairs that concern them.

Al-Kawakibi was among those who warned against the harm and corruption that can result from abandoning the practice of consultation. Such harm and corruption, moreover, are not restricted to the level of the state and political management; rather, they extend to all levels of human society, including the family and the individual. He quotes a sage as saying:

Thus it is that when we undertake a careful examination of every branch of the Islamic state, the biographies of its individual kings and princes, everyone with a family, or every individual for that matter, we find that righteousness is directly proportional to the degree to which we engage in the practice of consultation, while corruption is directly proportional to the degree to which we form our opinions independently of one another.<sup>10</sup>

In other words, righteousness is associated with the practice of consultation, while corruption is associated with its neglect.

Given the untold loss that the Muslim community has suffered as a result of its failure to practice consultation in a systematic manner, the time has come for us to regain an appreciation of consultation's necessity and value. After all, it is second only to the Qur'an as a source of guidance for people and a reliable means of managing their affairs. As we have seen, it is a right to which Muslims are entitled, and its neglect is one of the most serious injustices ever to have been

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perpetrated against the Muslim community. Consequently, redressing this injustice by restoring consultation to its proper place in Islamic life is one of the necessary conditions for spiritual and material reform and reawakening.

#### *Toward the Systematization and Institutionalization of Consultation*

With a few limited, short-lived exceptions, no detailed system of consultation has ever been established in any phase of Islamic history or in any Islamic state. Moreover, unlike functions such as government, administration, distribution of zakah, religious endowments, *hisbah*,<sup>11</sup> markets, the judiciary, crime control, policing, security, knowledge and education, it has never been enshrined in a set of enduring institutions. For this reason, consultation has remained subject to any number of possibilities: to be or not to be; to be frequent or seldom; to be practiced in this area or that; to be observed in relation to this issue or that; to be practiced once a day, once a year, or once in a lifetime; to be implemented with this person or that, in that category or that; to include those who disagree, or to be restricted to those who agree; to adopt the view of the advisors sought out, or to act on one's own opinion. In short, consultation has remained at the mercy of human caprice and circumstance. Why, then, has no detailed system or lasting institution ever been established for the practice of consultation?

In the earliest days of Islam, the establishment of such an institution would have been neither necessary nor appropriate to the nature of the phase itself, since the consultative process was marked at that time by such spontaneity, simplicity, honesty and trust that even without a defined system or a specialized institution, consultation was engaged in regularly and effectively. In keeping with the overall trend toward regulation and systematization during the days of the rightly guided caliphs, a number of organizational initiatives and steps were taken at that time. However, they were not sustained or developed. Abu Bakr and 'Umar, for example, refused to approve any ruling on new legal issues without first gathering with leaders of the Muslim community and consulting with them about the matter. During 'Umar's caliphate, the consultative body and its membership began to take on a specific form. 'Umar's advisors were referred to as "the reciters," who were

known to be scholars. In *Sahih al-Bukhari* we read that “It was the reciters with whom ‘Umar took counsel, be they older or younger.”<sup>12</sup> In addition, ‘Umar appointed specific individuals to a consultative body whose purpose would be to appoint his successor. Similarly, ‘Uthman would only rule on the cases brought before him in a manner consistent with the counsel he had received from his judicial advisors.

The most natural course of affairs would have been for such organizational procedures to develop over time into a system for the practice of consultation on the various levels of public life, particularly the political level. Scholars, and particularly the jurists among them, should have set about to issue legal rulings that would preserve the sound practice of consultation, especially in view of the fact that they were free from the influence of rulers’ worldly ambitions, calculations and priorities.

The organizational and juristic vacuum surrounding the management of consultation and political differences left the way open for the logic of power to hold sway, with all that this implied by way of rebellions, conflicts, and bloody liquidations. And in fact, well-attested hadiths and other traditions document situations that pointed to the need to lay clear-cut, commonly recognized foundations for resolving conflicts and warding off dissensions and civil strife rather than allowing them to take root, then seeking to extirpate them through violent means.

We read in a hadith narrated by Imam Muslim on the authority of ‘Amir ibn Sa‘d, on the authority of his father, who said:

As the Messenger of God was coming from al-‘Aliyah<sup>13</sup> one day, he passed by the mosque of Banu Mu‘awiyah. He entered the mosque and performed two cycles of prayer, and we prayed with him. He offered a lengthy supplication to God, then turned to us and said, “I asked my Lord for three things, two of which He granted me, and the third of which He refused. I asked Him not to allow my nation to perish by drought, and He granted this to me. I also asked Him not to allow my nation to perish through flooding, and He granted me this as well. Then I asked Him not to allow them to hurt one another, but He would not grant me this request.”<sup>14</sup>

In this account, the Prophet tells us that he asked God to spare his nation a devastating drought that would leave nothing in its wake, as well as destruction through a deadly flood, and God granted him both of these requests. Consequently, there is no reason to fear that the Muslim nation will be destroyed through drought or flood. Whatever droughts or floods occur will be only partial or temporary in their destructive effects. He also asked God to spare the Muslim nation internal strife, but this request was not granted. The question then arises: What divine wisdom can be discerned in God's refusal to grant this request by the Prophet, and in the Prophet's decision to tell us about it?

One notes here that the first two requests have to do with circumstances and events that lie outside the Muslim community's control, and for which they consequently bear no responsibility. After all, there is nothing they themselves can do to either cause, or prevent, famines or floods, and if they were to perish as a result of such events, nothing but God's power could prevent it. As for the third request, it has to do with human actions for which they themselves can be held responsible, and which they are capable of avoiding and dealing with through their own decisions. The Prophet had taught them what things were conducive to brotherhood and unity, and had warned them against those things that would produce enmity and division. Hence, no harm or injury could be done among them unless they had violated the rulings of their religion and neglected what was required of them. Moreover, they had no choice but to solve whatever problems resulted from their actions through their own efforts, and to take precautions by closing the door to civil strife and dissension; otherwise, they would have to bear the consequences of their own violations of God's limits and their neglect of His commands.

We know that Islamic law has erected numerous, well-fortified barriers against conflict and internecine warfare among Muslims. Whoever takes refuge behind these barriers will find protection, while those who disregard them or make light of them must do so at their own risk, for "thy Sustainer does not wrong anyone."<sup>15</sup>

One of the fortifications Islam has erected around the Muslim community to protect its members from infighting, disunity and civil strife is that it requires them to be those "whose rule [in all matters of

common concern] is consultation among themselves.” Consultation means placing the Islamic law, reason, logic and shared mutual interests in the position of arbiter among the members of the community. Consultation is dialogue, mutual understanding, and mutual agreement on the basis of which everyone receives his due. Consultation is also a process of argumentation, persuasion and allowing oneself to be guided by the evidence as opposed to high-handedness, selfishness and rivalry in their various guises, including chicanery, violence, coercion and scheming.

The Prophet’s saying that, “I asked Him not to allow them to hurt one another, but He would not grant me this request” does not mean that Muslims have no choice but to hurt one another and that there would be no way of avoiding such a fate. Rather, all it means is that this request was not granted, nor could the Prophet guarantee such a thing because it depended on how the members of the Muslim community chose to comport themselves and manage their affairs, and because they would have to take precautionary measures to prevent themselves from falling prey to the effects of high-handedness, selfishness and a spirit of rivalry.

One of the precautions that needs to be taken in order to avoid such evils is to adopt the practice of consultation in a systematic manner and to establish rules governing this practice, particularly in situations that are likely to give rise to conflict and dissension. It is with such considerations in mind that jurist Muhammad al-Hijjawi al-Thaalibi states:

The civil strife and wars that took place after ‘Umar’s time were due to a lack of organized consultative practice in Islam. Thus I stress again that ‘Umar, most probably bearing this in mind, established the consultative counsel that was to choose his successor.<sup>16</sup>

In both *Sahih Muslim* and *Sahih al-Bukhari* we read that ‘Umar ibn al-Khattab asked some of the other Companions of the Prophet about the hadith which speaks of civil strife among Muslims that will “billow like the waves of the sea.” In response, Hudhayfah ibn al-Yaman said to him, “O Commander of the Faithful, there is no need for you to be concerned, for there is a closed door separating it from you.” ‘Umar asked him, “Will the door be broken down, or opened?” “It will be

broken down,” replied Hudhayfah. “What this means,” said ‘Umar, “is that it is better for it not to be closed.”<sup>17</sup> What we have here, then, is a prediction by the Prophet of civil strife which will “billow like the waves of the sea.” We are told that there is a closed door keeping the strife at bay for a time, but that when the door is gone, such strife will enter Muslims’ lives. It is here that, given his worldly wisdom, perceptivity and insight, ‘Umar asks, “Will the door be broken down, or opened?” Hudhayfah then tells him that the door will be broken down, to which ‘Umar replies, “What this means is that it is better for it not to be closed.”

For if a closed door is opened in the normal manner, it can also be closed again in a normal manner. If it is broken down and shattered, it will remain open, at least for a period of time, until the door is repaired and can be closed again in the usual fashion. If, on the other hand, it is broken as a result of conflict, then it may not be possible to repair and restore it to normal functioning until after the conflict has come to an end and its causes have been dealt with. Al-Hafiz ibn Hajar quotes Ibn Battal as saying that “The reason ‘Umar said this was that a door is normally closed properly. If it is broken down, however, it is inconceivable that it could be closed again until it has been repaired.”<sup>18</sup>

This, then, is the civil strife that “billows like the waves of the sea.” It is caused by appealing to the logic of power and rivalry such that the door of legitimacy is broken down and its foundations are undermined, as a result of which unrest comes rolling in like a mighty wave. As for the solution, it is to rebuild the door and to close it in the face of unrest and those who seek to stir it up. For when we have exits, entrances, doormen and guards; when we have keys, with a key to every door; and when we have foundations, that is, laws that govern entry and exit, opening and closing, there will be no reason to fear unrest even if it rears its ugly head from time to time.

This, in part, is what I mean by the systematization or institutionalization of consultation and the way it is practiced: There need to be institutions that undergird the practice of consultation and laws that regulate it. At this point, however, there arise some questions and difficulties. It might be asked, for example: If it is truly necessary and vital to organize and regulate the practice of consultation, then why

was this not specified by the Messenger of God, and why is there no mention of it either in the Qur'an or in the Sunnah? Moreover, if Islamic law has specified no particular way of organizing the practice of consultation, why should we do what we have not been commanded to, or commit ourselves to something that has not been required of us? Why constrict and petrify what has been left unstructured? Why not leave things spontaneous, or up to the choice of those in power?

In response, it should be noted that if Islam has not laid down a clear-cut system for the practice of consultation, this is consistent with its approach to the organizational aspects of all areas of life that are subject to evolution and change. We have been commanded in Islam to seek knowledge and education and to educate others; however, we have no particular system by means of which we are to carry out this command. We have been commanded in Islam to adjudicate fairly between people based on what God has revealed. However, Islam has laid down no particular judicial system. As Muslims we have been assigned the task of commanding the doing of what is good and prohibiting the doing of what is evil, yet Islam has laid down no detailed means of going about this. Lastly, we are urged as Muslims to set aside wealth and land as religious endowments; nevertheless, Islam has not set forth a specific manner in which to facilitate the distribution and use of religious endowments that have accumulated over the years and centuries.

Organizational procedures, laws and methods might be likened to clothing, which is necessary, but which has to be tailored to fit bodies of different sizes and shapes and to accommodate customs, climates and practices that vary from time to time and place to place. Regrettably, however, Muslims have organized and developed their systems for all legitimate aspects and functions, both material and spiritual, with the notable exception of consultation, which has been neglected and left to atrophy in both substance and form.

To clarify the issue further, it may be helpful for us to look at one example of the legitimate functions and duties which have received their share of organization, standardization and institutionalization – namely, the pursuit of knowledge and education – in order to compare it with what has become of consultation. As is the case with

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consultation, the pursuit of knowledge and education is urged upon Muslims in a number of verses of the Qur'an and Prophetic hadiths. Similarly, we find that the Prophet set a practical example for the Muslim community in connection with both consultation and the pursuit of knowledge and education. Moreover, just as the Prophet's practice was both serious and effective, it was also simple, spontaneous and flexible in its manner of organization. And the same applies overall to the era of the rightly guided caliphs.

Thereafter the pursuit of knowledge and education moved steadily in the direction of greater organization, regulation, institutionalization, expansion, and specialization. Before long there were untold numbers of schools and universities, both public and private, with their own particular administrative structures, buildings, and financial resources, not to mention their own distinctive educational systems with their related curricula, programs, levels, and methods. Of significance here is the fact that none of these systems, institutions, methods, specializations, certificates, degrees, resources or budgets had been introduced, commanded, or even suggested by the Messenger of God. Nevertheless, Muslims themselves took the initiative to bring them into being, and they were vied for by scholars and rulers, rich and poor. Otherwise, the educational and academic movement would have remained stunted and primitive, unable to respond to the new requirements and challenges of Islamic societies, states and outreach programs. In fact, the educational movement itself would have been liable to dwindle and die out much in the way that the practice of consultation has dwindled and nearly died out.

All of these various organizational and administrative tasks and measures are means whose growth, development and suitability are in a constant state of flux, yet without which a more fundamental obligation – namely, the pursuit of knowledge and education – could not be fulfilled. After all, means are subject to ends, and ends are, in effect, the purposes served by their means. These organizational procedures are not explicitly mentioned or commanded in Islamic law. Nevertheless, Islamic law contains a number of general governing principles of relevance to every area of life and every one of life's legitimate functions.

We have had occasion, particularly in Chapter Two, to discuss a number of foundational principles and rules for consultative practice, all of which are derived from the Qur'an, the Sunnah, and the practical experience of the Prophet and his rightly guided successors. As we strive now to correct matters by reestablishing consultation in both theory and practice, we have no choice but to recall our foundational principles and build upon them to the greatest extent possible. In what follows, then, I will be reflecting on some of these principles derived from Islamic law, some of which are well-known and explicitly stated, and others of which are applied in practice, yet without being recognized on an explicit level.

*I – New types of offenses necessitate new rulings*

Although the formulation quoted above is attributed to the Caliph 'Umar ibn 'Abd al-'Aziz, it was nevertheless being applied prior to his time, and has continued to be applied since his time by jurists, rulers, administrators and judges. What this principle means, in essence, is that as new moral dilemmas, vices and distortions emerge in this or that society, they should be dealt with by means of rulings, laws and measures that are capable of containing, correcting, or deterring them. This principle finds its origins in the statement of the Prophet that "If people were given everything they claim is due them, they would claim others' wealth and their very lives. However, the person against whom a claim is made must swear [that the claim is not true]."

The foregoing is the version we find in *The Book of Rulings (kitab al-aqdiyah)* in *Sahih Muslim*. In his commentary on Muslim's compilation of hadiths, Imam al-Nawawi states:

In the version given by al-Bayhaqi and others with a good (*hasan*) or authentic (*sahih*) chain of transmission, there is an addition on the authority of Ibn 'Abbas, on the authority of the Prophet, who said, "If people were given everything they claim is due them, some people would claim others' wealth and their very lives. However, the party who makes the claim must provide supporting evidence, while the person against whom the claim is made and who denies the claim's validity must take an oath [to the effect that the claim is false]."

Commenting on this account, al-Nawawi states, “This hadith embodies a central principle governing legal rulings in Islam.”<sup>19</sup>

The implication of this hadith is that were it not for the false claims that some people knowingly make against others, the working principle would be that whoever makes a claim should be believed and granted what he is making a claim to. However, in view of the many false claims that people make, it has become necessary to require them to support their claims with evidence, despite the fact that requiring supporting evidence and not always granting someone access to what he claims the right to may, in some situations, deprive someone making a valid claim of what is rightfully his. As we have noted, the requirement that people back up their claims with supporting evidence is due to the false claims they – or some of them – have made. Hence, the cause behind the application of this ruling is people’s corruption and dishonesty.

Similarly, the Prophet’s Companions decided to require artisans and laborers to provide a guarantee to those for whom they were doing a job. In so doing, they departed from prevailing custom; they also departed from the principle that people should be assumed to be innocent and trustworthy. Artisans and laborers were thus required to guarantee anything that might be lost while in their possession, even if the loss had occurred through no fault of theirs. This requirement was imposed after it became apparent that some of them had been exploiting other peoples’ trust in them by appropriating materials that had been placed in their safekeeping on the pretext that they had been lost or stolen. If they knew that they would not be required to guarantee anything that might be lost or stolen, artisans were sometimes negligent about taking care of the things left in their possession. Hence, the newly introduced policy of requiring artisans to provide guarantees resulted from the newly emergent phenomenon of faithlessness and negligence. And had it not been for such faithlessness and negligence, the requirement of a guarantee would not have been imposed on them.

The best example of this principle’s application to the realm of consultation is the position taken by ‘Umar when he learned that there was someone who was waiting for him to die so that he could pledge

allegiance to the person of his choice, then present the rest of the Muslim community with his *fait accompli*. In the face of this dangerous ambition, 'Umar declared any pledge of allegiance that took place without prior consultation with the Muslim community to be null and void. In addition, however, he went so far as to threaten to kill anyone who dared to make, or accept, such a pledge. This ruling is without parallel in the Qur'an or the Sunnah. Nevertheless, 'Umar was not condemned for it by any of the other Companions, nor, to my knowledge, has any Muslim scholar raised objections to it.

What, then, was the basis for this judgment by 'Umar? It was the principle according to which "new types of offenses necessitate new rulings." After all, what offense could have been greater than this sort of reckless contempt for the Muslim community's rights and destiny? It was an offense that called for a commensurate ruling that would serve to deter anyone from contemplating it in future. It was probably with this situation in mind that 'Umar, after he had suffered an unexpected assassination attempt, set about to settle the potential dispute over succession to the caliphate by assigning the task of appointing his successor to a small but specified number of the most impeccably qualified individuals. In a deft, decisive, and highly prudent move, he shut the door in the face of dissension and civil strife by establishing a consultative council whose work would take public opinion into account in a manner with which no one could find fault.

The same concern lay behind the position taken by Ibn 'Atiyah, who, as we observed earlier, declared that "he who fails to consult those possessed of knowledge and piety must be dismissed." This verdict, which has been supported by other scholars as well, is not based explicitly on the Qur'an or the Sunnah. However, it was necessitated by the high-handed, tyrannical conduct of those who refused to acknowledge the need for consultation despite the corruption and terrible harm such conduct was destined to bring upon the Islamic state and community.

It is clear that the conquests that were achieved on all levels by Islam and the Muslim nation did not come about without a price. On the contrary, they brought about an imbalance and deficit in some qualitative aspects of life in the Islamic state and society. On one hand, there

was a quantitative increase in everything: in the number of Muslims, in their power, in their wealth, in their knowledge and experience, and in the ethnic and geographical extension of their empire. At the same time, however, there was a corresponding decline in their piety and moral standards. As Ibn Taymiyyah once observed, this decline had taken place “in both the shepherd and the flock.”<sup>20</sup>

The beginning of this decline began to make itself felt toward the end of the era of the rightly guided caliphs. Someone once asked ‘Ali ibn Abi Talib, “O Commander of the Faithful, how is it that people disagreed over both you and ‘Uthman, but not over Abu Bakr and ‘Umar?” ‘Ali replied, “Abu Bakr’s subjects were like me, ‘Uthman, Sa’d and ‘Abd al-Rahman. As for ‘Uthman’s and my subjects, they are like you.”<sup>21</sup>

The Companions, and even their successors who learned their thoughts and ways, had become a minority within the vast sea of new Muslims on the Arabian Peninsula as well as in the Levant, Iraq, Egypt, Persia, North Africa, and elsewhere. It was from this vast sea that ‘Umar’s assassin emerged, as did ‘Uthman’s, and ‘Ali’s. In short, it was out of this sea that the factors contributing to civil strife, including the individuals who would serve both as its instigators and its fuel, surfaced and took shape. Tremendous efforts were undoubtedly made to accommodate the new situation and bring its effects under control. Such efforts were made in the areas of outreach to non-Muslims to communicate the message of Islam, education and childrearing, as well as in the intellectual, political, military and administrative spheres. However, in the great press of events and developments, consultation, and the logic that serves as its driving force, were effectively lost. The gains it had once made possible were not preserved, nor was it systematized in such a way that it could contribute to providing a framework for the new situation in keeping with the principle enunciated above, and other legal principles.

A lesson we can glean from these events for our present and future is that all developments in people’s lives and society, the negative ones in particular, call for the appropriate use of independent, creative reasoning. This thinking process can help us arrive at the rulings which, in keeping with the relevant texts from Islamic law and its guiding

principles and aims, are best suited to the situation at hand. With these things in mind, we must adopt whatever measures and establish whatever institutions will preserve Muslims' religion and protect their interests while warding off the dissensions and distortions that threaten to undermine their lives both individually and collectively.

## 2 – *The principle of sadd al-dhara'i*<sup>c</sup>

There is a significant degree of overlap between the principle of *sadd al-dhara'i*<sup>c</sup> – namely, the prohibition of evasive legal devices or of anything which has the potential of leading to that which is forbidden – and the principle discussed in the previous section, namely, that new types of offenses necessitate new rulings. Of these two principles, that of *sadd al-dhara'i*<sup>c</sup> is the narrower and more specific, since it has to do with those cases in which something legitimate is used as a pretext for something which is forbidden. In other words, something that is legitimate and permissible is used for a purpose other than the one for which it was intended. Something that is permissible may be used to achieve a purpose which is not permissible, or something permissible may lead to some kind of actual harm or corruption, not out of any conscious intention, but as a result of misuse or misapplication.

If such a thing occurs, Islamic law intervenes by applying the principle of *sadd al-dhara'i*<sup>c</sup>. In so doing, it prohibits what is essentially a legitimate, permissible practice, declaring it to be illegitimate until such time as it can be restored to its proper use and application. I do not wish to enter into a technical discussion of this issue, which would involve citing the relevant textual evidence and examples from the Qur'an and the Sunnah. Scholars of the principles of jurisprudence, both ancient and modern, have already undertaken this task, and the issue is effectively settled. However, I would like to cite a number of examples and practical applications of relevance to organizing and safeguarding the practice of consultation.

One such example may be seen in the fact that despite their duplicity, their attempts to harm him and the Muslim community, and their cunning intrigues, the Prophet refrained from putting hypocrites to death. The reason for this was that such an action on his part might have been used as a means of frightening people away from Islam on

the pretext that, as he put it, “Muhammad kills his friends.” Some of the hypocrites deserved to be put to death, and the Prophet was aware of this fact. However, he left them in peace in application of the principle of *sadd al-dhara’i*’.

The Prophet forbade the enforcement of the divinely decreed punishments (*hudud*) for particular crimes when a military campaign was in process, on war fronts, and in enemy territory. The reason for this was that the enforcement of such punishments could have prompted those who had merited such punishments to flee and join the enemy, and perhaps even to commit apostasy. In a similar spirit, ‘Umar ibn al-Khattab forbade some of the Companions to marry Jewish and Christian women in particular circumstances for fear that this might lead to temptation among Muslim women.<sup>22</sup>

In relation to consultation, Umar was the first to apply the principle of *sadd al-dhara’i*’ through his refusal to appoint his son ‘Abd Allah as his successor to the caliphate. Even when ‘Umar sent his son ‘Abd Allah in to attend the sessions being held by the six men he had assigned to his consultative council, he stipulated that his son would not be a candidate for the post, and that he would only be attending in order to express his opinion and break tie votes when necessary. He also ensured that his paternal cousin, Sa‘id ibn Zayd, would not be allowed to succeed him despite the fact that, like the six members of the consultative council, Sa‘id had been promised Paradise by the Messenger of God. ‘Umar was fearful that if one of his relatives, however qualified he might be, succeeded him as caliph, this might be taken as justification for allowing the caliphate to become a hereditary post that was handed down from father to son. Nevertheless, what ‘Umar feared came to pass, albeit some time later. Even more unfortunate is the fact that not a single Muslim scholar issued a legal decision declaring it unacceptable for the caliphate to become hereditary, even for the sake of applying the principle of *sadd al-dhara’i*’.

This principle is nevertheless applied by all of the recognized schools of Islamic jurisprudence, and it has served as the basis for untold numbers of legal rulings and juristic interpretations. As Ibn al-Qayyim once declared:

The principle of *sadd al-dhara'i'* makes up one-fourth of our responsibility before God. This responsibility takes the form of commands and prohibitions, of each of which there are two types. The two types of command are: (1) commands to do things which are good in and of themselves, and (2) commands to do things which are a means of attaining some other good. As for the two types of prohibition, they are: (1) the prohibition of things that are themselves harmful or corrupting, and (2) the prohibition of things that could lead indirectly to harm or corruption. Hence, closing the door to those entities that could lead to what is harmful or corrupting is one-fourth of the religion.<sup>23</sup>

Hence, it may be concluded that if the principle of *sadd al-dhara'i'* had been applied to the political system, its institutions, and the manner in which their affairs are managed, it would have served to prevent a great deal of the fraud, obstruction, obfuscation, corruption, and tyranny that has afflicted political practice in the course of our history.

It should be acknowledged in all fairness here that the policy adopted by rulers in the Almohad Dynasty (*dawlat al-muwahhidin*)<sup>24</sup> in Morocco – who would not allow anyone to remain on the judge's bench for more than two years lest an excessively long tenure as judge lead to corruption – was an application of the principle of *sadd al-dhara'i'* after the manner of 'Umar ibn al-Khattab.

In his book *Tarikh al-Dawlatayn* ("The History of the Two States"), al-Zarkashi tells us that:

the Almohad heads of state who ruled long ago in Tunisia would not appoint anyone as judge for more than two years. Through their adherence to this policy, they were abiding by the wishes expressed by 'Umar ibn al-Khattab in his last will and testament, in which he wrote that no [government] employee should be allowed to hold his post for more than two years. They believed that if a judge remained in his post for a long period of time, he would gather a circle of friends and supporters around him, whereas if he expected to be removed from his post [after a set period of time], he would not grow overweening or conceited. Moreover, they held that in such a situation, the fruits of knowledge would spread among equals, and many would become judges by being trained in how to handle cases. As a result, the judiciary would be preserved in a way that it would

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not have been if a single person were allowed to remain in the position of judge, since in the latter case, there would have been no equality among them, and the person to come after him would have had no influence in a position he had obtained only after a long period of time. Moreover, those seeking knowledge and experience would have despaired of their aspirations due to the excessive hardship involved in attaining to positions of responsibility.<sup>25</sup>

### *3 – Unrestricted interests*

The concept of unrestricted interests (*al-masalih al-mursalah*) is one of the fundamental principles of Islamic law. It is based on the notion that Islamic law is intended to serve people's spiritual and material interests, and that its rulings are intended to bring benefit to people and to protect them from harm, be it immediate or delayed. As Ibn al-Qayyim states:

Islamic law is founded upon wise purposes and people's best interests both in this life and the next. From beginning to end, it is justice, mercy, benefit and wisdom. Hence, anything that serves injustice rather than justice, cruelty rather than mercy, harm rather than benefit, or foolishness rather than wisdom does not derive from the law of Islam, even if it has been read into it based on [this or that] interpretation [thereof]...<sup>26</sup>

Islamic law does not specify all human interests in detail, nor does it spell out all of the rulings required to preserve such interests, which are not only numerous, but multifaceted and increasing in number by the day. Therefore, in addition to its detailed rulings, Islamic law has laid down general rulings, universal principles and all-inclusive aims from which an untold number of rulings relating to newly arising situations and circumstances may be derived. We are told by the Qur'an, for example, that "God enjoins justice, and the doing of good."<sup>27</sup> "Do good,"<sup>28</sup> we are told. "He who shall have done an atom's weight of good, shall behold it, and he who shall have done an atom's weight of evil, shall behold it."<sup>29</sup> "Consider the flight of time! Verily, man is bound to lose himself unless he be of those who attain to faith, and do good works, and enjoin upon one another the keeping to truth, and enjoin upon one another patience in adversity."<sup>30</sup> This, then, is the basis for the principle of unrestricted interests: their importance, their

legitimacy, and their defensibility on the basis of Islamic law. Everything that is good, beneficial, right, fair and charitable is called for by the law of Islam, either as a recommended practice (*mandub*), or as a requirement (*wajib*) depending on the degree of its importance or necessity.

Unrestricted interests have been the subject of exhaustive studies by both early *usul* scholars and modern thinkers. Scores of works have been written on the subject, all of which have concluded that unrestricted interests are well-founded in Islamic law and of central significance to Islamic legislation. Imam al-Shatibi asserts that the unrestricted interests upon which Islamic legal rulings are based must fulfill the following conditions: (1) They must be compatible with the aims of Islamic law such that they do not violate any of its principles or conflict with any of its texts. (2) They must be comprehensible and in keeping with logical rationales which, if they are presented to sensible people, will be met with acceptance. Consequently, they belong to a category separate from that of divinely ordained rites of worship, which need not be comprehensible to human reason. (3) They must be such that, when they are recognized and acted upon, they serve to promote the aims of Islamic law. As such, they are classified not as aims, but as means by which aims are achieved.<sup>31</sup>

In sum, the human interests which must be preserved and upon which Islamic legal rulings are based will be consistent with the detailed contents and overall aims of Islamic law, and will serve to fulfill these aims. They will not be a reflection of mere desires, whims or unfounded assumptions. However, they will be comprehensible to human reason.

This fundamental principle of Islamic lawmaking has been applied by Muslim jurists, rulers and judges down the centuries, and has served as the basis for untold numbers of applications in numerous areas of life. One such application is the compilation of the text of the Qur'an during the caliphate of Abu Bakr, followed by the adoption of standard copies of the Qur'anic text for all Muslims in the Islamic territories during the caliphate of 'Uthman ibn 'Affan. The standard text adopted during 'Uthman's caliphate came to be known as the Ottoman Qur'an (*al-qur'an al-'uthmani*), and it is this version of the text which has

remained in use by the Muslim community to this day. During the caliphate of ‘Umar ibn al-Khattab, an agreement was reached to begin recording history, and it was determined that the first month of the Islamic lunar year would be Muharram. It was also during ‘Umar’s caliphate that administrative offices and treasury account books were established; out of this grew the allotment of salaries to Muslim soldiers, then to judges and all other government employees until, eventually, the payroll came to include scholars, orators, and prayer leaders in mosques.

Innumerable Islamic legal decisions, organizational and financial procedures, and other practical measures which Muslims initiated or borrowed from other cultures and societies were based on the notion of unrestricted interests or *istislah*, which is the practice of issuing a legal ruling concerning a case which is not mentioned explicitly in any authoritative Islamic legal text and on which there is no consensus, based on consideration for an unrestricted interest. Unfortunately, the concept of *istislah* was hardly ever applied to the practice of consultation. Nevertheless, it would have been possible in the past – just as it would be possible for us today – to adopt all the measures and rulings necessary in order to reinforce and uphold the consultative process, to serve the interests it is intended to protect, and to establish a consultative way of life. For in fact, everything relating to the practice of consultation is either recommended or required by Islamic law, since this practice serves an unrestricted interest.

Appointment of advisors and a precise definition of the conditions they must fulfill, a periodic review of both the membership of the consultative counsel and the qualifications members must have, the setting of regular dates for consultation, establishment of a variety of consultative bodies (scientific, juristic, political, military, financial, and the like), the determination of who will choose the Muslim community’s political and spiritual leader, how consultations will be conducted, how the choice of leader will be made, how such a leader will be removed from power and the conditions for undertaking such a procedure; and the allotment of salaries for those who serve as advisors if their advisory duties take them away from their gainful employment: all of these things, and more, are included among the unrestricted interests that must be taken into account whenever the need arises.

*4 – Borrowing from others for the common good*

There is no known juristic principle with this precise wording; however, its content is valid by the standards of Islamic law, and it has been put into practice throughout Islamic history. It was applied by the Messenger of God, his Companions, and the rightly guided caliphs, and it has been applied by Muslims over the centuries, particularly in relation to organizational matters and administrative procedures. Muslims have borrowed from others whatever was of use to them, yet not in conflict with their religion. In fact, the Qur'an itself teaches us to learn even from the non-human realm. God's prophet Solomon, for example, learned from the hoopoe bird, which resulted in manifest victory and widespread good. The bird said to Solomon, "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 tiding sure!"<sup>32</sup> The outcome of this "tiding sure" was the Queen of Sheba's declaration of her faith in God and surrender to Him, a declaration which led to a radical transformation in her reign: "O my Sustainer!" she declared, "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>33</sup>

Similarly, the Qur'an tells us about the way in which Adam's son Cain benefited from a raven:

But the other [brother's] passion drove him to slaying his brother; and he slew him, and thus he became one of the lost. Thereupon God sent forth a raven which scratched the earth, to show him how he might conceal the nakedness of his brother's body. [And Cain] cried out, "Oh, woe is me! Am I then too weak to do what this raven did, and to conceal the nakedness of my brother's body?" – and was thereupon smitten with remorse.<sup>34</sup>

If it is this important to be willing to learn from a hoopoe bird or a raven, then how much more important it must be to be willing to learn from other human beings, who have been graced by God with such great mental capacities, including the ability to gain new knowledge and experience, and whose history is rich with the heritage left by the prophets and other sages.

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When, during the lifetime of the Prophet, a confederation of tribes came together with a plan to attack the Muslim community in Yathrib and thereby extirpate them once and for all, it was suggested that the Muslims dig a trench around the city to prevent the invading armies from entering. This was a method of warfare that had been used by the Persians. Al-Hafiz ibn Hajar tells us that:

According to Ma'shar or the historians who recorded the details of the Prophet's military campaigns, the person who proposed this idea was Salman [the Persian]. He said to the Prophet, "If, when we were in Persia, we were placed under siege, we would dig a trench around us." In response, the Prophet issued instructions that a trench should be dug around the city, and he himself helped to dig it.<sup>35</sup>

Upon hearing Salman's suggestion, the Prophet did not say, "What could we possibly have to learn from the Persians, or from the methods adopted by polytheistic Magians?"

When the Muslims, together with the Messenger of God, consulted together concerning a way to announce the times for the five daily ritual prayers and to summon worshippers to the mosque, someone suggested that they use a horn as the Jews did, while someone else suggested that they use a bell as the Christians did.<sup>36</sup> As was noted in an earlier discussion, the Messenger of God did not upbraid them for making such suggestions. Rather, the consultation continued until they had arrived at a better, more fitting, solution, namely, the call to prayer or *adhan* known among Muslims today.

As we saw in an earlier chapter, the Prophet used to lean against the stump of a tree as he preached. Then one day he told his Companions that standing for a long period of time had become difficult for him. The Prophet consulted the Muslim congregation about it, and Tamim al-Dari, among others, suggested the idea of making a pulpit for him like the ones he had seen made in al-Sham. After some discussion, it was concluded that he should allow a pulpit to be made for him.<sup>37</sup> It should be remembered here that at that time, borrowing a practice from the inhabitants of al-Sham would have meant borrowing from the Byzantines, who were Christians.

In the compilations of authentic hadiths by both al-Bukhari and Muslim we read that when the Messenger of God wished to write letters to the sovereign rulers of his time (Caesar, Chosroes, and the Emperor of Abyssynia), he was told that such rulers would only accept letters bearing a seal. Consequently, the Prophet had a silver seal made for himself and had the words “Muhammad the Messenger of God” engraved on it.<sup>38</sup> We are told on the authority of Ibn ‘Abbas that “the Messenger of God liked to conform to the practices of the People of the Book, that is, Jews and Christians, in those areas in which he had not received any command to the contrary.”<sup>39</sup> In keeping with the same openness toward other peoples, we read in *Sahih Muslim* that:

According to an account related by ‘Abd al-Malik ibn Shu‘ayb ibn al-Layth, on the authority of ‘Abd Allah ibn Wahb, on the authority of al-Layth ibn Sa‘d, on the authority of Musa ibn ‘Ali on the authority of his father, a man by the name of al-Mustawrid al-Qurashi once said in the presence of ‘Amru ibn al-‘As, “I once heard the Messenger of God say that when the Day of Resurrection comes, the Byzantines [Christians] will be in the majority.” “What is this you are saying?!” exclaimed ‘Amru. Al-Mustawrid replied, “I am simply repeating what I heard from the Messenger of God ... I have said this, because they have four [praiseworthy] qualities: At times of dissension or civil strife, they are the most clement; they are the quickest to recover following misfortune; the first to rally after a defeat; and the kindest to the unfortunate, the orphan and the weak. They also have a fifth virtue, namely, that they are the most resistant to injustice on the part of their kings.”<sup>40</sup>

All the qualities listed here are mentioned by way of commendation, with the implication that they are a model to be emulated, though the most relevant to the topic at hand is the fifth and final virtue.

One of the most charming accounts to be found in the Prophetic Sunnah in this connection is the lengthy hadith concerning a woman by the name of Umm Zar‘. Commenting on this hadith, al-Qadi ‘Ayad states, “Of indubitable authenticity and accepted by leading Muslim scholars, this hadith is included in *Sahih al-Bukhari*, *Sahih Muslim*, and the compilations of Hadith scholars who came after them.”<sup>41</sup> It is said that eleven women from pre-Islamic times once

gathered for a meeting, where they decided that each of them would talk about her husband's good and bad points. They also agreed that they would be absolutely truthful and candid in everything they said. After all the other women had spoken, a woman by the name of Umm Zar<sup>c</sup> related an interesting experience she had had with her generous husband, Abu Zar<sup>c</sup>, and it is after Umm Zar<sup>c</sup> that this hadith was named. According to the hadith, the Messenger of God once said to 'A'ishah, "'A'ishah, I have been to you as Abu Zar<sup>c</sup> was to Umm Zar<sup>c</sup>.'" And she replied, "May my mother and father be your ransom, O Messenger of God! You are better to me than Abu Zar<sup>c</sup> was to his wife!"<sup>42</sup>

In a commentary devoted exclusively to this hadith, al-Qadi 'Ayad remarks that "this hadith serves as evidence that it is permissible for us to speak about bygone nations, peoples and generations and to cite them as examples from which we can learn. The reason for this is that their lives contain lessons for those willing to learn from them, insights for those with eyes to see, and benefits for those who diligently search for the good."<sup>43</sup> He quotes the Maliki jurist and judge al-Muhallab ibn Abi Safrāh as saying that "from this hadith we may derive the juristic principle that it is permissible to emulate the doers of good from whatever nation they happen to come." He then comments on al-Muhallab ibn Abi Safrāh's words, saying, "What he says about the permissibility of emulating the doers of good from whatever nation they happen to come is correct, so long as their actions do not conflict with Islamic law."<sup>44</sup>

Hence, the proper Islamic approach to non-Muslim peoples is to affirm the permissibility of emulating every doer of good in the good he does, every proficient person in his proficiency, and everyone who conducts himself correctly in the correctness of his conduct. The criterion for determining what is worthy of emulation is whether the action in question is consistent with and serves Islam, and whether it benefits the Muslim community and its interests. It was on this basis that the Companions and the rightly guided caliphs borrowed ideas and practices from other peoples and nations without embarrassment or apology. Examples are abundant and well-known; hence, I will not belabor the point.

[SECTION II]  
CONSULTATION AS A TOOL FOR REFORM  
AND RECONSTRUCTION

Several decades ago, Arab and Islamic regions were teeming with revolutionary trends and slogans. The notion of revolution had taken root in the minds of many well-read, educated Muslims, giving shape to their hopes, dreams and aspirations. Some wanted a Communist revolution, others a Socialist revolution, still others a Republican revolution, a pan-Arab revolution, an Islamic revolution, or a cultural revolution against religion and inherited, reactionary traditions. In short, the prevailing trend fifty or so years ago was the logic of revolution: its slogans, its methods, and its culture.

With or without revolution, our actual circumstances have changed little since that time. However, the way in which people think about how to change and improve things has most certainly changed. It is not my concern here to trace the change that has taken place or what directions such change has taken. However, one notes that the phase in which we now find ourselves is dominated by the notion, not of revolution, but of reform: its logic, its slogans, and its methods. Demands and pressures for reform have increased particularly over the last few years, as has the language of reform, to the point where everyone – even if only for the sake of going along with the crowd – calls for reform, promises reform, and strives for reform. This being the case, the issue of reform has been the subject of a great deal of discussion in recent years: Should it take place from within, or from without? Is it a natural, self-generated development, or is it a model imposed by others?

I do not wish to go into the political context of recent calls for reform, be they domestic or foreign. Nor do I wish to go into the political and ideological context of those who advocate external reform or of those who reject and condemn such reform, clinging to the status quo on the pretext of certain religious or national distinctives. Rather, what I wish to do is simply to ensure that the present discussion of consultation reflects an awareness of, and a responsiveness to, its political and social surroundings while at the same time maintaining its own distinct focus and purpose. This study is part of a

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self-generated, internal reform project which also admits of the possibility of borrowing from others whatever promises to be wholesome and beneficial. By self-generated and internal, I do not necessarily mean something that is initiated by residents of a particular country and carried out within the confines of that country. Such a project could well be genuinely self-generated and internal; however, it could also be an action dictated by external parties, or a superficial rearrangement or reconstruction of others' goals and priorities. Rather, what I mean by a genuinely self-generated and internal reform project is one which arises from within the community itself: from within its belief system, its culture, its national and ethnic personality and its potentials for renewal. Such a reform project is one that the community itself believes in and embraces with enthusiasm, one that it is responsive to and involved in. Or at the very least, it is one that the community can develop such a positive orientation towards.

Moreover, given that consultation is a practice promoted in both the Book of God and the examples set by the Messenger of God and the rightly guided caliphs, it embodies a reformist principle which not only has its roots deep in Muslims' hearts and minds, but which has a huge potential for adaptation and modification. How, then, can we translate this reformist principle into a practical mechanism by means of which the Muslim community can propel itself forward and activate the constructive, progressive potentials that lie within its commitment to the Islamic message?

#### *A Culture of Consultation*

We have seen how intensely involved the Muslim community was in consultation during the days of the Prophet and the rightly guided caliphs. We have also seen the way in which the practice of consultation deteriorated thereafter, not only on the practical level, but on the academic and theoretical levels as well.

As for what is required of us now, it is, first of all, to revive what might be termed the culture of consultation. The invitation to write on the topic of consultation, which is followed as a matter of course by publication and distribution, is clearly an expression, on the part of both those who issue the invitation and those who respond to it, of

their sense of the ongoing need for more attention to this subject. Promotion of the culture of consultation will require more writings, more lectures and seminars, and more consciousness-raising concerning both the meaning and importance of consultation, and the serious loss and harm that we suffer as a result of its neglect. The instructional discourse needed to spread the culture of consultation will need to be communicated through all channels possible, including the media, education, exhortation, guidance, preaching and the issuance of Islamic legal decisions.

The culture of consultation also means the widespread promotion of consultative practice in all areas of society in order for people to experience the consultative process, be trained in it, and realize firsthand the benefits it brings. After all, consultation is not exclusively for heads of states and other leaders, nor is it solely for the purpose of choosing the caliph or dealing with war situations or political issues. Rather, consultation is a way of life, a way of thinking and planning, and a pattern of relating to others. No one – whether his concern is major or minor, whether his knowledge is vast or limited – can do without consultation. If there was ever a human who could do without consultation, it would have been the best of all mankind, the Messenger of God. Yet it was this very Messenger of God who consulted others about major concerns and minor ones, about public affairs and private ones, about the material and the spiritual.

Consultation elevates the individual to a new level in the management of his affairs, enabling him to serve his own and others' interests to the maximum extent, to minimize the harm he does to himself and others, to purify himself, and to develop his intellect. Consultation provides a means of guiding and rectifying relationships between husbands and wives, and between parents and children. As such, it strengthens intimate relationships through dialogue and mutual understanding while helping us to avoid unilateral decisions together with the rancor and resentment they can cause. Similarly, it spares us the kind of distorted understanding that turns men's guardianship over women into mere authoritarianism, nay-saying and coercion, allowing it instead to become a guardianship of consultation, mutual understanding, shared consent and cooperation.

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If the kind of consultation enjoined by the Qur'an and modeled in the life of the Prophet is applicable to the lives of individuals – husbands and wives, parents and children – then it is all the more applicable to public interests and issues of shared concern. One of the public arenas that should be taking the lead in spreading the culture and practice of consultation is that of organized, communal outreach to non-Muslims. Groups and organizations involved in such outreach can – indeed, must – work at promoting the culture of consultation among Muslims in the following three ways:

- (1) by engaging in consciousness-raising and education on the subject of consultation among the general Muslim populace. This activity is one in which all those who give da'wah would take part in all their positions and capacities and with all the means at their disposal, be they individuals or groups.
- (2) by educating the members of such outreach groups in the consultative process, and by including consultative practice among their activities, programs, and educational objectives.
- (3) by incorporating consultation into their group action, including their institutions, the decisions they make, the initiatives they take, and the stances they adopt. A wise piece of advice offered by one of today's Muslims who gives da'wah is: Establish the Islamic state in yourselves, and it will be established in your land. For if such groups seek to establish sound, rightly guided Islamic rule, such rule will be marked, first and foremost, by consultative practice and the legitimacy it brings. Hence, let them first achieve this goal within their own ranks.

It is individuals and groups committed to consultative practice who will lead the way to sound Islamic rule, and it is they who will form its primary buttress and support. Let us remember that the Qur'anic verse that describes the Muslim community as those “whose rule [in all matters of common concern] is consultation among themselves” was revealed to the Muslim community when it consisted of nothing but a small group of believers who were calling others to faith, and who as yet had neither a state nor a caliphate.

The culture of consultation includes the establishment of consultative relationships and consultative management on the level of small social units. These might include demographic units, for example, or professional units. Hence, consultation might take place on the level of the neighborhood, the village, a rural area, the congregation of this or that mosque, a market, a craft or trade, or a factory. On all of these, and other, levels, one will find shared issues, shared interests, and shared problems, all of which call for deliberation, mutual understanding, and consultative planning and management. Moreover, such processes may be conducted by those directly concerned, or by their leaders, supervisors familiar with their circumstances, agents, or trustees.

The mosque, for example, is a shared facility and institution the management of whose affairs is the responsibility of the neighborhood or village residents who frequent it. Therefore, its affairs should be handled through “consultation among themselves” in accordance with the example set by the Prophet. The Prophet forbade anyone who was not a member of a given mosque’s congregation to lead prayers there, since the guiding principle in such a situation is for the imam or prayer leader to belong to the same congregation as those he leads, and to be from the same geographical area as they are. The Prophet thus said, “If someone is visiting a congregation, let him not lead them in prayer. Instead, they should be led by someone from among themselves.”<sup>45</sup> When the Companion Malik ibn al-Huwayrith would visit a mosque in order to teach and exhort the worshippers there, he would refrain from leading them in prayer if they asked him to do so, and he would cite this hadith in support of his position.<sup>46</sup>

There are also a number of hadiths with mutually supporting attestation in which the Messenger of God condemns anyone “who leads a congregation in prayer when its members dislike him.”<sup>47</sup> Imam al-Tirmidhi tells us in *al-Jami' al-Kabir* that “Some scholars declare it undesirable for a man to lead a congregation in prayer if they dislike him. However, if such an imam is not unjust or unkind to others, then those who dislike him bear guilt for their dislike of him.” Commenting on this statement, Ahmad and Ishaq state, “If such an imam is disliked by [only] one, two or three [members of the

congregation], there is nothing wrong with his leading them in prayer. It is only unacceptable for him to lead them in prayer if most of the congregation dislikes him.”<sup>48</sup> In other words, in order to lead a congregation in prayer, an imam must be acceptable to all, or at least, most, of its members. It is not acceptable for him to be imposed upon them, or for him to impose himself upon them, if they dislike him.

It follows, then, that a mosque’s regular worshippers should consult among themselves concerning their choice of imam, and concerning whether to remove their imam if circumstances require it. The authorities responsible for mosques must work to encourage and organize this type of local consultative process rather than overriding it for the sake of a centralized appointment and management process which, since it is inconsistent with the principle of consultation, has become ineffectual and illegitimate, not to mention unpopular. One notes that a number of government ministries today – ministries of culture, social affairs, youth and sports, and health, for example – deal with local societies and organizations which, given their areas of specialization, are called upon to assist and oversee these ministries’ activities. Ministries of religious endowments and Islamic affairs, which oversee most mosques in the Islamic world, are thus called upon to encourage the local, grassroots management of mosques and their affairs by popular committees or societies, or by other means, both official and unofficial. This type of management is bound to elevate mosques’ status as bearers of a mission of relevance to all; indeed, it promises to elevate the status of citizens themselves, particularly if there is assistance and support from the government organs overseeing the mosques or from local scholars, speakers, and prayer leaders. All such steps will serve to reinforce the culture and practice of consultation.

Scholars, too, must work to ensure that their legal and juristic interpretations and the stances they take on various issues and problems grow to the greatest extent possible out of dialogue, deliberation and mutual agreement. We have seen that this mode of conduct, rooted as it is in the practice of the Messenger of God and his Companions, is authentically Islamic and firmly grounded in Islamic history. It bears noting that the most significant, well-known of the Companions’ consultations were those that related to independent reasoning

(ijtihad) and the endorsement of rulings on new situations, actions and conflicts. And the same types of consultations have been engaged in by Muslim jurists and judges down the centuries.

It should be noted here that the age in which we live has witnessed a welcome return to the idea of communal, consultative interpretation and independent thinking. This return has manifested itself in the appearance of a number of juristic academies, some of which include scholars from a variety of Islamic regions. These include the Academy of Islamic Jurisprudence (a branch of the Islamic Conference Organization) and the Juristic Academy (associated with the Islamic World League). Some of them are continental, such as the European Council for Research and Fatwas and the Juristic Academy of North America. There are also juristic academies and fatwa committees in a number of Islamic countries.

This is a salutary, praiseworthy phenomenon; however, it is still limited in terms of numbers, representative power, credibility, productivity, and the ability to make its voice heard by communicating its legal decisions and positions to the broader Muslim community. Yet it is the existence of credible, effective consultative academic bodies on the level of the general Muslim populace, and indeed, on the level of the international community, that will bring us out of the confusion and chaos that now prevail in Islamic thought and jurisprudence in general, and in the area of issuing Islamic legal decisions in particular.

It would be neither possible nor worthwhile to attempt to prevent "every Tom, Dick and Harry" from issuing his own personal fatwas in the name of religion. Nor would it be possible for us to stop those who wish to issue fatwas "on request" according to formulas determined by the relevant "authorities." Similarly, it would be impossible for us to stand in the way of those who issue fatwas that stir up civil strife and wars whose victims are ordinary Muslims the world over. None of these measures would be feasible, and none would solve the problem. Rather, the solution consists in filling the vacuum with something that has credibility and scholarly authority, and which issues from trusted parties with prestige and the ability to defend their point of view in a cogent manner. The highest expression of this ideal is found in the communal issuance of fatwas or legal decisions in a process that

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combines competence and autonomy. At the same time, however, it should be remembered that even if the phenomenon of communal interpretation and independent thinking becomes widespread, it does not cancel out the need for individual interpretations, nor does it rob such interpretations of their legitimacy or undermine their importance or value.

In sum, the spirit of consultation needs to permeate the entire culture in which we live; in other words, it needs to become the prevailing way of life. Before becoming a law and a system, it needs to infuse people's moral character and values. Consequently, laws and systems regulating the practice of consultation will stand or fall depending on the degree to which they are surrounded, undergirded, nourished, strengthened and protected by a culture imbued with the spirit of consultation. If such a culture is prevalent and effective in the society at large and in relation to the management of its affairs, we will then be able to move forward in establishing and systematizing consultation on the level of the state and its institutions.

### *Systematizing Consultative Practice*

We touched earlier on a number of general principles and rules of relevance to the practice of consultation. We also noted the historic error embodied in the failure to adopt a specific, detailed system for the practice of consultation, a failure which has left it vulnerable to neglect or, at the very least, to becoming sporadic and capricious. In preparation for action to correct this error, I devoted the previous section to a discussion of a number of Islamic legislative principles, the application of which can help toward the systematization of consultative practice.

In light of the foregoing, it may be said that in order to truly benefit from consultation and to adopt it as a means of bringing about reform and renewal, it will be necessary to establish detailed, binding procedures relating to consultative practice. Such procedures must remain subject to review and modification whenever the need for such arises. First, however, they must be firmly in place and action must be in progress to apply them rather than leaving things to chance and voluntary initiatives.

We must emulate the pattern God has shown us in His creation: "It is He Who creates everything and determines its nature in accordance with [His own] design."<sup>49</sup> "Unto everything has God appointed its term and measure."<sup>50</sup> "...With Him everything is created in accordance with its scope and purpose."<sup>51</sup> Similarly, we must emulate the pattern He has shown us in His law: The major rites of worship in Islam are regulated with the greatest of precision with respect to their numbers, their times, the manner in which they are to be performed, the conditions for their performance, the conditions under which they are not to be performed, and the events or situations that render them invalid. If the command to perform such rites had remained general and devoid of detail or regulation, they would have remained vague and undefined, and as a consequence, they would have been in danger of disorganization, neglect, and even suspension.

It is true, of course, that such detailed regulation is not called for explicitly in the Qur'an or the Sunnah in relation to consultation, a fact which has been discussed, and the wisdom behind which has been elucidated. For as we noted earlier, consultation concerns itself with affairs and circumstances that are constantly subject to change in relation to their type, their seriousness, the specific issues involved, and the individuals to whom they are relevant. Hence, in contrast with Islamic rites of worship, which are related to timeless issues and conditions and whose functions and purposes are not subject to change or modification, consultation requires flexible regulations which can keep pace with ongoing developments and shifting needs and requirements. The Messenger of God once said, "Pray as you have seen me pray,"<sup>52</sup> and, "Take your pilgrimage ceremonies from me."<sup>53</sup> He did not say, "Take counsel with each other as you have seen me take counsel." Nor did he say, "Take your system of consultation from me." In other words, he appears to be saying: Manage among yourselves, and organize your consultative practice as you see fit.

In order to systematize consultation, we have a number of patterns and experiences to choose from. Some of these are derived from our Islamic heritage, others from the wider human heritage. We also have principles and criteria derived from Islamic law as well as our innate mental capacities and standards. The range of options available to us is

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rich in its potential and offers a great deal of flexibility. Given this richness, we are free to assess, weigh and compare, then adopt what we consider correct, more correct, or the best approximation to what we consider correct and beneficial and the least likely to lead to error or harm.

With this in mind, we need to establish consultative councils or bodies whose members are appointed, approved or removed in accordance with agreed-upon organizational regulations. These councils or bodies will vary in number and type based on the areas, specializations and levels needed, from the level of the head of state and the direct action entailed by this function, to the smallest administrative units and specialized institutions in the state or in the society as a whole.

Moreover, although it is only natural that some organizational rules will be common to the various consultative bodies, there will be other sets of rules and regulations that will set each one apart from the others. Among the common features of such bodies is that their powers and areas of specialization will have to be defined, as will their meeting times, and the degree to which their decisions will be binding within the confines of their respective specializations and powers. In addition, their decisions will be made by a majority vote if it is impossible to reach unanimous agreement. The principle of the majority might also be subject to conditions or controls; for example, it might be specified that this principle will not apply in certain cases, or that a specific percentage of votes will be required in order to approve decisions in certain situations.

One principle that must be adopted in consultative practice is that of the greatest possible inclusiveness of consultations, be they on the level of special units, or on the level of the entire society, including all of its adult members or all of a certain category of individuals depending on the type of case involved, the particular group of people to whom it is of concern, and the degree of inclusiveness that is, or is not, feasible. What this means is that in some cases, the consultative process might include an entire country, more than one country, or the entire Muslim community.

As we saw earlier in this discussion, the Messenger of God would in some cases consult with the largest possible number of Muslims,

saying, "Advise me, people." We also discussed the consultation that took place in the portico of Banu Sa'idah in the city of Madinah, as a result of which allegiance was pledged to Abu Bakr as the Muslim community's new caliph. This consultative session was attended by everyone who was able to attend, and everyone who wished to speak had the opportunity to do so. We also saw what 'Abd al-Rahman ibn 'Awf did when the number of candidates for the caliphate was narrowed down to two, namely, 'Ali and 'Uthman. In order to see which of these two men enjoyed greater favor with the people, 'Abd al-Rahman conducted something on the order of a popular referendum among members of the Muslim community. He even consulted with women confined to their private quarters, young boys in Qur'an memorization schools, and travelers at their stopping places.

What all of this tells us is that in relation to some cases, consultation may include the widest possible circle of advisors. Moreover, as we have seen, "the widest possible circle" is narrowed or broadened by virtue of circumstances and the means of consultation at people's disposal. This principle is confirmed by Muhammad al-Tahir ibn Ashur, who states that "since, in general, it would be difficult to obtain the agreement of the entire Muslim community, it is necessary to be content with the agreement and approval of the majority of the community."<sup>54</sup> Ibn Ashur also points out that given the inadequate means of communication available in times of old, it was inevitable that they would stop at certain limits and be content with certain formulations in the choice of "those who release and bind." It was necessary, for example:

...to content themselves with the knowledge that certain individuals enjoyed widespread fame within the Muslim community for their integrity, wisdom, and well-thought-out advice, and that given their excellent repute, the majority of the people would submit to the decisions they made in the management of their affairs and interests. For at that time, means of arriving at mutual understandings of things and reviewing issues together were exceedingly limited given the vast distances between the regions in which people lived and the slowness of their mail systems.<sup>55</sup>

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What this implies is that given the vast improvement we have witnessed in our circumstances and the means of communication at our disposal, it behooves us to broaden the sphere of consultation accordingly and to regulate its results with greater precision while, at the same time, evaluating the importance and necessity, or lack thereof, of each consultation in turn, and the benefits it can be hoped to achieve.

#### *Borrowing and Suitability*

The modern age has witnessed tremendous developments and rich experiments in relation to political and administrative systems, particularly in the area of creating institutions for the management of public affairs. The majority of these organizational experiments have taken place under the name of “democracy” or “democratic systems.”

As I sought to show in the previous section, borrowing that which is beneficial from others is a legitimate practice that can be traced back to the example set by both the Prophet and the rightly guided caliphs. Hence, it behooves Muslims in this day and age – as it does in every day and age – to look around them and to observe the organizational systems and patterns of others. Then, after investigating the outcomes and feasibility of such systems, they should seek to implement whichever aspects of these systems have proved beneficial and worthy of adoption and emulation. Whether such systems are termed democracy, democratic methods, democratic borrowing, or democratic approaches, what matters is not the labels we use to name things, but the entities thus named. What matters is not words, but their meanings; not terminology, but the terms’ content; not means, but ends; not appearances, but essences. As Ibn al-Qayyim states, “What matters in words and deeds is their meanings and the intentions behind them.”<sup>56</sup>

The act of borrowing from democratic systems or adopting democracy with refinements and corrections is a means of seeking wisdom wherever it happens to be found. It is also a form of rightly guided Islamic legal policy, which, in the words of Ibn ‘Uqayl, “consists in those actions which – even if they were not legislated by the Messenger of God and even if he received no revelation concerning them – bring people closer to righteousness and further from corruption.”<sup>57</sup>

Hence, if borrowing from democratic systems and experiments is both legitimate and beneficial, then whether one retains the name “democracy” is a matter of indifference. There is nothing wrong with using this name, nor is there anything wrong with abandoning it and replacing it with something else. At the same time, however, the expressive and explanatory power of certain terms may make it more useful to retain them in order to facilitate communication to the greatest possible extent. Both the Qur’an and the Messenger of God used certain terms for this reason. Examples of such terms are *al-qist* and *al-qistas*, which convey the sense of perfect justice. In the last section of his *Sahih*, which deals with God’s words, “But we shall set up just balance scales (*al-mawazin al-qist*) on Resurrection Day,”<sup>58</sup> and the fact that people’s words and actions are weighed in the balance, al-Bukhari states that according to Mujahid, “The term *qistas*, or *qist*, is a Byzantine Greek word meaning ‘justice.’” Al-Hafiz ibn Hajar quotes al-Qadi ‘Ayad as saying that “The term *qistas* (which may also be pronounced *qustas*) refers to the most just of balances.”<sup>59</sup> Hence, the word *qistas* used in the Qur’an is an Arabization of the Greek word for “justice.”

If, through the Qur’an’s use of the Greek term *qistas* or *qist*, precise or just balances have become a symbol and sign of justice as well as a means of achieving it, so also in our day has democracy become a symbol of the act of throwing off tyranny and exclusive claims to power. The term “democracy” speaks of people’s participation in managing their affairs and choosing their rulers and representatives in accordance with precisely formulated systems and regulations whose goal is to achieve justice and equality to the greatest possible extent. Hence, it may actually be helpful for us to use the word “democracy” or related terms to refer to some of the goals we wish to achieve through the establishment and systematization of consultation. Moreover, just as the Qur’an uses the words *qistas* and *qist* without dropping or even reducing its use of the word “justice” (*al-‘adl*), so also is it possible for us to employ the term “democracy” and its derivatives without eliminating the word “consultation” (*al-shura*) or minimizing its importance in any way. For just as the *qistas* or precisely calibrated balance is an ideal means of achieving justice in relationships, rights and

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conflicts, so also is democracy in its most authentic sense a means of achieving fairness and equality, preventing tyranny, and guiding the management of public affairs in the most prudent manner.

Means, methods and criteria derive their legitimacy, importance and standing from the outcomes they achieve. In the words of Ibn al-Qayyim:

God has sent His messengers and revealed His books in order for people to achieve *al-qist*, that is, the justice upon which the heavens and the earth were founded. Hence, if signs of the truth appear, if evidence of sound reason is apparent, and if its dawn breaks in any form whatsoever, then there one will find God's law, God's religion, God's command, and God's favor. God Almighty has not confined the paths and signs of justice to a single form while abolishing other forms which are more powerful and more evident. Rather, He has made clear through the paths He has laid down that His intention is to establish truth and justice and to guide people to act in fairness. Any path by means of which the truth is brought to light and justice is recognized is one on the basis of which judgments ought to be made. After all, paths are simply causes and means which do not exist for their own sake. Rather, they exist for the sake of the ends or purposes they are intended to achieve. However, through the paths He has laid down, God draws our attention to their foundations and ideals.<sup>60</sup>

When we decide to benefit from democratic experiments and systems, no one has the right to say to us: "Take democracy as it is, or leave it," "Accept this model of democracy lock, stock and barrel," or "Go all the way with Western democracy, and take the good with the bad." If some people do say such things, that is their business. As for us, however, we reserve the right to take what we wish and leave the rest, to modify and adapt whatever we please, however we please. Democracy's keenest advocates admit that it is simply the best system they have found to date, although some of them describe it as "the best of the bad"; in other words, out of the political systems available, it is the least undesirable. Hence, it is generally acknowledged that democracy has its faults and shortcomings, particularly when we move out of the realm of normative or ideal democracy into the realm in which democracy is applied and lived.

If we, as contemporary Muslims, have been destined to live in the age of democracy and its globalization, and if we are invited – or, possibly, obliged – to adopt democracy or at least borrow from it, then might we not also be destined to elevate democracy to a higher level, set it on a sounder path, and remedy its inadequacies? Democracy needs us and what we have to offer no less than we need democracy and what it has to offer. In fact, democracy's need for us may be greater than our need for democracy. We need democracy in the form of organizational and procedural borrowings and experiments, whereas democracy needs us to treat some of its deep-seated structural evils and maladies. Moreover, even if we are not able at this time to reform democratic practice on the international level, we can begin to contribute to such reform within Islamic countries and on the level of Islamic participation in democratic experiments, which will in turn mark the beginning of a positive contribution to, and influence on, the international scene.

One of the greatest evils from which democracy suffers today is the control exerted by monied interests: control over the political complex, including the institutions that guide it and make it up, control over the establishment and funding of the major political parties, control over the funding of exorbitantly expensive election campaigns by means both legal and illegal, and control over the major media outlets, which are directed for or against whoever the monied interests want them to be directed for or against. In this way we end up with a parliamentary majority controlled by the minority, or a government of the minority under the guise of government by the majority!

This appalling situation, in which facts are turned on their heads through legal, “democratic” means, is not without a remedy. In fact, if things are taken with the proper seriousness, there is more than one way in which it can be remedied. In non-capitalistic countries, or in countries in which capitalism enjoys a limited influence, it is more feasible to treat this evil or avoid it altogether. However, it should be remembered that in Islamic countries, scholars, religious spokesmen, religious and tribal leaders and other local authority figures continue to enjoy considerable influence. This situation has its advantages, since it enables leaders to emerge within the society in a natural way that is

marked by greater credibility than the controlled democratic approach. If this reality were taken into account and incorporated in a legal fashion into the political and electoral systems, it could serve as a deterrent factor that would help to counterbalance the power of money and those who wield it. The purpose behind such a measure would be to give everyone his due and to search out the most credible, reliable ways in which to represent members of society and their views, both of which are essential features of a normative democracy.

In addition, it should be remembered that institutions whose function is to produce human resources in Islamic societies, such as those devoted to education, child-rearing and guidance, are influenced by a number of institutions and individuals that are themselves swayed little by monied power. These include mosques, groups and institutions devoted to spreading Islam among non-Muslims, Sufi brotherhoods and religious schools. Such parties also represent deterrent forces capable of keeping money's power and influence in check, and thereby creating a needed balance in society.

In the face of election campaigns and the exorbitant sums that fuel them, we must persevere in spreading our Islamic culture with its stance against all thoughtlessness, waste, and extravagance. In fact, the notion of propagandistic election campaigns needs to be reassessed entirely, including their content and style, the ways they are funded, and the amounts of money spent on them. For while Islam prohibits waste and extravagance, which it views as foolish and wicked, it also prohibits lying, falsification, deception, slander, scandal-mongering, false accusations, and faultfinding. Similarly, it condemns the practice of selling oneself by boasting and projecting an image of oneself as praiseworthy and superior, whether the claims one makes about oneself are true or false; it also condemns people who love to receive undeserved praise. In Islamic societies and circles, these values and precepts need to be cherished, preserved and put conscientiously into practice in the face of the flood of subversive counter-values with which we are being confronted.

Another of the banes that afflict democracy is the fact that it opens the door, in principle, at least, to all possibilities. In other words, when people truly govern themselves, by themselves – which is the most

fundamental meaning of democracy – anything could happen, and anything could change. Some Muslim writers have gone so far as to suggest that this element in particular – which is fundamental to democracy – could lead Muslims to abolish the precepts of Islamic law, whether in part or in whole. In response to this suggestion, I would say that this possibility exists nowhere but in such thinkers' minds. The abolishment of Islamic law that has taken place thus far in Islamic states has come about by dictatorial means, not by democratic ones. Some of these changes have been brought about by foreign occupation, and others by our own rulers in response to foreign pressure. In all cases, however, the changes have been implemented by virtue of dictatorial fiat, not democracy. Never before has it happened that a Muslim populace, or those elected by a Muslim populace, have voted in favor of something which they knew clearly would run counter to Islam and its law. Moreover, in all the cases in which Islamic peoples have been allowed to express themselves freely on this issue, they have chosen to move in the direction of more, rather than less, adherence to Islam and its precepts.

However, let us suppose for the sake of argument that what some people fear actually came to pass and that, in the presence of a genuine democracy, the majority of the Muslims in this or that region chose something that would be considered a departure from Islam. Would the fault in this case lie in democracy, or in the situation faced by the people of the region concerned? It would not be democracy that had caused the fault, or the faulty situation. Rather, democracy would simply have revealed the existence of the problem. This, then, would be a reason to thank democracy and adhere to it even more, not a reason to malign or reject it. After all, the process of giving people an opportunity to express their thoughts and feelings freely, whether we call it democracy or something else, reveals the truth to us, enabling us to ascertain the way things really are. And is there anyone who would be against knowing the truth about things?

As for the solution to such an unfortunate situation, if it came to pass, it would lie not in ignoring or running away from the facts. Nor would it lie in passing or abolishing this or that law. Rather, it would lie in a process of consciousness-raising, explanation, education,

enculturation, and dialogue. The remedy to the problem, in short, would lie in invitation and persuasion, not in prohibition or coercion. Can you or I force people to be believers? Or must we first persuade and convince them? It would not be consistent with Islam, nor would it be in the interests of Islam and Muslims, for us to establish an Islamic state that did not reflect what is in people's hearts, or for us to impose on people laws that they hate.

I am not speaking here about a minority of the people, nor about some lunatic fringe. Rather, I am speaking about the majority of the populace. Nor must we forget that the laws and precepts of Islam represent a religion that rests on faith and inward approval. Islamic precepts are not merely edicts passed by this or that government which are enforced in people's lives with or without their consent. For those who do not consent to God's rule in their heart of hearts, but, rather, hate it and wish to be freed from it, are unbelievers or hypocrites even if they apply this rule, or if it is applied to them.

God does not require even "the people of the Book," that is, Jews and Christians who live among Muslims and under the rule of an Islamic state, to appeal to Islam and Muslim rulers for legal decisions so long as they adhere to their own religion. Nor does He require Muslim rulers to settle such matters between them based on the law of Islam. Rather, it is a matter of choice for both parties unless there is evidence of injustice, aggression, or widespread corruption among them, in which case it must be dealt with and eliminated. As for the religious, civil and social disputes that arise among them, it is up to them, their religion and their religious leaders to settle them on their own. God tells the Prophet, "If they come to thee [for judgment], thou mayest either judge between them or leave them alone: for, if thou leave them alone, they cannot harm thee in any way. But if thou dost judge, judge between them with equity: verily, God loves those who act equitably."<sup>61</sup>

When laws and legal rulings lose the element of faith and inward consent, they lose all spiritual value and the last vestiges of a religious dimension. And when this happens, it makes little difference whether one applies these rulings and laws, or others. Hence, if our primary concern is to preserve our religion and be faithful to it, with all the

consequences this entails in this life and the next, what should really dismay us is not the symptom, but the underlying malady. A preference on the part of the majority of a Muslim population for something which is contrary to Islam is a symptom, an outcome, not the underlying illness or cause. Hence, what is truly unfortunate here is not that people have expressed what they really feel and think; rather, it is the intellectual, cultural and psychological condition that has thus revealed itself. At the same time, however, this revelation provides us with an opportunity to treat and correct the condition rather than continuing to bury our heads in the sand, thereby allowing the illness to grow steadily worse. Moreover, if the disorder and its causes are treated, then what had been lost through democracy will be regained through democracy as well. We will have gained an understanding of both the illness and how to cure it, and this will be a “manifest triumph.”<sup>62</sup>

At the same time, it should be borne in mind that every democratic state has constitutional rules which guarantee the preservation of its foundations, distinctive features and unchanging values. Such rules may not be violated by democracy and its circumstantial outcomes. The existence of such rules is considered to be one of the essential features of democracy provided that it represents the nation's wishes while protecting its identity and the foundations of its existence. Islamic states thus have the democratic and religious responsibility to stipulate in their constitutions that anything that conflicts with Islam is to be considered unconstitutional and, therefore, null and void. The practice of democracy can then proceed on this basis, which is not the least inconsistent with democratic principles so long as it is, itself, the people's choice and a reflection of their beliefs and desires.

Be that as it may, whether such precautionary guarantees are stipulated or not, and whether they are enforced or not, the best guarantee of democratic, that is, consultative, rule continues to lie in the preservation of people's godliness, religious culture and adherence to their religion and its law through faith and persuasion, not through coercion and force.

# CONCLUSION

## *Not by Consultation Alone*

I have attempted throughout this study to highlight the importance of consultation in all areas, and at all levels, of Muslims' lives. I have sought to make clear that all people are called upon to adopt consultation as a way of life, and that in so doing, they help to protect their own best interests while drawing upon a profound source of guidance and wisdom. I hope to have defended this idea sufficiently to restore it to its proper place in Muslims' thinking, at least on the theoretical level, and to have drawn attention to the role consultation has to play in reform and renewal.

At the same time, however, it must be borne in mind that consultation alone is not sufficient for the achievement of such goals. After all, consultation is only one part of Islam and its law. As such, it is only one part of an integrated Islamic framework. Moreover, such a framework will only be able to achieve its goals in the most complete, ideal manner if all its parts are functioning fully. And just as a breakdown in any one part will reflect negatively on the effectiveness of the other parts, so also will a breakdown in the overall system's functioning reflect negatively on the effectiveness of each part individually.

When consultation is practiced in an atmosphere conducive to its optimum performance and the fulfillment of its purposes, it will yield far greater fruit than it would if it were practiced in a hostile or unsupportive atmosphere. I have spoken, for example, about the need for high moral standards and ethical guidelines in the practice of consultation, and even more so in the practice of democracy. Certain high-minded politicians<sup>†</sup> today speak frequently about the need to introduce morals into democratic practice and public life. To this I would add that the introduction of morals into public life is inseparable

from their introduction into private life. The introduction of morals into any sphere requires a concomitant process of education and consciousness-raising that will serve to reinforce and facilitate such morals. On the other hand, education and consciousness-raising without the introduction of morals is likely to be an exercise in futility. As it was said of old, "Knowledge without the fear of God is a mirage in the desert."

If we succeeded in establishing a system of consultation, but applied it in a setting characterized by moral laxness and neglect, this system could easily become nothing more than a setting for power struggles and maneuvers, tugs-of-war and fruitless controversy. Given this possibility, then, we might add to "instructive consultation" and "binding consultation" a third category, namely, that of "painful consultation," that is, consultation which produces nothing but rancor, disputes, and headaches. Clearly, then, consultation and consultative institutions are capable of turning into means of seeking personal gain and advancement. Similarly, they can become fertile ground for the formation of blocs and alliances, both political and otherwise, and the conclusion of deals for the benefit of this or that party, faction, individual, family, tribe or wing. Alternatively, they can be exploited as a cover for tyranny, oppression, manipulation and scheming.

After all, even Pharaoh and his leading men used to take counsel together in the service of wrongdoing and corruption. The Qur'an speaks of this on more than one occasion, saying:

The great ones among Pharaoh's people said, "Verily, this is indeed a sorcerer of great knowledge, who wants to drive you out of your land!" [Said Pharaoh] "What, then, do you advise?" They answered: "Let him and his brother wait awhile, and send unto all cities heralds who shall bring before thee every sorcerer of great knowledge."<sup>2</sup>

And elsewhere:

Said [Pharaoh] unto the great ones around him, "Verily, this is indeed a sorcerer of great knowledge who wants to drive you out of your land by his sorcery. What, then, do you advise?"<sup>3</sup>

## *Conclusion*

Even Joseph's brothers engaged in consultation for the purpose of scheming against him. In this connection the Qur'an tells us that:

Indeed, in the story of Joseph and his brothers there are messages for all who search [after truth]. Now [Joseph's brothers] spoke [thus to one another]: "Truly, Joseph and his brother [Benjamin] are dearer to our father than we, even though we are so many. Behold, our father is surely suffering from an aberration!"

[Said one of them]: "Slay Joseph, or else drive him away to some [faraway] land, so that your father's regard may be for you alone; and after this is done, you will be [free to repent and to live once again as] righteous people."

Another of them said, "Do not slay Joseph, but rather – if you must do something – cast him into the dark depths of this well, [whence] some caravan may pick him up."

[On this they agreed, and thereupon] they spoke [thus to their father]: "O our father! Wherefore wilt thou not trust us with Joseph, seeing that we indeed are his well-wishers? Let him go out with us tomorrow, that he may enjoy himself and play; and verily, we shall guard him well!"

[Jacob] answered, "Behold, it grieves me indeed [to think] that you might take him with you, for I dread lest the wolf devour him at a moment when you are heedless of him!"

Said they, "Surely, if the wolf were to devour him notwithstanding that we are so many – then behold, we ought ourselves to perish!"

And so, when they went away with him, they decided to cast him into the dark depths of the well. And We revealed [this] unto him, "Thou wilt yet remind them of this their deed at a time when they shall not perceive [who thou art]!"<sup>4</sup>

Honorable consultation is practiced by honorable people with honorable intentions and in conjunction with upright, morally principled conduct. Moreover, such consultation will only endure and bear fruit to the extent that it takes place in a cultural and social milieu that nourishes, strengthens, protects and sustains it. For if the practice of consultation is important, then it is likewise important to persevere in it and to achieve its true purposes.

Additionally, consultation will only succeed and endure in an atmosphere of freedom: freedom of conscience, freedom of thought, and freedom of speech. In a climate of freedom, people think and express themselves without fear or intimidation, misgivings, impediments or precautions. Moreover, first and foremost among those who need such a climate are those engaged in consultation. After all, there is no consultation without genuine freedom. If it does take place in the absence of freedom, it will not endure, and if it endures, it will not be true consultation. Rather, it will be nothing but empty form and ritual.

In an atmosphere of freedom, by contrast, all become eligible to take part in consultation even if they are not members of consultative councils. This is because consultation in its broader sense consists in advice given; moreover, when advice is given, it must be given “for God’s sake, for the sake of God’s Book, and for the sake of His Messenger. It must also be given for the sake of the Muslim community, both its leaders and the general populace.”<sup>5</sup> Jarir once said, “I pledged allegiance to the Messenger of God, promising that I would perform the canonical prayer, give zakah, and offer [sound] advice to every Muslim.”<sup>6</sup>

This is where the distinctive role of scholars – as well as all those endowed with knowledge, thought and opinions – comes to the fore. All such individuals are called upon to offer their counsel and advice whether it has been solicited or not. One and all, they are a source of assistance and support for those engaged officially in the consultative process. As such, they are indirect, unofficial advisors to those in positions of authority and responsibility, indeed, to everyone in the wider Muslim community.

I would like to conclude this study with an incident from the first generation of Muslims which serves as a model for both those who seek others’ counsel, and those whose counsel is sought. As such, it offers lessons to Muslim leaders and scholars who sincerely seek to offer wise counsel. The incident comes from the life of ‘Umar ibn al-Khattab and one of the members of his consultative council. Ibn ‘Abbas related the following events:

‘Uyaynah ibn Husn ibn Hudhayfah once came and stayed with his nephew, al-Hurr ibn Qays, who was among ‘Umar’s trusted advisors.

## Conclusion

‘Umar’s advisors and the members of his councils were reciters [that is, scholars], be they middle-aged or young. ‘Uyaynah said to his nephew, “O my nephew, you are respected by this ruler. So please request his permission for me to see him.” His nephew replied, “I will do as you have asked.” Hence, al-Hurr requested ‘Umar’s permission for ‘Uyaynah to come see him, and permission was granted. When ‘Uyaynah had entered ‘Umar’s presence, he said, “What is this, O son of Khattab? Verily, you are not generous toward us! Nor do you judge fairly among us!” Upon hearing what ‘Uyaynah had said, ‘Umar was so enraged that he nearly struck him. However, al-Hurr said, “O Commander of the Faithful, God Almighty said to His Prophet, ‘Hold to forgiveness; command what is right, but turn away from the ignorant.’<sup>7</sup> And this man is most surely among the ignorant.” And verily, ‘Umar restrained his anger when he recited the verse to him. For he was someone who held the Book of God in the highest esteem.<sup>8</sup>

This text is rich in lessons of relevance to our subject, of which I make mention of the following seven:

- (1) The characteristics of a qualified advisor include knowledge, clemency, and the willingness to utter words of counsel and warning to those in authority.
- (2) The advisor, and others who work closely with rulers, is someone who serves the general populace, and who strives to be a link, rather than a barrier, between them and those in authority over them.
- (3) The good advisor is someone who gives others the benefit of a doubt when they act or speak in an offensive manner, and who urges those in power to overlook such behavior and pardon them rather than resort to punishment and retaliation.
- (4) The willingness to pardon rather than rebuke and seek revenge will encourage people to speak their minds without fear and to come forward with their complaints, observations, criticisms and words of advice, bearing in mind that unseemly behavior will wane if it is met with good manners. As God declares, “Verily,

good deeds drive away evil deeds.”<sup>9</sup> Moreover, encouraging people to speak freely and candidly, even if it is done impolitely at times, is better than encouraging them to be sycophants and hypocrites.

- (5) ‘Umar had consultative councils whose members were men of learning, both young and old.
- (6) The members of ‘Umar’s inner circle, that is, those with whom he associated closely and with whom he surrounded himself, were willing and able to offer sincere, well-founded advice.
- (7) A ruler will be willing to accept what he hears from a trusted advisor without hesitation or arrogant resistance, particularly if the advice is offered for God’s sake and is consistent with the Book of God.

*May God be pleased with all of these our forebears in faith,  
and may He benefit us through their knowledge  
and their way of life. Praise be to God,  
Lord of the worlds.  
Amen.*