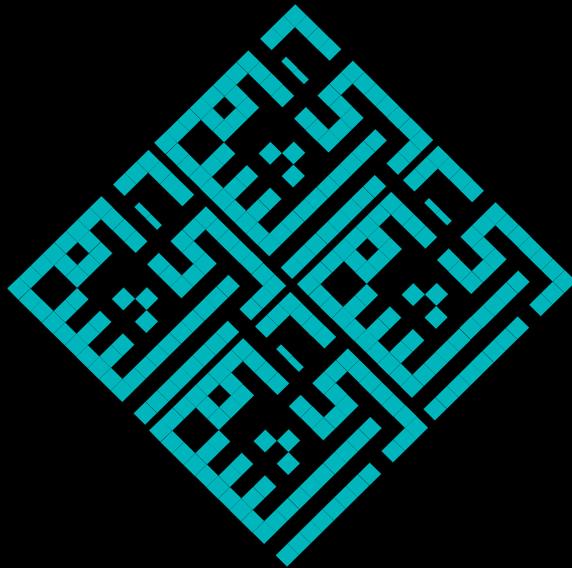


# AL-SHURA

The Qur'anic Principle *of*  
Consultation



AHMAD AL-RAYSUNI

AL-SHURA:  
THE QUR'ANIC PRINCIPLE OF CONSULTATION,  
A TOOL FOR RECONSTRUCTION AND REFORM



AL-SHURA:  
THE QUR'ANIC PRINCIPLE OF CONSULTATION,  
A TOOL FOR RECONSTRUCTION AND REFORM

AHMAD AL-RAYSUNI

*Translated from the Arabic by*  
NANCY ROBERTS



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# CONTENTS

<i>Foreword</i>	VII
<i>Introduction</i>	IX
CHAPTER I: THE PLACE OF CONSULTATION IN ISLAMIC LIFE	I
[Section I] THE IMPORTANCE OF CONSULTATION IN ISLAMIC LEGAL TEXTS AND IN DAILY LIFE	I
• In the Beginning there was Consultation	I
• Consultation: From the Private Sphere to the Public	7
• The Islamic Legal Ruling on Consultation	9
• The Areas in which Consultation is Applicable	12
[Section II] THE FUNCTIONS AND AIMS OF CONSULTATION	24
• Consultation's Purposes and Benefits	24
CHAPTER II: BASIC ISSUES IN CONSULTATIVE PRACTICE	41
[Section I] THE QUESTION OF WHO MAY BE INVOLVED IN CONSULTATION	42
• The Equality of Men and Women in the Consultative Process	44
• Consultation Concerning Private Affairs	52
[Section II] MEMBERS OF CONSULTATIVE COUNCILS: CONDITIONS FOR MEMBERSHIP AND THE MEANS BY WHICH MEMBERS ARE CHOSEN	55
• The Characteristics of Those Who Should be Involved in Consultation	55
• Methods of Choosing Those Who Will be Engaged in Consultation: Appointment and Election	60
[Section III] THE BINDING NATURE OF CONSULTATION AND THE ISSUE OF THE MAJORITY	64

• The Outcomes of Consultation: Are They Binding, or Merely Instructive?	64
• The Question of the Majority	68
• The Prophet's Distinctive Rank	86
 CHAPTER III:	 93
AN OVERVIEW OF ISLAMIC CONSULTATION FROM ITS FOUNDING ERA ONWARDS	
 Prefatory remarks	 93
[Section I] THE EARLY ISLAMIC CONSULTATIVE EXPERIENCE AND THE LESSONS IT OFFERS	94
• The Early Muslim Experiment in Consultation: A Summation	109
[Section II] HISTORICAL DEVELOPMENTS IN CONSULTATIVE PRACTICE	110
• Organizational Progress and Consultative Decline in the Islamic State	113
• The Judicial Exception	116
 CHAPTER IV:	 119
CONSULTATION TODAY: HOW DO WE PROMOTE IT AND BUILD UPON IT?	
 [Section I] TOWARD A THOROUGH REBUILDING	 119
• Toward the Systematization and Institutionalization of Consultation	123
[Section II] CONSULTATION AS A TOOL FOR REFORM AND RECONSTRUCTION	144
• A Culture of Consultation	145
• Systematizing Consultative Practice	151
• Borrowing and Suitability	155
 CONCLUSION	 163
 <i>Notes</i>	 169
<i>Glossary of Terms</i>	183
<i>Bibliography</i>	186

# FOREWORD

THE International Institute of Islamic Thought (IIIT) presents this scholarly work on the topic of consultation, or *al-Shura*, which examines the concept as a tool for reconstruction and reform in the Muslim world. The word, or rather principle, has been mentioned in the Qur'an, with the practice of the Prophet (SAAS)\* and the Companions also seeming to point in this direction. The Prophet in fact both advocated the practice of consultation and engaged in the practice himself. However, Muslims remain largely unaware of the importance and value of *al-Shura* with scholars remaining somewhat undecided as to whether it is obligatory or not and what matters call for consultation. In a modern context *al-Shura* has been associated on one level with democratic participation in a decision making process, with qualification particular to the Qur'an and the Sunnah. This has fired up debate with critics challenging the notion of equating *al-Shura* with democracy. Unfortunately, according to the author, although much has been written on the subject, in reality it has been at best ineffectively applied and at worst heedlessly ignored. This has serious consequences for the Muslim world mired as it is in political authoritarianism whose intrinsic aspects are also reflected destructively in the private sphere. As such, concludes the author, consultation should be adopted as a way of life for all Muslims to protect their interests and as a tool for reconstruction and reform. Much of the book explores ways in which the principle can be introduced, institutionalized and applied in Muslim society and common life. In doing so the author addresses the subject from some intriguing new angles and gives insight into areas hitherto little, if at all, examined.

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\* (SAAS) – *Salla Allahu 'alayhi wa sallam*: May the peace and blessings of God be upon him. Said whenever the name of the Prophet Muhammed is mentioned.

## *Foreword*

This study has been published to widen discourse, invite scholars to respond, and hopefully pave the way for further research. Doubtless readers may agree with some of the issues raised, and also disagree with others, but it is hoped that for the most part both general and specialised readers will benefit from the perspective offered and the overall issues examined in the book.

Where dates are cited according to the Islamic calendar (hijrah) they are labelled AH. Otherwise they follow the Gregorian calendar and labelled CE where necessary. Arabic words are italicized except for those which have entered common usage. Diacritical marks have been added only to those Arabic names not considered modern.

The IIIT, established in 1981, has served as a major center to facilitate sincere and serious scholarly efforts based on Islamic vision, values and principles. Its programs of research, seminars and conferences during the last thirty years have resulted in the publication of more than four hundred titles in English and Arabic, many of which have been translated into several other languages.

We would like to express our thanks to the editorial and production team at the IIIT London Office and all those who were directly or indirectly involved in the completion of this work including Wejdan M. Ismail, Dr. Maryam Mahmood and Shiraz Khan.

IIIT London Office

*August 2011*

# INTRODUCTION

IN recent decades the Islamic academic and cultural field has witnessed the publication of hundreds of books and articles on the subject of consultation (*al-shura*). Hence, one might wonder whether there remains anything to be added on this topic. I would answer such a query in the affirmative: There are numerous things that still need to be said on the subject of consultation: some of them basic, others subsidiary; some of them academic and theoretical, others practical and functional.

This being the case, I have taken care in this study to avoid repeating things that have already been said on the subject at hand, while at the same time highlighting what is new and useful. The present study deals primarily with new questions relating to the issue of consultation, new angles to this issue, or aspects thereof that have not received attention heretofore. Anything that falls outside these three categories I have left aside except by way of brief reminder, as a foundation for the discussion of new issues, or in order to provide some needed correction or clarification.

Consequently, I have dwelt neither on definitions and linguistic analysis of terms, nor on points that are self-evident. Nor have I concerned myself with lengthy introductions or digressions except within what I have deemed the necessary limits. Rather, my ongoing concern has been to treat the issue to which I have made reference to in the title of this book, as well as fundamental, current issues that serve to promote the practice of consultation and support efforts to build up the Islamic community worldwide. My hope throughout has been to bring the practice of consultation from a state of dormancy to one of effectiveness, from inertness to action, from passivity to responsiveness, and from dependency and subordination to a sense of mission and creativity.

## *Introduction*

Another concern of mine has been to ensure that the study is well founded on authoritative sources. It was a pleasure for me in the course of writing this work to delve into a number of verses from the Holy Qur'an, events from the life of the Prophet, and examples set by the rightly guided caliphs. In doing so, I adhered closely to a source-based<sup>1</sup> methodology as well as source-based and legislative principles.

I have striven in this study to advance the cause of consultation in both the academic and practical spheres. In the academic sphere, I have sought to offer genuine, qualitative additions to the many writings that have been published on the subject of consultation, particularly in the modern era. I have aimed to discuss a number of subsidiary issues and questions in a manner that presents a more complete and coherent picture of what consultation entails. Moreover, I have sought to achieve these aims as they relate to both the process of consultation in and of itself, and to its place and function within the Islamic framework. As for the practical sphere, the study moves gradually in this direction, ending with a specification of the concrete forms and mechanisms by means of which the consultative process can reinforce reform efforts, thereby enabling the Islamic community worldwide to reemerge with self-respect, a pioneering spirit, and confidence in its message and mission.

### *Chapter One. The Place of Consultation in Islamic Life*

*Section 1* of this chapter highlights the importance of consultation both in texts relevant to Islamic law and on the level of practical necessity. The first half of the section focuses on a number of texts from the Holy Qur'an and Prophetic traditions, whose relevance to the topic of consultation has received little attention. Such texts include the Qur'anic verses that recount the exchange which Allah (SWT),\* initiated with His angels concerning the creation of Adam and the future of his descendents on earth. This exchange was seen by the well-known scholar Muhammad al-Tahir ibn Ashur as a kind of consultation which God conducted in order to honor and educate the angels, as

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\* (SWT) – *Subhanahu wa Ta'ala*: May He be praised and may His transcendence be affirmed. Said when referring to God.

## *Introduction*

well as to inspire emulation. Such texts also include the numerous Qur'anic verses that establish a foundation for consultation in individual life: between husbands and wives, between parents and children, and even in situations involving marital discord or divorce. In the second half of *Section 1*, I seek to demonstrate the comprehensiveness of consultation, which is relevant to virtually all areas of life, both the spiritual and the material, the individual and the corporate.

The significance and comprehensiveness of consultation are likewise demonstrated in *Section 2* of this chapter, which is devoted to an elucidation of consultation's purposes and benefits. For such purposes and benefits are not – contrary to prevailing beliefs – restricted to that of arriving at the most valid point of view on this or that issue. In fact, I have listed no fewer than ten purposes and benefits that can be achieved through the practice of consultation.

### *Chapter Two. Basic Issues in Consultative Practice*

Consultation-related issues are discussed here in the context of three themes. The first of these is that of consultation relating to public affairs: Who is responsible for engaging in such consultation? To whom is it addressed? The answer I propose to these questions is consistent with the overall thrust of this study, which favors comprehensiveness and generality. The reason for this is that comprehensiveness and generality are features that emerge in the traditional Islamic texts describing consultation. As such, consultation is considered to have a wider, more general application, unless it would be difficult or impossible to do otherwise, unless one or more individuals have already engaged in the requisite consultation on behalf of others, or unless the issues at stake are of such a highly specialized nature that no one but those with the relevant knowledge and expertise would be capable of offering the needed counsel. In light of this same principle – namely, that of comprehensiveness and generality – as well as the fact that men and women are equal in situations calling for consultation, this section of the study likewise takes up the question of “women and consultation.”

*Section 2* of this chapter deals with membership in consultative councils, particularly those that have the right to consider questions on

## *Introduction*

the level of national government and its specific realms of jurisdiction. Who are such senior advisors to be? What qualities should they be expected to exhibit? And how are they to be chosen? An overview of what scholars have had to say about the conditions and qualifications required of such advisors yields the following three: integrity, knowledge, and experience.

As for the means by which advisors are to be chosen, there are two primary methods, namely, election and appointment, each of which is characterized by its own details and concrete forms. The Qur'anic revelation, the Sunnah and commentaries on them indicate that these two methods can also be combined, with priority given to election.

*Section 3* of this chapter deals with the question of whether the outcome of consultation is to be considered binding or only instructive. This question leads necessarily and automatically to another question, namely, that of how we are to treat the majority opinion of consultative councils, and decisions made by means of consultation that are supported by a majority. In view of the discussions and disagreements that continue to be sparked by this issue among Muslim scholars, thinkers and writers, I have given lengthy coverage of this point, including a presentation of the evidence for and against opposing points of view. Such evidence is drawn from the Holy Qur'an, the life of the Prophet and the examples set by the rightly guided caliphs, as well as from principles laid down by Muslim jurists, scholars who have devoted themselves to the study of the principles of Islamic jurisprudence (*usuliyyun*), and Hadith scholars.

### *Chapter Three. An Overview of Islamic Consultation From its Founding Era Onwards*

*Section 1* of this chapter deals with the initial consultative experiences of the Islamic community, that is to say, the manner in which consultation was conducted during the lifetimes of the Prophet and the rightly guided caliphs. Based on an examination of these two foundational eras, I have sought to identify the lessons such early experiences of consultation offer us in the present day, as well as the features of these experiences which, though indispensable, are also in need of support and supplementation from other areas of Muslims' lives.

## Introduction

*Section 2* includes a brief overview of the developments witnessed by the practice of consultation – on the levels of both actual practice, and theorization and scholarly interpretation – subsequent to the era of the rightly guided caliphs. An examination of these two levels makes clear that the place of consultation in the life of the Islamic community suffered a marked setback at that time. There are numerous reasons for this; however, the main reason is that, apart from certain exceptional cases, the practice of consultation remained without organization or regulation, and this is despite the fact that the major developments witnessed by the Islamic community and the Islamic state, both positive and negative, had necessitated the establishment and development of organized plans, institutions and systems in virtually all other areas of Islamic life.

### *Chapter Four. Consultation Today: How Do We Promote it and Build Upon it?*

This chapter takes as its starting point the lessons to be gleaned from historical experience, both its virtues and its failings, for the sake of restoring consultation to its place of honor and rebuilding it both conceptually and organizationally. What I propose is that such rebuilding requires us to redress the primary failing in the area of consultation, namely, the organizational vacuum, by working to systematize and institutionalize consultative practice.

To this end, *Section 1* of this chapter presents four legislative principles which are both amply supported by the texts of Islamic law and applicable to virtually all interpretative issues of relevance to new developments in human life. These principles are: (1) that new forms of corruption necessitate new rulings commensurate thereto; (2) the prohibition of evasive legal devices, or of anything which has the potential of leading to that which is forbidden or destructive (*sadd al-dhara'i'*); (3) unrestricted or public interests (*al-masalih al-mursalah*), that is, human interests that are not explicitly identified by any text in the Qur'an or the Sunnah but which are generally agreed upon based on circumstances that arise in human society; and (4) borrowing that which is beneficial from others.

## *Introduction*

*Section 2* is a practical extension of *Section 1* and the four principles presented there, with special emphasis on the fourth principle, namely, borrowing that which is beneficial from others. In this section I present examples from the areas and approaches in which consultation is an effective instrument of reform and progress on the level of individuals, groups, states and institutions. The emphasis placed on the principle of borrowing that which is beneficial from others leads into a discussion of the issue of reliance on modern democratic systems and learning from their experiences and methods. I endeavor to demonstrate the legitimacy of this practice, indeed, the great need for it. Such borrowing is an ongoing means of emulating the Prophet which finds support in the Qur'an and in the example set by the Messenger of God, the rightly guided caliphs, and the righteous ancestors, that is, the Companions of the Prophet and their believing successors.

I then set out to show that democracy needs us as much as we need democracy. Indeed, democracy needs us even more than we need it. The reason for this is that whereas we need the knowledge and practical experience democracy has to offer in the realms of form, organization and procedure, democracy needs us in order to treat maladies that are integral to its very structure.

Lastly, in a complement to the aforementioned discussions of the importance of consultation and ways to reactivate it and render it effective, I conclude my study with the message that consultation alone is insufficient. For given the fact that consultation is a part of the Islamic framework, it will only succeed, bear fruit, endure and prosper to the extent that other parts of this same framework are operating in conjunction with it.

These, then, are the themes God has laid on my mind and heart. Hence, I ask Him to accept this labor of mine, overlooking its deficiencies and opening the way for its defects and errors to be amended. He is the One Who hears and answers.

*Praise be to God, by whose grace alone good deeds are performed.  
Praise be to God, who has guided us to this, and without  
Whom we would not have been thus guided.*

## CHAPTER I

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# THE PLACE OF CONSULTATION IN ISLAMIC LIFE

### [SECTION I]

#### THE IMPORTANCE OF CONSULTATION IN ISLAMIC LEGAL TEXTS AND IN DAILY LIFE

##### *In the Beginning there was Consultation*

WHEN discussing consultation and the evidence supporting it in Islamic legal texts, scholars and writers have tended to focus on two particular Qur’anic verses, namely, 42:38 and 3:159. Given the centrality of these two passages to any treatment of the subject of consultation, I will be discussing them in due course. However, I would like to begin with the Qur’anic passage that reads:

And lo! Thy Sustainer said unto the angels: “Behold, I am about to establish upon earth one who shall inherit it.”

And they said: “Wilt thou place on it such as will spread corruption thereon and shed blood – whereas it is we who extol Thy limitless glory and praise Thee, and hallow Thy name?”

[God] answered: “Verily I know that which you do not know.”

And He imparted unto Adam the names of all things; then He brought them within the ken of the angels and said: “Declare unto me the names of these [things] if what you say is true.”

They replied: “Limitless art Thou in Thy glory! No knowledge have we save that which Thou hast imparted unto us. Verily, Thou alone art All-Knowing, Truly Wise.”<sup>1</sup>

## AL-SHURA: THE QUR'ANIC PRINCIPLE OF CONSULTATION

In an intriguing observation on this passage, renowned scholar Muhammad al-Tahir ibn Ashur suggests that this exchange between God and His angels is a kind of consultation. This consultation, he states, was intended to take place in the beginning of the creation so as to provide guidance for human beings from the very start. He writes:

These words of God are addressed to the angels as a means of supplying them with information that will cause them to realize the superiority of the human race. In this way, then, He intends to overcome the suspicion toward human beings which He knows to be in their hearts. His words are also intended as a kind of consultation, thereby to show them honor. Thus it is that through these words, God offers them instruction in the guise of a tribute...and is not [actually] seeking counsel concerning His affairs. Rather, in this way He seeks to make the angels aware of the hidden wisdom for the sake of which He has created Adam. This has been mentioned by Qur'anic exegetes.

It seems to me that this consultation was intended to be a reality that would emerge in conjunction with the creation of the first human being, and that would become a principle which would inform the thinking of his descendents. The reason for this is that when a given condition or idea is associated with something's formation, this brings about harmony between said condition or idea and the entity with which it is associated.<sup>2</sup>

If we build upon the view expressed by Ibn Ashur and other commentators to whom he makes reference, consultation is the first social practice for which God established a precedent. Another lesson to be derived from this event is that the practice of consultation is an example to be emulated even in relation to questions that have already been settled beforehand, or the answers to which are already known. The reason for this is that consultation of this type has specific purposes and benefits, some of which have been mentioned by Ibn Ashur, which go beyond that of seeking counsel. Such purposes include instruction, the bestowal of honor, and setting an example for others to learn from and emulate.

Another case that we might include in this category is the situation in which Abraham consulted his son about a command he had received from God. We read in the Holy Qur'an that:

## *The Place of Consultation in Islamic Life*

...when the child had become old enough to share in his [father's] endeavors, the latter said: "O my dear son! I have seen in a dream that I should sacrifice thee: consider, then, what would be thy view!"<sup>3</sup>

The question of whether Abraham was to sacrifice his son had already been settled through a divine command. Nevertheless, Abraham said to his son, "Consider, then, what would be thy view." In reply his son said, "O my father! Do as thou art bidden; thou wilt find me, if God so wills, among those who are patient in adversity."<sup>4</sup> In this connection al-Tartushi states:

Your determination to carry out what you have in mind and to demonstrate its correctness need not prevent you from seeking counsel. Do you not see that Abraham, upon him be peace, had been instructed to sacrifice his son in the form of a command which admitted of no discussion? Nevertheless, his refined moral sensibility and his knowledge of the high standing he enjoyed in other people's hearts led him to consult his son about the matter, saying to him, "O my dear son! I have seen in a dream that I should sacrifice thee: consider, then, what would be thy view!"<sup>5</sup>

A similar thought is expressed by Judge Badr al-Din ibn Jama'ah, who writes, "Consultation was a practice adhered to regularly by the prophets. God's beloved friend Abraham, upon him be peace, received a strict command to sacrifice his son. Nevertheless, he did not refrain from consulting his son about the matter."<sup>6</sup> Those who are accustomed to consulting others even in matters that are obvious would never refrain from doing so in relation to matters that are obscure. Hence, if consultation is a commendable, beneficial practice in relation to issues that have already been decided, how much more important and needful it must be in relation to multifaceted, complex issues concerning which there are diverse and conflicting points of view.

Abraham's act of consulting his son brings to mind another example of consultation on the level of the family unit. This type of consultation is described in the following passage from the Qur'an:

And when you divorce women, and they have come to the end of their waiting-term, hinder them not from marrying other men [or, "from

## AL-SHURA: THE QUR'ANIC PRINCIPLE OF CONSULTATION

marrying their (former) husbands”]<sup>7</sup> if they have agreed with each other in a fair manner. This is an admonition unto every one of you who believes in God and the Last Day; it is the most virtuous way for you, and the cleanest. And God knows, whereas you do not know. And the [divorced] mothers may nurse their children for two whole years if they wish to complete the period of nursing; and it is incumbent upon him who has begotten the children to provide in a fair manner for their sustenance and clothing. No human being shall be burdened with more than he is well able to bear; neither shall a mother be made to suffer because of her child, nor, because of his child, he who has begotten it. And the same duty rests upon the [father’s] heir. And if both [parents] decide, by mutual consent and counsel, upon separation [of mother and child], they will incur no sin [thereby].<sup>8</sup>

Consultation is mentioned explicitly in the second verse (“by mutual consent and counsel”), and implicitly in the first (“if they have agreed with each other in a fair manner”). In both cases, true consent is only considered to have been arrived at after there has been dialogue and consultation in a spirit of mutual good-will with all that this entails by way of desire for the good, conciliation, prudence, and fairness.

We understand from the first verse that if two estranged spouses arrive at a mutual understanding on the basis of which they wish to resume married life together, a guardian has no right to prevent this from taking place. From the second verse we learn that the period of breastfeeding which is set at two entire years may be reduced, but only if the weaning takes place on the basis of mutual consultation and consent. In other words, the decision to wean the child cannot be made unilaterally by either of the parents. What this means is that management of a child’s affairs is a right and responsibility shared by both parents and that it needs to take place based on mutual agreement and consultation in order that the choices made will be those which, to the extent possible, best serve the child’s interests.

The fact that the woman is the one who nurses the child does not authorize her to make a unilateral decision either to wean the child or to extend the period of breastfeeding. Similarly in the case of the husband, his role as breadwinner and head of household do not give

him the right to make decisions concerning his children in an autocratic manner. Rather, the mother is his partner in managing their affairs. Consequently, all such decisions need to grow out of “mutual consent and counsel” or, as the Qur’an expresses it elsewhere, “taking mutual counsel together according to what is just and reasonable.”<sup>9</sup>

Concerning the phrase, “And if both [parents] decide, by mutual consent and counsel, upon separation [of mother and child], they will incur no sin [thereby],” Ibn Kathir states, “That is to say, if the child’s parents decide to wean a child before he is two years old because they believe this to be to his benefit, and if they have consulted together on the matter and arrived at mutual agreement, they incur no guilt for so doing.” What we may deduce from this is that if one of the parents were to decide unilaterally to wean the child, this would not be sufficient, since it is not acceptable for one of them to impose his or her point of view on the other or to act single-handedly without consulting the other. This is the point of view expressed by al-Thawri and others.

This arrangement, which requires that careful consideration be given to a child’s affairs, serves to protect the child and is thus an expression of God’s mercy and compassion. For God has singled parents out for the task of rearing their children and guided them to what would be most beneficial both for them and their offspring. As God declares in surah 65, “and if they nurse your offspring [after the divorce has become final], give them their [due] recompense; and take counsel with one another in a fair manner [about the child’s future].”<sup>10</sup>

In view of the foregoing, decisions relating to young children’s education (its location, type, duration, and whether to continue or discontinue it), their health, their place of residence, travel, their activities (which are acceptable and which are not, which should be encouraged and which should not), as well as those relating to professional guidance or marriage if they need counseling and assistance in these from their mothers and fathers – all this and more calls for joint consultative management between the parents, or between the parents and the child concerned if he or she has reached the age of discernment. It is also recommended that parents consult with young children themselves in order to accustom them to the process of consultation as a way of life.

## AL-SHURA: THE QUR'ANIC PRINCIPLE OF CONSULTATION

Numerous prophetic traditions urge parents to ask their daughters whether they agree to marry this or that suitor. According to one such tradition, 'A'ishah said, "I asked the Messenger of God whether, if a girl's family wants to give her in marriage, they should seek out her opinion on the matter." "Yes, they should," he replied.<sup>11</sup>

Hence, consultation is called for when there are questions relating to marriage, family affairs and child-rearing, and situations involving conflict and discord. God declares:

And if you have reason to fear that a breach might occur between a [married] couple, appoint an arbiter from among his people and an arbiter from among her people. If they both want to set things aright, God may bring about their reconciliation. Behold, God is indeed All-Knowing, Aware.<sup>12</sup>

The passage above contains an implicit command to engage in consultation. For so long as there are two arbiters, the assessment of the case and the adoption of a possible solution can only come about through consultation between the discordant parties, followed by mutual agreement on the solution or way out.

Moreover, just as consultation is needed in relation to marriage, so also is it needed in relation to divorce. This is the practice which was adopted by the Messenger of God for himself and his wives, and which he established as a precedent for the Muslim community. In the context of a slanderous lie that was once spread about her, 'A'ishah said, "When the Messenger of God felt that a revelation from God was slow in coming, he summoned 'Ali ibn Abi Talib and Usamah ibn Zayd and asked for their counsel concerning whether he should divorce his wife."<sup>13</sup> Similarly, when a sense of alienation grew between the Messenger of God and his wives due to their persistent demands that he provide more for them in the way of material support, he urged them to consult with their fathers and mothers concerning whether to remain with him or seek divorce. The Qur'an relates that God said to him:

O Prophet! Say unto thy wives: "If you desire [but] the life of this world and its charms – well, then, I shall provide for you and release you in a

## *The Place of Consultation in Islamic Life*

becoming manner; but if you desire God and His Apostle, and [thus the good of] the life in the hereafter, then [know that], verily, for the doers of good among you God has readied a mighty reward!”<sup>14</sup>

The Messenger of God presented the matter to his wives, giving them the choices set forth in the two verses quoted above. Beginning with ‘A’ishah, he said, “There is no reason for you to act hastily; rather, you should first seek counsel from your parents.”<sup>15</sup> According to another version of the same account, he said, “I prefer that you not be hasty [in your decision], but that you [first] consult your parents.” To which she replied, “Would I need to consult my parents about you, O Messenger of God? On the contrary, I choose God, His Messenger, and the life of the hereafter!”<sup>16</sup>

### *Consultation: From the Private Sphere to the Public*

Given that consultation is a necessity in connection with private affairs, including issues that pertain to the individual alone, the individual in relation to other individuals, husbands and wives, and parents and their children, then it is clearly all the more vital in relation to public affairs and the major issues they raise. The importance of consultation in the public sphere is made evident in two Qur’anic verses. The first of them speaks of those “whose rule [in all matters of common concern] is consultation among themselves.”<sup>17</sup> This phrase occurs in the following passage:

And [remember that] whatever you are given [now] is but for the [passing] enjoyment of life in this world – whereas that which is with God is far better and more enduring. [It shall be given] to all who attain to faith and in their Sustainer place their trust; and who shun the more heinous sins and abominations; and who, whenever they are moved to anger, readily forgive; and 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>18</sup>

## AL-SHURA: THE QUR'ANIC PRINCIPLE OF CONSULTATION

As for the second verse, it consists of God's command to the Messenger of God to "take counsel with them in all matters of public concern." The passage in which this command occurs reads as follows:

And it was by God's grace that thou [O Prophet] didst deal gently with thy followers; for if thou hadst been harsh and hard of heart, they would indeed have broken away from thee. Pardon them, then, and pray that they be forgiven. And take counsel with them in all matters of public concern; then, when thou hast decided upon a course of action, place thy trust in God; for, verily, God loves those who place their trust in Him.<sup>19</sup>

The first verse quoted above is found in surah 42 of the Qur'an which bears the name *Al-Shura* "Consultation." The fact that one of the surahs of the Qur'an has been given this name is, in and of itself, evidence of the importance of consultation and the place of honor it has been accorded in the Islamic revelation.

In this verse consultation is mentioned explicitly along with a number of fundamental characteristics of the believing Muslim community. Since coming to faith, they have placed their trust in God, avoided the most heinous sins and abominations, responded to God's command, performed regular prayer, consulted among themselves in all matters of common concern, distributed the zakah tithe, and spent on others what God has provided for them. This, then, is the context in which we find the description of the Muslim community as those who, in a consistent, ongoing manner, consult among themselves in all matters of common concern. Commenting on this verse, al-Qannuji writes, "What this verse is saying is that they engage in consultation concerning every issue or question they encounter. Consequently, no one person's point of view is given consideration to the exclusion of others'."<sup>20</sup> Scholars have noted the fact that the practice of consultation is listed along with a number of characteristics that are viewed as essential constituents and foundations of the Islamic religion; this being the case, it may be concluded that consultation, too, is an essential constituent of Islamic practice. Al-Jassas states:

God's reference to those who "respond to [the call of] their Sustainer and are constant in prayer; and whose rule [in all matters of common concern]

## *The Place of Consultation in Islamic Life*

is consultation among themselves; and who spend on others out of what We provide for them as sustenance..." [42:38] is evidence of the vital significance of consultation. After all, He mentions it together with faith and the performance of regular prayer. Hence, it serves as evidence that believers have been commanded to engage in consultation.<sup>21</sup>

As for the second verse of relevance to consultation, namely, 3:159, it is addressed to the Messenger of God in his capacity as guide, educator, commander and leader, and one who calls others to faith in God. These roles required him to be gentle, kind and compassionate toward others, tolerant of their failings and forgiving when they sinned; similarly, they required him to seek out their counsel and show consideration for their opinions. Moreover, the command given to the Messenger of God to consult his Companions applies to everyone who, like him, serve as commanders, leaders and those who call others to faith. In fact, scholars and Qur'anic commentators hold that such individuals are under a heavier obligation than the Prophet was to heed this command, since they stand in far greater need of it than he would have.

Consequently, this verse is viewed as a foundational principle in Islamic government and leadership, and in the relationship between Muslim rulers and those whom they rule. Commenting on this verse, Judge Ibn 'Atiyyah made his forceful and well-known statement that "consultation is among the foundations and most binding precepts of Islamic law. Hence, he who fails to consult those possessed of knowledge and piety must be dismissed. This point is beyond dispute."<sup>22</sup>

### *The Islamic Legal Ruling on Consultation*

The question of whether consultation is mandatory or only recommended under Islamic law may appear to be so clear as to require no discussion, particularly if we view it in light of the two aforementioned statements by al-Jassas and Ibn 'Atiyyah. Nevertheless, the question requires that we make certain distinctions if we are to avoid confusion and overgeneralization. In the case of governors, presidents and others in authority to whom the command to "take counsel with them in all matters of public concern" applies, consultation is unquestionably

mandatory. After all, if consultation was required of the Messenger of God despite his prophetic status and personal virtues, then its necessity for others is even clearer and more pressing.

The Prophet's Companion Abu Hurayrah once observed, "Never have I seen anyone more prone to seeking his Companions' counsel than was the Messenger of God."<sup>23</sup> However, we know that there has never been anyone who could more easily have dispensed with others' counsel than the Messenger of God and that, conversely, any other ruler or leader will inevitably be in greater need than he was for his Companions' counsel and advice. If we were to assume, as some do, that God's injunction to His Messenger to seek out others' counsel rendered the practice merely desirable in his case, it would be mandatory for others. Hence, if it was mandatory for the Prophet – which, in fact, it was – then it is even more mandatory and binding for others. It is for this reason that Ibn 'Atiyyah, not content merely to classify consultation as obligatory, lists it "among the foundations and most binding precepts of Islamic law," after which he goes on to say that it is an unquestionable duty to dismiss any ruler or leader who fails to consult those possessed of knowledge and piety.

Tunisian jurist Abu 'Abd Allah ibn 'Arafah challenges the view that a ruler or leader who does not engage in consultation must be dismissed. He insists that Ibn 'Atiyyah's statement is invalid and that it is a view that no one else has ever held. On the contrary, maintains Ibn 'Arafah, Islamic scholars have ruled that even if an imam is guilty of something more serious than a failure to consult the knowledgeable and pious, it is not necessary that he be dismissed.<sup>24</sup>

However, another Tunisian scholar, namely, Ibn Ashur, refutes Ibn 'Arafah's view while correcting the statement made by Ibn 'Atiyyah. In Ibn 'Arafah's view, the failure to engage in consultation is analogous to actions that require one to be classified as *fasiq*, that is, as someone who does not meet the legal requirements of righteousness,<sup>25</sup> whereas even if an imam is classified as a *fasiq*, it is not necessary that he be dismissed. How, then, Ibn 'Arafah asks, can it be said that an imam who fails to engage in consultation must be dismissed when such a failure is not as serious as being classified as a *fasiq*? This analogy, however, is invalid according to Ibn Ashur, who writes:

## *The Place of Consultation in Islamic Life*

There is a considerable difference between the two [i.e. between being a *fasiq* and failing to engage in consultation]. For the actions of someone who has been judged to be *fasiq* hurt no one but the *fasiq* himself, whereas the negligence of someone who fails to engage in consultation endangers the interests of the entire Muslim community. According to the Maliki school of jurisprudence, consultation is a binding duty. Moreover, they hold that Islamic legal rulings should be considered to have a general rather than a restricted application<sup>26</sup> unless there is clear evidence in support of the latter.<sup>27</sup>

Similarly, God's words concerning those "whose rule [in all matters of common concern] is consultation among themselves" tell us that any matter of concern to the whole community is to be a subject of mutual consultation, and no one has the right to treat it as his or her own exclusive concern or act unilaterally with respect to it. The basis for the necessity of consultation here is the shared nature of the concern, the shared nature of the right, and the shared nature of the potential benefit or harm that may result from decisions made. For if anything is shared or communal, the right to manage it is shared and communal as well, and no one – be he the ruler or anyone else – is entitled to dispose of it without first having received counsel or permission from those concerned. As al-Qurtubi puts it, "...If there is a matter whose benefit or harm affects everyone, it likewise brings everyone together for consultation."

As we observed earlier in this discussion, God mentions consultation twice in connection with nursing a child, since the child is the shared concern of his mother and his father, neither of whom has more right to him or her than the other. Consequently, it is necessary for each of them to seek the other's advice and counsel and for them to reach mutual agreement concerning everything affecting the child. The same holds true in relation to marriage and giving in marriage: all parties concerned, including everyone whose rights are affected by the matter and upon whom some relevant responsibility lies, are to be consulted.

When, on the other hand, the matter has to do with individual rights and affairs, the decision whether to consult others is left up to the

person concerned. He or she is free either to consult others or not to do so, to decide with whom to consult, and to assess whether it is required or only recommended that he consult others concerning this or that issue. The answer to this latter question needs to be determined on a case-by-case basis depending on how simple or complex the issue at hand happens to be and what stakes are involved in terms of potential benefit or harm. In all cases, however, the act of seeking out others' counsel is legitimate, praiseworthy, and a means of emulating the Prophet's example. In other words, it is never simply a matter of indifference, but is viewed as a recommended, desirable course of action. This is the clear import of the body of texts and traditions which speak well of consultation and those who engage in it and which draw attention to the desirable outcomes of having sought out others' advice. As one tradition states it, "Those who pray for divine guidance will never be disappointed, and those who seek others' counsel will never be burdened with regrets" (*ma khaba man istakhar, wa ma nadima man istashar*).

*The Areas in which Consultation is Applicable*

The question to which we now come is: What are the areas and issues in relation to which consultation is called for, whether as a requirement, a recommendation, or simply a desirable option? Further, it may be asked whether there are areas and issues to which consultation is not applicable. The answers to these questions will most clearly reveal the importance of consultation and the breadth of its range and effect, since it is on this basis that decisions will be made concerning who will be involved in the consultative process.

*I – The sphere of the political and the mundane*

This is the sphere in which consultation is most widely recognized and discussed. Al-Hafiz ibn Hajar states:

There has been disagreement over what matters call for consultation. Some say that there should be consultation over every matter concerning which there is no explicit text in the Qur'an or the Sunnah. Others say that there should be consultation only concerning mundane affairs.

## *The Place of Consultation in Islamic Life*

Al-Dawudi states that he [the Prophet] used to consult them [his Companions] concerning war-related questions on which there was no clear ruling [from the Islamic revelation], since rulings were derived therefrom [that is, from the consultative process].<sup>28</sup>

Judge Ibn ‘Atiyyah states, “The Prophet consulted others concerning matters of war, delegations and other, similar, sorts of situations. As for questions concerning what was permitted or forbidden or legal sanctions for specific actions, these [depended on] divinely revealed laws.”<sup>29</sup>

Generally speaking, two of the most prominent areas in connection with which consultation is mentioned are the political and military spheres. These two spheres can be combined under the appellation, “political administration,” including its civilian and military dimensions. This sphere may involve consultation in preparation for the choice of a caliph or rulers in general, as well as rulers’ and political and military leaders’ consultation with advisors and aides in the context of drawing up and implementing plans and making decisions concerning a variety of political and war-related problems and situations, including the conclusion of peace treaties and settlements and declarations of war.

When the term is broadened, it may be said that consultation is applicable to mundane matters, whereas in relation to issues pertaining to religion and its rulings, some hold that it is applicable, though most dispute this view. As we have seen, there is virtual unanimity concerning the applicability of consultation to the political sphere, including both the civilian and the military. Nevertheless, I would like in what follows to draw attention to the importance of still other spheres for the practice of consultation in Islamic life.

### *2 – Issues that call for consultation: Broadness vs. specificity*

Perhaps the first thing that needs to be established in this connection is the broad nature of the texts pertaining to consultation, particularly the two Qur’anic phrases discussed above, the first of which speaks of those “whose rule [in all matters of common concern] is consultation among themselves,” and the second of which is the command to the Prophet to “take counsel with them in all matters of public concern.”

The command to the Prophet to engage in consultation is a general one which is not restricted or limited in any way. Moreover, the principle on the basis of which such a general command is to be dealt with is that it is to be interpreted as applying broadly until or unless it is demonstrated that it has a more restricted or specific application. However, if it is demonstrated that the applicability of a command is more restricted in certain situations, it may continue to be applied broadly in other situations.

Consequently, the matters to which consultation is applicable, whether as a requirement or merely as a recommended practice, include all areas and all types of issues. This is the original understanding of consultation, and this is what requires that it be applied as broadly as possible. At the same time, however, this breadth is restricted by the words of God that “whenever God and His Apostle have decided a matter, it is not for a believing man or a believing woman to claim freedom of choice insofar as they themselves are concerned.”<sup>30</sup> Hence, nothing concerning which God and His Apostle have issued an authoritative judgment may be subject to consultation, and no choice may be allowed with respect to it. Those engaged in consultation investigate a variety of options and possibilities in order to determine which of them is preferable and to adopt it as a course of action. However, no such consultation and examination of options is possible to them in relation to issues in regard to which Islamic law contains a clear, definitive ruling.

### *3 – Consultation concerning the application of definitive rulings*

A definitive legal ruling may still leave room for consultation concerning the details of its application and enforcement and related matters, such as the specific conditions under which the ruling applies, the means of applying it, the times at which it is to be enforced, and circumstances that serve as obstacles or impediments to its enforcement. Hence, it is possible to engage in consultation regarding these aspects of a definitive legal ruling without calling into question the ruling itself. Attention is drawn to this point by ‘Abd Allah ibn al-Azraq. He states:

## *The Place of Consultation in Islamic Life*

Matters concerning which it is permissible to engage in consultation are of two types: (1) mundane affairs in relation to which it is difficult to discern the right course of action, and (2) higher intents of the [Islamic] religion which have not been spelled out in detail, or which, given considerations external to the intents themselves, are problematic due to ambiguities concerning the ways in which they are to be applied to everyday life.<sup>31</sup>

Of relevance here is the situation cited earlier in which, after receiving a command from God to sacrifice his son, Abraham consulted his son concerning the matter, saying, “What would be thy view”? I recall how, when I first encountered this passage many years ago, I was puzzled by it. I wondered: How could Abraham, have presented this clear, definitive divine command to his son for consideration? And I wondered what he possibly could have meant by asking his son what he thought about the command of God Himself.

Since then, however, I have come to realize that this consultation had nothing to do with acceptance or rejection of the divine command, or with whether the command would be obeyed or not. Rather, it most likely had to do with the manner, time or place in which it would be carried out. By opening the matter up for discussion in this way, Abraham may have been giving his son an opportunity to request a reprieve or pardon from God, or to request that God rescind or modify the decree. After all, we know that after being urged to do so by Moses, the Messenger of God pleaded with God until the number of ritual prayers required of believers each day was reduced from fifty to five.

Hence, we may find that we need to arrive at independent interpretations and consult with each other concerning questions relating to jihad, the commanding of the good and the forbidding of evil, as well as rulings having to do with the pilgrimage to Makkah, fasting, the ways in which zakah money is spent, and the enforcement of divinely revealed sanctions for specified offences. This is true despite the fact that we have rulings on all these matters which are explicit and definitive, since the enforcement of such rulings may be affected by concomitant circumstances, complications, impediments and new developments which call for discussion, investigation, the weighing of competing factors and wise management.

*4 – Consultation concerning controversial rulings, and those arrived at through independent reasoning*

Another, closely related, matter that calls for investigation, discussion and consultation is that of legal rulings which were arrived at originally by means of a process of deduction and weighing the various implications and possible meanings of the evidence at hand. An area in which consultation is even more essential is that of rulings concerning which there is no explicit text and which must therefore be arrived at based on analogical deduction (*qiyas*), juristic preference (*istihsan*), and reasoning based on unrestricted interests (*istislah*).

All of the foregoing are areas that pertain to Islamic law. Nevertheless, they are subject to discussion and consultation among learned individuals who are qualified to engage in independent reasoning and to offer informed points of view. This is an emulation of the example set by the Companions of the Prophet as well as the rightly guided caliphs. Indeed, it is based on the example of the Prophet himself, who both advocated the practice of consultation and engaged in the practice himself. Ibn ʿAbd al-Barr related that ʿAli ibn Abi Talib, once said:<sup>32</sup>

I said, “O Messenger of God, what are we to do in situations concerning which nothing has been revealed in the Qur’an and in which we have no example from you to follow?” The Prophet replied, “Gather together believers who are knowledgeable (or he said, given to worship). Then consult among yourselves concerning the situation, and do not base your conclusions on the opinion of just one person.”<sup>33</sup>

Also of relevance here is the tradition related by Ibn ʿUmar concerning the way in which the Islamic call to prayer, or *adhan*, was first adopted. We read in this tradition that:

When the Muslims [first] came to Madinah, they would gather and wait for the prayer times to arrive, since no one called to announce it. Hence, one day they discussed the matter. One of them said, “Why do you not use a bell as the Christians do?” Another said, “Why do you not use a horn as the Jews do?” Then ʿUmar said, “Why do you not send forth a man to call others to prayer?” Upon hearing ʿUmar’s suggestion, the Messenger of God said, “O Bilal, rise and call us to prayer.”<sup>34</sup>

Judge Abu Bakr ibn al-‘Arabi states:

This tradition serves as evidence of an important juristic principle, namely, the principle of analogical and independent reasoning. We see the way in which the Prophet consulted his Companions concerning the call to prayer. He did not wait for God to grant him a revelation, nor did he request clarification or explanation [from God]. Rather, he wanted to hear what his Companions thought about the matter based on their understanding of the principles of Islamic law and its purposes.<sup>35</sup>

It bears noting that this statement by Ibn al-‘Arabi is at odds with another statement of his in *Ahkam al-Qur’an*, where he asserts:

Our scholars have said that the Qur’anic verse 3: 159 [“And take counsel with them in all matters of public concern”] refers to consultation related to war, and of this there is no doubt, since they [the Companions] had nothing to say concerning legal rulings. Rather, legal rulings were derived from pure revelation from God, Exalted is He, or – in the view of those who hold that the Prophet was permitted to engage in independent reasoning – from the Prophet’s own interpretations of the revelation.<sup>36</sup>

Al-Hafiz ibn Hajar quotes Al-Dawudi as saying, “Whoever says that he [the Prophet] used to consult his Companions concerning legal rulings demonstrates palpable ignorance, because it is an agreed-upon fact that he did not, in fact, consult them about binding legal rulings.”

Al-Hafiz then states:

This unqualified generalization is subject to disagreement. Al-Tirmidhi narrates the following tradition on the authority of ‘Ali and declares it to be *hasan* (good),<sup>37</sup> while Ibn Habban judges it to be *sahih* (authentic).<sup>38</sup> The tradition reads as follows: [‘Ali said], “When the following verse was revealed (‘O you who have attained to faith! Whenever you intend [to consult] the Apostle, offer up something in charity on the occasion of your consultation. This will be for your own good, and more conducive to your [inner] purity. Yet if you are unable to do so, [know that], verily, God is Much-Forgiving, a Dispenser of Grace.’), the Prophet said to me, ‘What do you think the gift of charity should be? A dinar?’ ‘No,’ I said, ‘a

grain of barley.' 'You're ungenerous!' he replied. There then was revealed the verse that reads, 'Do you, perchance, fear [lest you may be sinning if] you cannot offer up anything in charity on the occasion of your consultation [with the Apostle]? But if you fail to do it [for lack of opportunity], and God turns unto you in His mercy, remain but constant in prayer and render [no more than] the purifying dues, and [thus] pay heed unto God and His Apostle: for God is fully aware of all that you do.'" Then he [Ali] said, "Through me God relieved this [Islamic] nation of a burden, since in this account we see evidence that the Prophet consulted [his Companions] concerning certain legal rulings."<sup>39</sup>

In *al-Tabaqat al-Kubra*, Ibn Sa'd relates a tradition on the authority of Abu Hurayrah, who said that the Prophet used to lean against the stump of a tree as he preached. Then one day the Prophet said, "It has become difficult for me to remain standing." Tamim al-Dari replied, "Shall I make a pulpit for you like the ones I have seen made in al-Sham?"<sup>40</sup> The Prophet then consulted the Muslim congregation about it, and it was their view that he should allow a pulpit to be made for him.<sup>41</sup>

If it was unusual for the Prophet to consult his Companions in the derivation of legal rulings, the reason for this is that in this connection he would generally receive divine revelations, which were his primary source of authority in such matters. However, he also consulted others concerning such rulings in order to establish a precedent for those who would come after him. After all, the true need for consultation in this area emerged after the Messenger of God had departed and the descent of divine revelation had ceased. Ibn al-'Arabi states, "After God took the Prophet to Himself, the Companions would consult with one another concerning legal rulings and derive them from the Qur'an and the Sunnah."<sup>42</sup>

This issue has also been discussed by Abu Bakr al-Jassas, who holds that consultation is relevant to all matters, be they mundane or spiritual, concerning which there is no explicit text in the Qur'an or the Sunnah. He mentions those who hold that the consultation which the Messenger of God was enjoined to engage in applies particularly to mundane affairs. Then he continues:

## *The Place of Consultation in Islamic Life*

However, others say that he was commanded to consult them [the Companions] concerning matters of religion, events and situations concerning which there was no revelation from God, Exalted is He, and that he was likewise commanded to consult them concerning worldly affairs by garnering others' opinions and adopting the course that seemed most reasonable and convincing. He consulted them after the Battle of Badr concerning the captives, which was also considered to be a matter of religion.<sup>43</sup>

He then supports this view by saying, "Since God did not distinguish religious affairs from mundane affairs in His command to the Prophet to consult his Companions, it must therefore apply to both spheres equally."<sup>44</sup>

During the caliphate of ʿUmar ibn al-Khattab, a discussion arose among the Companions concerning the circumstances in which sexual intercourse brings about a state of major ritual impurity (*janabah*), thereby requiring the parties involved to perform total ablutions (*ghusl*). The question was: Is one only required to perform total ablutions when there has been an ejaculation, or is one also required to do so when the spouses' genitalia have been in contact, though without ejaculation? Some of the Companions held the first view, and others the second, though all of them based their view on a valid chain of transmission and on their own understanding of the example set by the Prophet. Hence, it was necessary to discuss the matter and engage in mutual consultation so that everyone's opinion might be heard and they might arrive at a sound resolution of the issue.

Ibn al-Qayyim summarizes the discussions and consultations that took place among the Companions over this issue and the conclusion that was reached. Narrating on the authority of Abu Bakr ibn Abi Shaybah, he writes:

ʿAbd al-Aʿla related to us on the authority of Muhammad ibn Ishaq on the authority of Zayd ibn Habib on the authority of Muʿammar ibn Abi Habibah, Bint Safwan's servant, on the authority of ʿUbayd ibn Rifaʿah on the authority of his father Rifaʿah ibn Rafiʿ, who said: "Once when I was in the presence of ʿUmar ibn al-Khattab, may God be pleased with

him, a man came in and said, 'O Commander of the Faithful, Zayd ibn Thabit is issuing legal decisions to people in the mosque based on his view concerning the performance of total ablutions to cleanse oneself of major ritual impurity.'

'Have him come here,' said 'Umar.

So Zayd came, and 'Umar said to him, 'O you who work at cross purposes with yourself! Have you reached the point where you issue legal decisions to people based on your own opinion?'

Zayd replied, 'O Commander of the Faithful, I swear to God that this is not what I did. I had heard a tradition from my paternal uncles, and I related what I had heard. The tradition is based on the authority of Abu Ayyub, Ubayy ibn Ka'b and Rifa'ah ibn Rafi'.'

'Have Rifa'ah ibn Rafi' come to see me,' said 'Umar.

He then asked Rifa'ah, 'Is this the practice you used to adhere to, that if anyone touched a woman but failed to have an ejaculation, he would perform total ablutions?'

Rifa'ah replied, 'This is what we used to do in the days of the Prophet, and no prohibition of it came to us from God, nor did we hear anything concerning it on the Prophet's authority.'

'Was the Messenger of God aware of this?' 'Umar asked.

'I don't know.'

'Umar then issued instructions for the Emigrants and the Supporters to be brought together. They came together and he consulted them, and they indicated that total ablutions were not required [if there was no ejaculation]. However, Mu'adh and 'Ali said that if there was vaginal entry, total ablutions were required.

'Umar said, 'If even you, who fought together at Badr, have disagreed [over such things], then there will be far more disagreement among those who come after you.'

'Ali then said, 'O Commander of the Faithful, no one would be more knowledgeable about these things than the Prophets' wives.'

'Umar thus sent to Hafsa, who said, 'I know nothing about it.'

He then sent to 'A'ishah, who said, 'If there is vaginal entry, total ablutions are required.'

Thereupon 'Umar declared, 'If I ever hear of a man doing such a thing [again],<sup>45</sup> I shall give him a sound thrashing.'<sup>46</sup>

As a result of the aforementioned deliberations, it was decided that in emulation of the Prophet's example in both word and deed, total ablu-tions were to be required if spouses' genitalia had come in contact, regardless of whether or not there had been ejaculation. Hence, thanks to the effort that was made to engage in mutual consultation and a shared search for the proper course of conduct based on the available evidence, the Muslim community reached unanimity, or near unanimity, on the issue raised.

The fact is that those who restrict the realm of consultation to that of political and other mundane affairs, leaving religious matters and their associated rulings to individual jurists, administrators and judges, end up glorifying the former and demeaning the latter. After all, concerns whose investigation is delegated to a community whose members engage in discussion, debate and consultation prior to making a decision will undoubtedly be held more sacred, be accorded a more exalted status, and be more capable of leading people to the wisest courses of action, than those which are left to the discretion of individuals and their particular interpretations.

#### *5 – Consultation in the judiciary*

A judge is someone who rules on issues relating to property, matters of life and death, marital affairs, and other matters affecting people's interests, as well as complaints and disputes. The rulings he issues, moreover, affect both individuals and groups, and possibly even states and governments. A jurist or a mufti engages in independent reasoning in order to derive a ruling from the evidence at hand. As for a judge, he does the same; however, he must then repeat the process in relation to the particular case before him, including the evidence pertaining to each party concerned as well as the case's hidden dimensions and attendant circumstances. Consequently, the judge's need to consult others in relation to the verdict he hands down is even greater than that of the jurist or mufti in relation to the legal decision he issues. This is particularly true in relation to major, complex cases. The prophetic hadiths and other traditions having to do with consultation over situations concerning which there is no explicit text in the Qur'an or the Sunnah apply likewise, and as a matter of course, to the disputes and other cases

that the caliphs and other Companions of the Prophet were called upon to settle. Indeed, the same principles apply to everyone who is in the position of a ruler or judge.

When a dispute came before Abu Bakr, he would first look into the Qur'an. If he found a basis for a judgment there, he would issue a ruling on this basis. If he found nothing in the Qur'an, he looked to see whether the Prophet had left any precedent relevant to the dispute. If so, he would issue a ruling on this basis. Otherwise, he would go out and ask people about the matter. If even this produced no answers to the question at hand, he would summon the Muslim leaders and scholars and seek their counsel. If those gathered agreed on a verdict, he would base his ruling on this.<sup>47</sup> Moreover, al-Sha'bi is reported to have said, "If anyone wishes to adopt sound judicial practice, let him emulate 'Umar, because he used to seek out others' counsel."<sup>48</sup>

'Umar ibn 'Abd al-'Aziz is quoted as having said that "no one is entitled to be a judge unless he has the following five qualities: He must be chaste, gentle and patient, knowledgeable of the past, accustomed to seeking the counsel of the learned, and indifferent to criticism from others."<sup>49</sup> 'Umar ibn 'Abd al-'Aziz once wrote in a letter to 'Urwah, saying:

You have written to me asking about the practice of issuing legal rulings and settling people's legal disputes. [What I say to you is] that the heart of judicial practice is adherence to what you find in the Book of God, the issuance of rulings based on the example set by the Messenger of God as well as the judgments handed down by the rightly-guided imams, and consultation with the learned whose points of view can be trusted.<sup>50</sup>

Some jurists hold that consultation is recommended of a judge, but not required. This view may be acceptable when it comes to simple, straightforward cases of the sort that recur on a regular basis. However, when it comes to major, complex cases riddled with ambiguities, consultation is a must for the presiding judge. This is the view held by the majority of jurists. Abu 'Umar ibn 'Abd al-Barr states:

In his book entitled, *Adab al-Qudah*, al-Shafi'i mentions that no judge is permitted to issue verdicts unless he is well-informed...[and] one who

## *The Place of Consultation in Islamic Life*

consults others concerning points that are not clear to him. This is consistent with the teachings of Malik and other Muslims well-versed in Islamic jurisprudence throughout the world, who stipulate that judges and muftis must exhibit the aforementioned qualities.<sup>51</sup>

It thus becomes clear that the requirement that judges engage in consultation with others concerning the cases they consider is neither a passing fad nor a result of influences external to Islam. This may be seen in the words of Qahtan al-Duri, who asserts, “Influenced by their understanding of the principle of consultation and their realization of its importance, Muslim jurists hold it to be applicable to the judicial authority. This being the case, they maintain that it is required, or at least recommended, that a judge consult others before issuing a verdict.”<sup>52</sup>

This grows out of the prevailing belief that consultation is a political issue with relevance [only] to the political realm and, specifically, the political authority in its legislative and executive branches. According to this belief, consultation is a process which is referred directly to the “consultative council,” and to the head of state and those associated with him. It is this belief which I hope to correct in the course of this study.

### *6— Consultation in the systematization of consultation*

By now it will have become clear that in addition to establishing the principle of consultation and drawing attention to its virtues and importance, Islam enjoins and encourages Muslims to engage in it on the practical level. At the same time, it authorizes the Muslim community to apply, systematize and adapt the principle of consultation for use in various times, places, realms, and circumstances through the use of independent reasoning and good management. Consequently, it can be said that the detailed practical means by which the principle of consultation is applied to Muslims’ lives are themselves subject to consultation, as are all organizational and administrative affairs of the state, society and smaller Muslim communities. These are all included in God’s description of the Muslim community as those “whose rule [in all matters of common concern] is consultation among themselves,”

since all of them are matters we are required to organize, adapt and decide on by seeking out one another's counsel.

Generally speaking, then, it may be said that anything that involves probability and ambiguity and which, therefore, calls for the use of human reason and interpretation, anything that tends to stir up controversy and disagreement, anything that has been left to silence by the Islamic revelation, and anything that is held in common among people by way of duties, rights and interests, is subject to consultation. Moreover, in all such situations, consultation will be at the very least recommended, and in some cases obligatory, depending on the importance of the issue at hand and the seriousness of its implications for people in their relationships with those around them and in their material and spiritual lives.

[SECTION II]

THE FUNCTIONS AND AIMS OF CONSULTATION

*Consultation's Purposes and Benefits*

The functions and purposes that are fulfilled through consultation and for the sake of which consultation was established in Islam have generally been treated by Muslim scholars and writers in the most summary terms. Moreover, the brief discussions such thinkers devote to the theme of consultation tend to revolve around only one of its purposes, namely, that of arriving at the correct point of view and engaging in well-guided management. The result is that the aims and functions of consultation are attenuated, which in turn reduces the number of areas in which consultation is seen to apply and narrows the circle of those viewed as eligible to take part in it as well as those affected by it. Consequently, I would like in what follows to present a fairly detailed and thorough discussion of the purposes and functions of consultation in order to demonstrate more clearly its value and significance.

In order to give a balanced presentation of the relevant materials, I will quote first from a number of eminent jurists whose writings are marked by a slightly broadened perception of consultation's purposes and benefits, although none of these thinkers intended to engage in an

## *The Place of Consultation in Islamic Life*

exhaustive, comprehensive treatment of the subject. The first quotation is from the Hanafi jurist Abu Bakr al-Jassas, who, commenting on the Qur'anic reference to those "whose rule [in all matters of common concern] is consultation among themselves," notes that "this entails a number of benefits." These benefits he lists as follows:

*First:* It makes clear to people that the way in which to arrive at a correct ruling in relation to events and situations concerning which there is no explicit text [from the Qur'an or the Sunnah] is to engage in independent reasoning and, on this basis, to adopt the point of view that has the most evidence in its favor.

*Second:* It highlights the dignified standing of the Prophet's Companions, may God be pleased with them, who were qualified to engage in independent reasoning and whose views were worthy of being adopted and emulated. This verse from the Qur'an places them on the level of those who are worthy to be consulted by the Messenger of God, who approved of the deliberations and investigations they undertook for the purpose of living in accordance with the divine precepts.

*Third:* It tells us that their hearts and consciences were pleasing to God, Exalted is He. If this were not the case, God would not have enjoined the Prophet to seek out their counsel. All of this, then, serves as evidence of their certainty, their sound faith, their understanding and their knowledge. At the same time, it justifies the use of human reasoning in seeking to arrive at the judgments suited to situations concerning which there is no explicit text from the Qur'an or the Sunnah. In this way, it set an example for the Muslim community to emulate after the Prophet had ceased to be with them.<sup>53</sup>

The second quotation, taken from the writings of the Maliki jurist Abu Bakr ibn al-ʿArabi, complements the first. Commenting on the traditions cited by al-Tirmidhi on the subjects of jihad and consultation, Ibn al-ʿArabi states:

Consultation brings a number of blessings: One of these is that as a result of consultation, one acts based on something which is known (since one acts only after having engaged in investigation, verification, and a clarification of vision). Another is that through consultation, truth is freed

from the [unwelcome] possibilities to which people's desires can lead. A third is that one gleans [that which is best] from people's minds and reasoning capacities. And a fourth is that through consultation, people's hearts are united as they set about to take action. This is what the Prophet did twice at Badr.<sup>54</sup>

Elsewhere, Ibn al-<sup>ᶜ</sup>Arabi sums up his position on the subject of consultation by saying, "Consultation generates familiarity and goodwill among the members of the community, it probes the depths of people's minds, and it leads to right thinking and action. There is no people that has engaged in mutual consultation but that they have been guided aright."<sup>55</sup>

As for the third quotation, it comes from the writings of Judge Abu Bakr al-Muradi, who said:

Consultation is needed for four reasons: (1) Because the one who engages in the consultation might otherwise be unable to discern the best way to manage his affairs. (2) Because the one who engages in the consultation may fear that he will be mistaken in his assessment of things, even if he is not prone to negligence. (3) Because insightfulness is a form of liberation. That is to say, love or hatred may cause a person to deviate from the right path by blinding him to certain aspects of the truth and the most prudent, well-thought-out course of action. Consequently, the individual needs to receive counsel from those whose perspectives are unclouded by passion, and who are able to discern the various aspects of all points of view. (4) The person whose counsel is solicited might be a potential partner or supporter in the action being contemplated, in which case the act of seeking his or her advice will be a means of courting his friendship and goodwill, and will serve to motivate him or her to be of assistance in the event that the action is carried out with his or her consent and approval.<sup>56</sup>

In light of such texts, I have compiled a list of ten purposes and benefits achieved by the practice of consultation:

*1 – Determining the course of action which is correct, or the most correct*

This is undoubtedly the most fundamental purpose and aim of consultation. Moreover, as we have had occasion to note, it is the point to

which those who discuss consultation and its outcomes are most likely to limit themselves, or, at the very least, the one they are most likely to focus on in their treatments of the topic. After all, consultation usually takes place concerning issues that involve a variety of possibilities and ambiguities and which admit numerous options and possible courses of action. Hence, the person seeking out counsel or those engaged in the consultation need to discern where the truth concerning a particular issue lies and which course of action is the most prudent and sound.

However, the purpose of consultation may not be to distinguish a right course of action from a wrong one. Rather, it may be to weigh the relative merits of a course of action which is correct, and one that is more correct, or something that is good and something that is better. In other words, consultation may help in discerning which course of action is better and more correct in order to adopt such a course of action if possible. Moreover, the need to discern what is better and more correct may be more urgent than the need to distinguish right from wrong and good from evil. Consequently it has been said, “The wise person is not the one who knows the difference between good and evil. Rather, the wise person is the one who can discern the greater of two goods and the greater of two evils.”

Indeed, the inability to discern the difference between what is correct and what is more correct, what is good and what is better, or what is helpful and what is more helpful, is more common than the inability to tell the difference between right and wrong, good and bad, helpful and harmful. Nevertheless, Islamic law enjoins us to follow that which is better or best, saying, “Repel [thou] evil with something that is better,”<sup>57</sup> “And tell My servants that they should speak in the most kindly manner...”<sup>58</sup> Moreover, God praises those “who listen [closely] to all that is said, and follow the best of it.”<sup>59</sup> It is a clear and undisputed fact that next to divine revelation, consultation is the surest way to discern truth. It can thus be taken as a given that consultation generally helps people to avoid error and to adhere to what is correct, or to choose what is more correct over what is merely correct. Similarly, it may be assumed that, as we have seen, consultation is of relevance to virtually all realms of human existence – the mundane and the spiritual, the individual, the familial, and the communal on all its various levels.

And given this reality, we begin to see how much we gain when we apply the principle of consultation to all areas of our lives, allowing it to guide our decisions, our interpretations, our actions, and the way we manage our affairs. Conversely, we begin to see how much we lose and how much suffering we bring on ourselves when we neglect consultation and allow it to be replaced by individualism, high-handedness, selfishness, arbitrariness, capriciousness, and one-sided ways of looking at things.

If, moreover, it is through the practice of consultation that we experience gains, benefits and blessings and through its neglect that we suffer untold loss, misfortune and harm, then the least we can do is reflect on the gravity of such losses and their cumulative effects over the centuries. In so doing, we may come a long way toward understanding the reasons that underlie the progress, or lack thereof, in the lives of nations throughout history. The Qur'an issues a warning "to every one of you, whether he chooses to come forward or to hang back."<sup>60</sup> In so saying, as Judge Ibn 'Atiyyah puts it, "it is telling us that he who looks carefully will find himself on the path of truth and right guidance, but that this very person may lag along the path should he be heedless and fail to look where he is going."<sup>61</sup>

We can thus say with confidence that one of the major reasons for our decadence and lack of progress – as individuals, societies and nations – is the widespread neglect of the practice of consultation in our public and private lives from one century to the next.

## *2 – Release from the tyranny of subjectivity and selfish whims*

Every one of us has a certain degree of selfishness and impulsiveness, just as every one of us is swayed by particular psychological states, propensities and subjective considerations, be they in the form of motivations or inhibitions. All these factors find their way, rightly or wrongly, into a person's mind, where they influence his thinking and assessments, particularly as they pertain to complex or ambiguous issues, our perceptions of which may be swayed this way or that by a variety of considerations and points of view. Such factors impinge even more on a person's thinking when the issues concerned touch upon his or her emotions, be they feelings of love, hatred, fear,

reverence, ambition or greed. It is therefore difficult for anyone to assess and treat such matters with complete fairness, objectivity and detachment as though he or she were not affected by such inward realities. As it was said of old, “Love makes a person blind and deaf.”

The way out of this predicament is, quite simply, the practice of consultation. For if an issue is examined and discussed by a number of prudent, sincere people with differing ways of thinking and feeling, all of whom have knowledge of and experience with the issue at hand, then the outcome of the consultation, discussion, assessment and weighing of considerations is bound to be far less prejudiced by subjective influences and confusions and far closer to truth, justice and sound action. Perhaps this is what Ibn al-‘Arabi meant when he stated that “through consultation, truth is freed from the [unwelcome] possibilities to which people’s desires can lead.”

### *3 – Preventing high-handedness and tyranny*

Consultation is the opposite of high-handedness or authoritarianism; if consultation is present, authoritarianism will disappear, and if consultation is absent, authoritarianism will appear. And if authoritarianism takes root and persists, it becomes tyranny, which leads in turn to untold harm and injustice.

There are many authoritarians who, in the beginning, at least, have no desire or intention to be authoritarian. Nevertheless, authoritarianism begins to take root and grows little by little if such a person is given free rein. When someone in a position of power finds himself thinking alone, commanding and prohibiting alone, and governing alone with no one to check his authority, advise him, resist him or raise objections to the things he does; and when, in addition, such a person finds that when he does seek out counsel, all he hears are things like, “You know best!” and “Whatever you say goes!,” what can we expect to happen to such a person when he, like us, is subject to human frailty and weakness? Does the Qur’an not tell us that “verily, man becomes grossly overweening whenever he believes himself to be self-sufficient”?<sup>62</sup> What can we expect from him but more and more high-handedness, self-importance and despotism? Is it not this type of situation that led Pharaoh to say to his people, “I but want to make you see what I

see myself, and I would never make you follow any path but that of rectitude!”<sup>63</sup> These words of Pharaoh’s sum up the principle on which he based his dealings with others, namely, that of unquestioning confidence in his own point of view. And in fact, there is no authoritarian on earth but he that operates on the basis of this principle, whether he acknowledges it or not.

Hence, not only does consultation protect people from the high-handedness of their rulers, it also protects the rulers themselves from their latent authoritarian propensities. When we read the verse that says, “Thus he incited his people to levity, and they obeyed him: for, behold, they were people depraved!”<sup>64</sup>, we need to ask ourselves: If, when Pharaoh incited his people to levity, they had not obeyed him, would he have persisted in his arrogant, overweening abuse of power? It seems highly unlikely. If his people had deterred him, he would probably have responded accordingly. If from the very beginning he had come up against limits and restrictions on his power, he may have come to his senses and followed the right course. Hence, just as a ruler is responsible for the rectitude or corruption of those he rules, so also are the people ruled responsible for the rectitude or corruption of their ruler.

Nor is authoritarianism found only among rulers, commanders and leaders. We also have authoritarian husbands, authoritarian fathers, and authoritarian muftis. Indeed, everyone who is in a position of authority, be it political, administrative, academic or social, can become an authoritarian. And everyone who is allowed to act without consulting others will exhibit authoritarian tendencies commensurate with his personal capacities and the power at his disposal.

In sum, authoritarianism is a malady, and consultation is its prevention and cure.

#### *4 – Teaching humility*

Just as authoritarianism teaches a person to be arrogant and tyrannical, consultation teaches one to be humble and cooperative, by providing opportunities to exercise humility and make it part of one’s character. Authoritarianism gives one a sense of self-sufficiency. One feels no need for others’ opinions, knowledge, or assessments of things. And

as we saw above, the Qur'an draws a causal connection between authoritarianism and the tyrannical use of power, saying, "Verily, man becomes grossly overweening whenever he believes himself to be self-sufficient."

By contrast, consultation teaches us that we stand in need of others and what they have to offer. It helps us to see that however much knowledge we happen to have, we can never dispense with the knowledge of others, and however correct our viewpoints may be, we still need to hear what others think. Consultation cuts through the tendency to see ourselves as autonomous and superior to others, or to think ourselves above listening to others, seeking out their counsel, and benefiting from what they have to say.

As a matter of fact, there is nothing shameful about seeking out others' advice, as though it indicated some deficiency in the person who does so. On the contrary, it is shameful to neglect this practice because we imagine ourselves to be above such things. It was in part to make this fact clear that God commanded His Prophet to consult with his Companions despite the fact that they enjoyed a lesser status than he did. Sufyan ibn 'Uyaynah once stated, "He [God] commanded him to consult others in order for the Muslim community to emulate his example and not to view this practice as demeaning. In addition, God speaks approvingly of those 'whose rule [in all matters of common concern] is consultation among themselves.'"<sup>65</sup>

#### *5 – Giving everyone his due*

This benefit applies in particular to the kinds of consultation that relate to other people's rights, foremost among which are those that touch on public and joint affairs. It is these affairs that are being referred to in God's description of the Muslim community as those "whose rule [in all matters of common concern] is consultation among themselves." Every concern of theirs is shared by all; hence, all are entitled to a share in managing it. Consequently, they deal with such a concern and make decisions of relevance to it by means of joint consultation, and no one member of the community is entitled to make independent, unilateral decisions or impose his point of view on others, since the benefit or harm that accrues from such decisions affects one and all.

The act of consulting with those to whom a given matter is of concern, or those who represent them, and taking their opinions into account is a means of being fair to them and ensuring that their rights are protected. After all, disposing of people's rights should be conditional on their approval or authorization. When the Messenger of God was about to make peace with the tribe of Ghatafan by offering them one-third of Madinah's date crop in return for their withdrawal from the alliance with the polytheists and the Jews who had laid siege to the city during the Battle of the Confederates (the Battle of the Trench), he did not take this step until he had consulted with the leading men of Madinah, who said:

O Messenger of God, is this a revelation from Heaven such that by agreeing, we will be surrendering to a divine command? Or is it your opinion and preference, in which case our agreement would simply mean complying with your personal wishes? If what you want is to preserve our lives, then verily, you know that we and they are equals. Moreover, they will have none of our date harvest unless they buy it or unless we give it to them as a gift of hospitality.<sup>66</sup>

Having heard their words, the Messenger of God refrained from carrying out his original plan and adopted these men's point of view as his own.

Similarly, when, during the days of the Battle of Hunayn, the Prophet wished to show kindness to the Hawazin tribe by returning their captives to them, he refrained from carrying out his intention until after he had summoned those who had taken part in the battle. He said to them, "Your brethren [meaning, the Hawazin] have approached me in repentance. Consequently, I would like to restore their captives to them. Hence, those of you who wish to approve of this course of action, let them do so, and those of you who wish to retain the captives in their possession, let them do so, and we will give them to them out of the first spoils God grants us." In response the people said, "We approve of [what you wish to do], O Messenger of God." The Messenger of God then replied, "We do not know which of you have granted their permission [for me to do this], and which of you have not. Therefore, return [home] until your leaders tell us what

you have decided.” Hence, the people retreated [for a consultation] and their leaders spoke to them. Then they returned to the Messenger of God and informed him that they had approved his plan of action and granted him permission to carry it out.<sup>67</sup>

*6 – Promoting an atmosphere of freedom and initiative*

True consultation is marked, first and foremost, by freedom of thought and the freedom to express oneself with total honesty. If it lacks these two freedoms, it becomes nothing but a distraction or a maneuver in the guise of consultation. In other words, although it may take the form of consultation and be referred to by this name, it is, ultimately, nothing but a ruse. Consequently, freedom of thought and freedom of expression are conditions for the validity of consultation. Moreover, they are both a precondition and a concomitant condition; in other words, if we wish to engage in genuine consultation, it must be both preceded and accompanied by freedom. Under these circumstances, consultation becomes a practical outworking of freedom of thought and expression. At the same time, it serves to reinforce the exercise of these freedoms and guarantee their survival.

When we promote an atmosphere of genuine consultation – consultation based on freedom and truthfulness – in a given society or environment, people will develop a desire to engage in consultation, to offer counsel and advice, and to be truthful and candid in the process. In fact, they will begin taking the initiative to engage in these processes whether they have been asked to do so or not. When, on the other hand, there is an absence of consultation and an atmosphere conducive to it, or when the consultation engaged in is a mere show, people will cease to offer advice or counsel, and those who do offer it will do so as a means of currying favor or for other self-serving motives.

In the beginning of this chapter I quoted the Qur’anic passage in which we read:

And lo! Thy Sustainer said unto the angels: “Behold, I am about to establish upon earth one who shall inherit it.”

And they said: “Wilt thou place on it such as will spread corruption thereon and shed blood – whereas it is we who extol Thy limitless glory and praise Thee, and hallow Thy name?” (2:30)

As was noted earlier, Tunisian scholar Ibn Ashur views this report by God to the angels and the subsequent exchange between them as a type of consultation which God initiated in order to educate and honor them. As for me, I derive still another lesson from this dialogue between God and the angels, namely, a lesson on freedom of thought and expression. One notes that the angels were neither fearful nor ashamed to express their astonishment and skepticism in response to God's announcement. Moreover, rather than upbraiding them for voicing their reservations, God engaged in a dialogue with them and helped them to see Adam's superiority, thereby overcoming their suspicions. In response they exclaimed, "Limitless art Thou in Thy glory! No knowledge have we save that which Thou hast imparted unto us. Verily, Thou alone art All-Knowing, truly Wise."<sup>68</sup>

There is a well-known story about a woman who came complaining to the Messenger of God about her husband, who had declared her "forbidden" to him on the pretext that she was now "like his mother."<sup>69</sup> However, not only did the woman complain to the Prophet; she even disputed with him about what he had said to her. In this context, a divine revelation concerning her case was granted to the Prophet. The passage in question does not rebuke her in any way for having disputed with the Messenger of God. On the contrary, it approves her conduct and establishes her right in the face of the injustice which had been done to her, saying:

God has indeed heard the words of her who pleads with thee concerning her husband, and complains unto God. And God does hear what you both have to say; verily, God is All-Hearing, All-Seeing.<sup>70</sup>

We find that the Companions of the Prophet, men and women alike, would express their opinions, reservations and objections to the Messenger of God without fear, and without hearing a word of rebuke or censure of any kind. Even when some of them were found to have violated certain rules of etiquette and propriety, it was the Qur'an itself which drew attention to the proper means of addressing the Messenger of God, saying:

## *The Place of Consultation in Islamic Life*

O you who have attained to faith! Do not raise your voices above the voice of the Prophet, and neither speak loudly to him, as you would speak loudly to one another...<sup>71</sup>

It should be remembered here that these were simply rules of etiquette governing the manner in which the Prophet was to be addressed. They neither prohibited nor suppressed the freedom of expression which his Companions continued to exercise in the presence of the Prophet throughout his lifetime in relation to the things he did and the measures he took. When, for example, they took issue with the Prophet's having appointed Usamah ibn Zayd as a military commander when he was less than twenty years old, the Messenger of God simply pointed out their error. He insisted that contrary to their assessment, Usamah was worthy to command the army and that his decision had therefore been the correct one. He said to them, "If you challenge his competence to lead the army, remember that you challenged the competence of his father before him. And God is my witness that his father was eminently worthy to be a leader, just as he was dear to my heart, and just as Usamah is now dear to my heart."<sup>72</sup>

If his Companions' opposing views were shown to be correct, the Prophet would adopt them and act on them. Of such situations there are numerous examples in compilations of Prophetic hadiths or traditions and in the accounts of the Prophet's life. We read in *Sahih Muslim* that:

During the Tabuk military campaign, the people were suffering from famine. "O Messenger of God," they said, "With your permission, we will slaughter the camels that carry our water for us. Then we can eat and daub ourselves with their fat." The Messenger of God replied, "You may do so." Hearing what had been said, 'Umar objected, "O Messenger of God, if we do this, we will not have enough animals to ride. Rather, have the people bring whatever remains of their provisions, then pray over them and ask God's blessing on them. Perhaps God will increase what we have." "Very well," replied the Messenger of God. And he did as 'Umar had suggested.<sup>73</sup>

What we can gather from the foregoing is that consultation and freedom of thought and expression are inseparable. As such, they are

interdependent and mutually reinforcing. As for mistaken opinions expressed or lapses in etiquette, they do no real harm in the end, since the remedy for them is found in the combination of freedom and consultation.

*7— Developing the capacity for thinking and planning*

Consultation is a school and a training ground. For, in addition to fulfilling the aforementioned purposes and benefits, consultation provides those who are seeking others' counsel as well as those whose counsel is being sought with opportunities to develop their intellectual capacities and their practical experience. In short, consultation involves research, investigation, learning and deepened understanding, a result of which those engaged in it gain greater experience and expertise.

One reason for this is that those involved in consultation are prompted to think about issues they may never have thought about before or which, had it not been for their involvement in consultation, they would not have thought about. Moreover, even if they had considered or dealt with such issues on their own, they would have done so in a different way and on a level that falls short of the level required by consultation. In this connection, we find that the Messenger of God used to consult his Companions concerning matters that may have been clear to him personally. Nevertheless, he would seek out their thoughts on such matters in order to bring them to a higher level of understanding and awareness. In other words, he would consult them in order to instruct them and to refine their perceptive faculties. Of relevance in this regard is the example cited by Abu al-Walid al-Baji, who states:

It is related that the Messenger of God consulted his Companions concerning the punishment for sexual immorality and stealing. They said, "God and His Messenger know best." The Prophet said, "They are heinous sins, and there is a penalty for them."

Commenting on this account, al-Baji asserts, "Had he and they not been commanded to engage in independent reasoning with respect to

situations concerning which no explicit text was found [in the Qur'an and the Sunnah], there would likewise be no basis for consultation concerning the penalty to be imposed on someone concerning whose punishment nothing had been stipulated [in the Qur'an and the Sunnah].”<sup>74</sup>

Thus it is that the more frequently consultation is engaged in, the more people experience its benefits on the level of knowledge and thought. And the more the practice spreads throughout society and the various areas of people's lives, the more interested, knowledgeable individuals there will be with experience and skill in dealing with life's problems and challenges. God has honored human beings by giving them the freedom to dispose of their own affairs and solve their own problems through human effort and ingenuity in vast areas of their spiritual lives, and even vaster areas of their material lives. The most sublime form of human ingenuity, and the most likely to lead to prudent courses of action, is that which manifests itself through consultation. Moreover, the creative reasoning that takes place through consultation in practical contexts is the best way to train the human mind and cause it to advance through the ascending levels of independent reasoning and correct ways of thinking.

Even our senior scholars, if they fail to acquire increasing knowledge of life and reality, including an awareness of events, real-life situations and newly arising issues, will tend to remain largely naïve, unaware and weak, both intellectually and academically. If such individuals are to benefit and be of benefit to others with their stores of knowledge, they need to take part in discussions of contemporary issues of relevance to their communities and societies. Moreover, involvement in consultative bodies – of whatever type they happen to be, and on whatever level – is the best entry point for those who wish to achieve the aforementioned aims. And the same is true for every one of us depending on his or her position, circumstances and area of specialization.

#### *8 – Increased readiness for action and support*

Decisions made, taxes imposed, and other measures that grow out of mutual consultation and consent are generally received by people with enthusiasm and, therefore, with the desire to carry them out, assume

responsibility for their consequences, and ensure their success, particularly when they are seen to be balanced and objective. The reason for this is that such decisions enjoy legitimacy and credibility. People feel that they originated with them and were made on their behalf because they resulted from counsel that was offered by them themselves, or by others who represent them. Hence, even those who have not been charged with implementing such decisions become involved in supporting and defending them.

As for decisions that are taken in a unilateral, autocratic manner, they are received with indifference at best, and people may even go so far as to resist them, try to evade them, or challenge their legitimacy in public or in private. Moreover, they will be carried out in a shoddy, dilatory fashion by those who have no other choice but to do so.

*9 – Promoting goodwill and unity*

As we have seen, consultation lends the greatest possible legitimacy and credibility to governments, those who head them, and the decisions and pronouncements they make. This in turn tends to result in high degrees of satisfaction, cooperation and confidence on the part of those governed. In the words of the Qur'an, God draws a link between consultation and mutual consent when He speaks of "mutual consent and counsel."<sup>75</sup> Ibn Ashur states, "It is through consultation that the right becomes apparent and mutual consent comes about."<sup>76</sup>

A similar message is communicated in the passage quoted earlier from Qur'an 3:159, where God reminds the Prophet that had he been "harsh and hard of heart" with his followers, they would have broken away from him, whereas in fact, he had pardoned them, prayed for them to be forgiven, and counseled with them about matters of shared concern. After all, harshness and hardness of heart alienate and divide people, while pardon, intercession and mutual consultation bring them together.

An early Muslim scholar has been quoted as saying that when God instructed the Prophet to "take counsel with them [his Companions] in all matters of public concern," He did so "in order to make them happy and to elevate their standing." However, al-Jassas rejects this interpretation and counters it forcefully, saying:

## *The Place of Consultation in Islamic Life*

It is not acceptable to say that God's command to the Prophet to take counsel with his Companions was "in order to make them happy, to elevate their standing, and to give the Muslim community an example to follow in such situations." For if the Companions had known that, after they had expended so much effort in arriving at a conclusion concerning the matter about which they had been consulted and deciding the right course of action in this connection, their conclusions would not be adopted and acted upon, this would by no means have made them happy or elevated their standing. On the contrary, it would have left them feeling forlorn and discouraged, since it would have told them that their opinions had been neither accepted nor translated into concrete action. Therefore, this interpretation is invalid and meaningless.<sup>77</sup>

As I see it, the goal of making people happy and uniting their hearts is a valid one; it is also a foreseeable outcome of consultation. However, it does nothing to cancel out consultation's most fundamental goal, which is to reveal and carry out the right course of action. On the contrary, happiness and self-confidence follow naturally from the experience of having one's counsel be sought out by others.

If people consult with one another about their affairs, and if those in authority over them likewise seek out their counsel and take their views into account, this, of all things, is most likely to yield harmony, unity and solidarity. If, on the other hand, mutual consultation is absent from a community, then disunity, divisions and discord are bound to creep in. Even if it were possible to achieve or preserve unity by force and other such means, it would be a unity lacking in goodwill, harmony and mutual consent, and it would be bound to lead eventually to disintegration, schisms and rebellion.

### *10—Willingness to endure undesirable consequences*

A given decision or measure may sometimes result in consequences that are destructive, enervating or even disastrous. Such consequences may result from a flaw in the decision made or the measure taken. Alternatively, they may be due to unexpected events that lie outside the control of those who made the relevant decisions and which could not have been anticipated. In all such cases, however, people will seek

to deny responsibility for such consequences if the decision was taken in a unilateral or autocratic manner, and as a consequence, they will place the blame for them on the person who made the decision. Whatever resentment they felt for this person already will be exacerbated, and there will be increasingly negative effects on people's morale and on their relations with those responsible for making the decision, carrying it out, and supporting it.

If, by contrast, the decision concerned was made through a consultative process and communal planning, those who made it will have done their duty and taken precautions for themselves and the community by investigating what called for investigation and granting a role in the decision-making to those they govern and individuals with the relevant knowledge and expertise. In such a situation, everyone will feel that, in one way or another, they had a part in making the decision and that, therefore, they share in the responsibility for its outcomes. Consequently, they will involve themselves voluntarily in dealing with the consequences and jointly bearing its costs, both material and emotional. It is with this in mind that Muhammad Abd al-Qadir Abu Faris states:

Consultation involves a distribution of responsibility. Consequently, its results do not fall on the shoulder of any one person in particular. Rather, everyone shares in the bitter and the sweet, and if the outcome of a decision taken based on consultation is negative or unpleasant, there is no blame-casting, conflict or bickering.<sup>78</sup>

## CHAPTER II

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# BASIC ISSUES IN CONSULTATIVE PRACTICE

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

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

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

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

[SECTION I]

THE QUESTION OF WHO MAY BE INVOLVED IN CONSULTATION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

One Qur'anic verse reads:

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

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

Al-Fasi then adds:

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

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

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

*Consultation Concerning Private Affairs*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[SECTION II]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[SECTION III]

THE BINDING NATURE OF CONSULTATION AND THE ISSUE  
OF THE MAJORITY

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### *The Question of the Majority*

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

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

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

*I – Looking to the Qur’an*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### *2.1 – The Battle of Badr*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### 2.2 – *The Battle of Uhud*

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

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

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

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

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

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

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

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

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

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

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

God speaks to the Muslim fighters, saying:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Abu Ya'la writes:

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

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

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

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

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

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

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

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

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

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

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

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

## CHAPTER III

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# AN OVERVIEW OF ISLAMIC CONSULTATION FROM ITS FOUNDING ERA ONWARDS

### *Prefatory Remarks*

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

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

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

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

[SECTION I]

THE EARLY ISLAMIC CONSULTATIVE EXPERIENCE AND THE  
LESSONS IT OFFERS

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

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

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

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

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

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

One could cite many more examples of this phenomenon from the

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

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

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

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

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

*1 – The pledge of allegiance to Abu Bakr*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### *3 – The pledge of allegiance to 'Uthman*

After 'Umar had been stabbed<sup>21</sup> and it had become apparent that he did not have long to live, people began coming to see him, requesting that he draw up a will and testament and appoint a successor as Abu Bakr had done. In response, 'Umar stated, "For this task I know of no one more qualified than the men who enjoyed the Messenger of God's favor at the time of his death." He then named 'Ali ibn Abi Talib, 'Uthman ibn 'Affan, Zubayr ibn al-'Awwam, Talhah ibn 'Ubayd Allah, Sa'd ibn Abi Waqqas, and 'Abd al-Rahman ibn 'Awf, saying, "Let my son 'Abd Allah be a witness to the proceedings, though he himself should not be nominated."<sup>22</sup>

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

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

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

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

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

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

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

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

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

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

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

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

#### *4 – Consultation over conquered lands*

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

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

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

Abu Yusuf states:

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

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

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

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

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

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

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

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

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

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

### *The Early Muslim Experiment in Consultation: A Summation*

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

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

## [SECTION II]

## HISTORICAL DEVELOPMENTS IN CONSULTATIVE PRACTICE

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

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

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

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

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

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

When 'Umar ibn 'Abd al-'Aziz came to Madinah, he stayed in the home of Marwan, where people came to greet him. After he had performed the noon prayer, he summoned ten of the city's leading jurists: 'Urwah ibn al-Zubayr, 'Ubayd Allah ibn 'Abd Allah ibn 'Utbah, Abu Bakr ibn 'Abd al-Rahman, Abu Bakr ibn Sulayman ibn Abi Hatmah, Sulayman ibn Yasar, al-Qasim ibn Muhammad, Salim ibn 'Abd Allah ibn 'Amr, 'Abd Allah ibn 'Abd Allah ibn 'Amru, 'Abd Allah ibn 'Amir ibn Rabi'ah, and Kharijah ibn Zayd. After the men had come in and seated themselves, 'Umar uttered praises to God, then said, "I have called upon you with regard to something for which you will be rewarded by God, and in which you will be supporters of truth and justice. I do not want to decide any matter without your agreement, or the agreement of someone who is present on your behalf. Hence, if you should see anyone violating someone else's rights, or if you should hear that anyone working for me is committing injustice, then I adjure you by God to inform me of the matter." They then departed, calling down God's blessings upon him.<sup>34</sup>

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

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

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

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

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

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

*Organizational Progress and Consultative Decline in the Islamic State*

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

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

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

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

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

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

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

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

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

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

### *The Judicial Exception*

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

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

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

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

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

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

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

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

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

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

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

## 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

## *Consultation Today: How Do We Promote It and Build Upon It?*

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

### *Consultation Today: How Do We Promote It and Build Upon It?*

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 sabb al-dhara'i'*<sup>c</sup>

There is a significant degree of overlap between the principle of *sabb 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 *sabb 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 *sabb 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

## *Consultation Today: How Do We Promote It and Build Upon It?*

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.

## *Consultation Today: How Do We Promote It and Build Upon It?*

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

### *Consultation Today: How Do We Promote It and Build Upon It?*

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.

## *Consultation Today: How Do We Promote It and Build Upon It?*

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

## *Consultation Today: How Do We Promote It and Build Upon It?*

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

### *Consultation Today: How Do We Promote It and Build Upon It?*

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'adah 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>

### *Consultation Today: How Do We Promote It and Build Upon It?*

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

## *Consultation Today: How Do We Promote It and Build Upon It?*

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.*

# NOTES

## *Introduction*

1. The term “source-based” is being used to render the Arabic word *usuli*, which has referred traditionally to a scholar who devotes himself to the study of the principles of Islamic jurisprudence (*usul al-fiqh*). The noun *usul* (plural of *asl*) can also be used in the sense of “sources”; the four sources of Islamic law are agreed generally to be the Qur’an, the Prophetic Sunnah, analogical reasoning (*qiyas*) and consensus (*ijma’*). A source-based methodology is thus a methodology founded on the aforementioned sources, which are viewed as an authoritative basis for Islamic thought and practice. [Translator’s note].

## *Chapter One*

1. Qur’an 2:30-32. Unless otherwise specified, Qur’anic quotations are taken from Muhammad Asad, *The Message of the Qur’an* (Gibraltar: Dar al-Andalus, 1984).
2. Muhammad al-Tahir ibn Ashur, *Al-Tahrir wa al-Tanwir* (Tunis: al-Dar al-Tunisiyyah li al-Nashr, 1984), 1/400.
3. Qur’an 37:102.
4. Qur’an 37:102.
5. Abu Bakr al-Tartushi, *Siraj al-Muluk* (Al-Matba’ah al-Wataniyyah bi Thaghr al-Iskandariyyah, no date), p.132. I shall have occasion to return to this passage shortly, God willing.
6. Badr al-Din ibn Jama’ah, *Tahrir al-Ahkam fi Tadbir Ahl al-Islam*, ed. Fuad Abd al-Munim Ahmad, 2nd Edition (Qatar: Ri’asat al-Mahakim al-Shar’iyyah wa al-Shu’un al-Diniyyah, 1991), p.169.
7. The translation in brackets, which is consistent with the author’s train of thought below, is based on Abdullah Yusuf Ali, *The Meaning of the Holy Qur’an*, 11th Edition, (Amana Publications, 2004).
8. Qur’an 2:232-233.
9. Qur’an 65:6. ‘Abdullah Yusuf Ali, *The Meaning of the Holy Qur’an*.
10. Qur’an 65:6.
11. *Sahih al-Bukhari*, The Book of Military Campaigns (*kitab al-maghazi*), the section on *Hadith al-Ifk* (the tradition dealing with the slander spread about ‘A’ishah

## Notes

12. Qur'an 4:35.
13. *Sahih al-Bukhari*, The Book of Military Campaigns (*kitab al-maghazi*), the section entitled, "The Account of the Calummy" (*Hadith al-ifk*).
14. Qur'an 33:28-29, *surah al-Ahzab*.
15. *Sahih al-Bukhari*, The Book of Commentary (*kitab al-tafsir*).
16. *Sahih Muslim*, The Book of Divorce (*kitab al-talaq*), the section entitled, "Giving a woman a choice [between remaining with her husband or separating] leads to divorce only if the intention to divorce is present."
17. Qur'an 42:38.
18. Qur'an 42:36-38.
19. Qur'an 3:159.
20. Siddiq ibn Hasan al-Qannuji, *Fath al-Bayan fi Maqasid al-Qur'an* (Qatar: Idarat Ihya' al-Turath al-Islami, 1989), 12/311.
21. Abu Bakr al-Jassas, *Ahkam al-Qur'an* (Beirut: Dar al-Fikr, no date), 3/386.
22. 'Abd al-Haqq ibn 'Atiyyah, *Al-Muharrir al-Wajiz fi Tafsir al-Kitab al-'Aziz*, ed. al-Rahhali al-Faruqi, et. al., 1st Edition (Doha, Qatar, 1977), 3/397.
23. Narrated by al-Tirmidhi in one of his sections on jihad.
24. Abu al-'Abbas al-Basili al-Tunisi, *Nukat wa Tanbihat fi Tafsir al-Qur'an al-Majid* (abridged from his sizable anthology on the authority of his shaykh, Ibn 'Arafah), ed. Muhammad al-Tabarani [dissertation] (Rabat: Dar al-Hadith al-Husniyyah, no date), 2/111-112.
25. More specifically, a *fasiq* is someone who commits major sins (*kaba'ir*) or who persists knowingly in minor ones (*sagha'ir*). [Translator's note].
26. What he means is that the Qur'anic command to "take counsel with them in all matters of public concern" is a binding command which applies to all Muslim rulers and leaders, and not exclusively to the Messenger of God.
27. Ibn Ashur, *Al-Tahrir wa al-Tanwir*, 4/148.
28. Ibn Hajar al-'Asqalani, *Fath al-Bari bi Sharh Sahih al-Bukhari* (Beirut: Dar al-Fikr, 1992), 15/184.
29. *Al-Muharrir al-Wajiz*, 3/398.
30. Qur'an 33:36.
31. Abu 'Abd Allah ibn al-Azraq, *Bada'i' al-Silk fi Taba'i' al-Mulk*, ed. Ali Sami al-Nashshar (Baghdad: Manshurat Wizarat al-'Ilam al-'Iraqiyyah, 1977), 1/316-317.
32. Despite the weakness in the chain of transmission relied on in this tradition, the content of the account is well-attested as being authentic and trustworthy.
33. Abu 'Umar Yusuf ibn 'Abd al-Barr, *Jami' Bayan al-'Ilm wa Fadlihi wa ma Yanbaghi fi Riwayatihi wa Hamlihi* (Beirut: Dar al-Fikr, no date), 2/73.
34. *Sahih al-Bukhari*, The Book of the Call to Prayer (*kitab al-adhan*), and al-Tirmidhi, The Sections on Prayer (*abwab al-salah*).
35. Abu Bakr ibn al-'Arabi, *Al-Qabas fi Sharh Muwatta' Malik ibn Anas*, ed. Muhammad

## Notes

- Abd Allah Walad Karim, 1st Edition (Beirut: Dar al-Gharb al-Islami, 1992), 1/194-195.
36. Abu Bakr ibn al-<sup>ḥ</sup>Arabi, *Ahkam al-Qur'an* (Beirut: Dar al-Fikr, no date), 1/389.
  37. A "good" hadith or tradition is one whose narrators do not approach in moral excellence those of a sound or authentic (*sahih*) tradition.
  38. An authentic (*sahih*) tradition is traceable back to the Prophet and has been handed down by pious individuals known for their integrity. An authentic tradition may also be one whose chain of transmission goes back without interruption to one of the Prophet's Companions, and contains only narrators who are trustworthy.
  39. Al-Hafiz ibn Hajar, *Fath al-Bari*, 15/284.
  40. The region referred to earlier times as al-Sham extended from the Euphrates River in the northeast as far as al-Arish on the Egyptian border, and from the two mountains of Tayyib in the northern Arabian Peninsula (to the southwest of Dawmat al-Jandal) as far as the Mediterranean Sea (Yaqt al-Hamawi al-Rumi al-Baghdadi, *Mu'jam al-Buldan* [Beirut: Dar Sadir, 1995], vol. 3, p. 312). [Translator's note].
  41. Quoted by al-Hafiz ibn Hajar in *Fath al-Bari*, 3/60.
  42. Abu Bakr ibn al-<sup>ḥ</sup>Arabi, *Ahkam al-Qur'an*, 4/92.
  43. Abu Bakr al-Jassas, *Ahkam al-Qur'an*, 2/41.
  44. Ibid.
  45. That is, issuing legal opinions among people based on his personal point of view. [Translator's note].
  46. Ibn Qayyim al-Jawziyyah, *A'lam al-Muwaqqi' in 'an Rabb al-'Alamin* (Beirut: Dar al-Jil, no date), 1/56.
  47. Muhammad Ruwwas Qalaji, *Mawsu'at Fiqh Abi Bakr al-Siddiq* (Beirut: Dar al-Nafa'is, 1994), p. 155.
  48. Ibn Hajar al-<sup>ḥ</sup>Asqalani, *Fath al-Bari*, 15/50.
  49. Ibid.
  50. Ibn 'Abd al-Barr, *Jami' Bayan al-'Ilm*, 2/30.
  51. Ibid. 2/101.
  52. Qahtan Abd al-Rahman al-Duri, *al-Shura bayna al-Nazariyyah wa al-Tatbiq* (Baghdad: Dar al-Ummah, 1974), p. 56.
  53. Abu Bakr al-Jassas, *Ahkam al-Qur'an*, 2/41.
  54. Abu Bakr ibn al-<sup>ḥ</sup>Arabi, *Aridat al-Ahwadhi fi Sharh Sahih al-Tirmidhi* (Beirut: Dar al-Fikr li al-Tiba'ah wa al-Nashr wa al-Tawzi', no date), 7/206.
  55. Abu Bakr ibn al-<sup>ḥ</sup>Arabi, *Ahkam al-Qur'an*, 4/91.
  56. Abu Bakr al-Muradi, *Al-Siyasah aw al-Isharah fi Tadbir al-Imarah*, ed. Ali Sami al-Nashshar. (Al-Dar al-Bayda', Dar al-Thaqafah, 1981).
  57. Qur'an 41:34.
  58. Qur'an 17:53.
  59. Qur'an 39:18.

## Notes

60. Qur'an 74:37.
61. Ibn 'Atiyyah, *Al-Muharrir al-Wajiz fi Tafsir al-Kitab al-<sup>ç</sup>Aziz*, 15/194.
62. Qur'an 96:6-7.
63. Qur'an 40:29.
64. Qur'an 43:54.
65. al-Jassas, *Ahkam al-Qur'an*, 2/40.
66. Ibrahim al-Ali, *Sahih al-Sunnah al-Nabawiyyah* (Amman: Dar al-Nafa'is, no date), p.361.
67. *Sahih al-Bukhari*, The Book of Military Campaigns (*kitab al-maghazi*), the section concerning the words of God, "on the Day of Hunayn, when you took pride in your great numbers..." [Qur'an 9:25].
68. Qur'an 2:32.
69. What is involved here is a practice, prohibited in Islam but accepted in pre-Islamic times, known as *zihar*, or "injurious assimilation," in which a man would declare his wife to be forbidden to him sexually based on his likening her to his mother or to one of his non-marriageable female relatives.
70. Qur'an 58:1.
71. Qur'an 49:2.
72. See *Sahih Muslim* and *Sahih al-Bukhari*, the section entitled, "The Virtues of the Companions" (*Fada'il al-Sahabah*), the heroic feats of Zayd ibn Harithah (*Manaqib Zayd ibn Harithah*).
73. *Sahih Muslim*, The Book of Faith (*kitab al-iman*), the section entitled, "Whoever dies as a believer in the oneness of God will enter Paradise" (*Man Mata <sup>ç</sup>Ala al-Tawhid Dakhala al-Jannah*).
74. Abu al-Walid al-Baji, *Ihkam al-Fusul fi Ahkam al-Usul*, ed. Abd al-Majid Turki, 1st Edition (Beirut: Dar al-Maghrib al-Islami, 1986), p.575.
75. Qur'an 2:233.
76. Muhammad al-Tahir ibn Ashur, *Al-Tahrir wa al-Tanwir*, 2/438.
77. Abu Bakr al-Jassas, *Ahkam al-Qur'an*, 2/40-41.
78. Muhammad Abd al-Qadir Abu Faris, *Al-Shura wa Qadaya al-Ijtihad al-Jama'ci* (Al-Zarqa<sup>ç</sup>: Maktabat al-Manar, 1986), p.35.

## Chapter Two

1. Ibn Hajar al-<sup>ç</sup>Asqalani, *Fath al-Bari*, 15/284.
2. Ibid.
3. Abu Bakr ibn al-<sup>ç</sup>Arabi, *Ahkam al-Qur'an*, 1/391.
4. Ibid.
5. See Abu Muhammad ibn Hazm al-Zahiri, *Al-Ihkam fi Usul al-Ahkam*, 2nd Edition (Beirut: Dar al-Afaq al-Jadidah, 1983), 3/80-86.
6. Ibid., 3/1.

## Notes

7. Ibn Hazm al-Zahiri, *Al-Ihkam fi Usul al-Ahkam*, 3/81-82.
8. *Ibid.*, 3/86.
9. The actual text of the hadith reads, *la ghusla 'alayhi*, i.e., "He is not required to perform total ablutions." Commenting further on this hadith, al-Khattabi states, "The apparent meaning of the hadith is that a man is required to perform total ablutions if, upon waking, he observes moisture [in the genital area], even if he is not certain that it is semen. This view is attributed to a group of the Prophet's successors (*tabi'in*), including 'Ata', al-Sha'bi, and al-Nakh'i. Ahmad ibn Hanbal states, 'I think it preferable for one to perform total ablutions.' However, the majority of scholars hold that one is not required to perform total ablutions unless he is certain that the moisture results from semen and not from something else, and that it is preferable for one not to perform them simply as a precaution. Furthermore, they agree that if one does not observe any semen even after dreaming of sexual intercourse, he is not required to perform total ablutions." Commenting further, he states, "The view of the first group of scholars, namely, that the mere observance of moisture upon waking requires total ablutions, is more consistent with the overall message of the hadith." (Abu Sulayman al-Khattabi, *Ma'alim al-Sunan*, on the margins of al-Tirmidhi's *Mukhtasar Sunan Abi Dawud*, ed. Ahmad Muhammad Shakir and Muhammad Hamid al-Fiqi, Beirut: Dar al-Ma'rifah, 1980, 1/161). [Translator's note].
10. *Sunan Abi Dawud*, The Book of Ritual Purity (*kitab al-taharah*), the section entitled, "If a man has an emission of semen while asleep" (*bab al-rajul yajidu al-billah fi man-amih*).
11. Al-Khattabi, *Ma'alim al-Sunan*, 1/161.
12. *Sahih al-Bukhari*, The Book of Heroic Feats (*kitab al-manaqib*), the section on the signs of prophethood in Islam (*'alamat al-nubuwwah fi al-islam*).
13. Ibn Hajar al-Asqalani, *Fath al-Bari*, 7/309.
14. *Sahih al-Bukhari*, The Book of Conditions (*kitab al-shurut*), the section entitled, "Conditions pertaining to jihad and reconciliation with foes in war, and on recording such conditions in writing."
15. *Sahih al-Bukhari*, The Book of Heroic Feats (*kitab al-manaqib*), the section entitled, "Signs of Prophethood in Islam."
16. *Ibid.*, The Book of *Jum'ah* (*kitab al-jum'ah*), the section entitled "Preaching From the Pulpit" (*al-khutbah 'ala al-minbar*).
17. Al-Hafiz ibn Hajar al-Asqalani, *Fath al-Bari*, 7/306.
18. Yahya ibn Sharaf Al-Nawawi, *Sahih Muslim bi Sharh al-Imam al-Nawawi*, (Beirut: Mu'assasat Manahil al-'Irfan and Damascus: Maktabat al-Gazali). 5/34.
19. Qur'an 27:29-35.
20. Qur'an 28:26.
21. *Sahih al-Bukhari*, "The Book of Dissension and Civil Strife" (*kitab al-fitan*).
22. Qur'an 9:71.
23. Qur'an 2:233.

## Notes

24. Allal al-Fasi, *Madkhal fi al-Nazariyyah al-‘Ammah li Dirasat al-Fiqh al-Islami wa Muqaranatuhu bi al-Fiqh al-Ajnabi* (Rabat: Mu’assasat ‘Allal al-Fasi, 1985), p. 101.
25. Imam al-Haramayn ‘Abd al-Malik al-Juwayni, *Al-Ghayyathi – Ghayyath al-Umam fi Iltayath al-Zulam*, ed. Abd al-Azim al-Dib, 2nd Edition (Doha: Idarat al-Shu’un al-Diniyyah, 1980), p. 62.
26. *Ibid.*, p. 64.
27. Ibn Qayyim al-Jawziyyah, *Zad al-Ma’ad fi Hadi Khayr al-‘Ibad*, ed. Shuayb al-Arnaut and Abd al-Qadir al-Arnaut, 14th Edition (Beirut: Mu’assasat al-Risalah, 1990), 3/48.
28. Abu ‘Abd Allah al-Qurtubi, *Al-Jami‘ li Ahkam al-Qur’an* (Beirut: Dar Ihya’ al-Turath al-‘Arabi, 1967), 4/250.
29. Qur’an 16:43; cf. 21:7.
30. Qur’an 4:83.
31. Abu ‘Abd Allah ibn al-Azraq, *Bad’i‘ al-Silk fi Tabai‘i‘ al-Mulk*, pp. 309–310.
32. Qur’an 27:22.
33. Abu ‘Umar Yusuf ibn ‘Abd al-Barr, *Jami‘ Bayan al-‘Ilm wa Fadlihi wa ma Yanbaghi fi Riwayatihi wa Hamlihi* (Beirut: Dar al-Fikr, no date), 2/73.
34. *Sahih al-Bukhari*, The Book of Adherence to the Qur’an and the Sunnah (*kitab al-i’tisam bi al-kitab wa al-sunnah*), the section concerned with the words of God, “whose rule [in all matters of common concern] is consultation among themselves.”
35. Qur’an 7:20–22.
36. *Sunan Abi Dawud*, the section on consultation; the hadith cited is declared authentic by al-Albani in *Mukhtasar al-Sunan*.
37. Khayr al-Din al-Tunisi, *Aqam al-Masalik fi Ma’rifat Ahwal al-Mamalik*, edited and introduced by Munsif al-Shannufi (Tunis: al-Mu’assasah al-Wataniyyah li al-Tarjamah wa al-Tahqiq wa al-Dirasat, 1990), pp. 175–176.
38. That is, the rightly guided caliphs. [Translator’s note].
39. *Sahih al-Bukhari*, The Book of Adherence to the Qur’an and the Sunnah (*kitab al-i’tisam bi al-kitab wa al-sunnah*), the section concerned with the words of God, “whose rule [in all matters of common concern] is consultation among themselves.”
40. Badr al-Din ibn Jama‘ah, *Tahrir al-Ahkam fi Tadbir Ahl al-Islam*, ed. Fuad Abd al-Munim Ahmad (Qatar: Ri’asat al-Mahakim al-Shar’iyyah wa al-Shu’un al-Diniyyah, 1991), p. 72.
41. The term “election” is being used in its broadest sense without regard for the various forms the electoral process may take; similarly, the process may be spontaneous or organized, formal or informal.
42. *Sahih al-Bukhari*, The Book of Rulings (*kitab al-ahkam*), the section entitled, “Those knowledgeable of the people’s affairs” (*al-‘urafa’u li al-nas*), and The Book of Military Campaigns (*kitab al-maghazi*), the section concerning the words of God, “On the Day of Hunayn, when you took pride in your great numbers...” [Qur’an 9:25].
43. Ibn Hajar al-‘Asqalani, *Fath al-Bari*, 15/74.

## Notes

44. ʿAbd al-Haqq ibn ʿAtiyyah, *al-Muharrir al-Wajiz fi Tafsir al-Kitab al-ʿAziz*, 4/382.
45. Ibn Qayyim al-Jawziyah, *Aʿlam al-Muwaqqiʿin ʿan Rabb al-ʿAlamin*, 1/62, and Jalal al-Din al-Suyuti, *Tahdhib Tarikh al-Khulafaʾ*, ed. Nayif al-Abbas, 1st Edition (Damascus: Dar al-Albab, 1990), p.38.
46. Abd al-Hayy al-Kittani, *Nizam al-Hukumah al-Nabawiyyah*, also known as *al-Taratib al-Idariyyah* (Beirut: Dar al-Kitab al-ʿArabi, no date), 2/165; the account is found in the section entitled, “The people’s agreement on who will represent them in an official ceremony or religious funeral service.”
47. Qahtan al-Duri, *Al-Shuura bayna al-Nazariyyah wa al-Tatbiq*, p.323.
48. Abu ʿUmar Yusuf ibn ʿAbd al-Barr, *Jamiʿ Bayan al-ʿIlm*, 2/73.
49. Narrated by Imam Ahmad in *al-Musnad*, 4/227. See also Ibn Hajar al-ʿAsqalani, *Fath al-Bari*, 15/284.
50. Ibn Hajar al-ʿAsqalani, *Fath al-Bari*, 15/99.
51. Muhammad Ruwwas Qalaji, *Mawsuʿat Fiqh Abi Bakr al-Siddiq*, p.156.
52. Abu Jaʿfar Muhammad ibn Jarir al-Tabari, *Tarikh al-Umam wa al-Muluk* (Beirut: Dar al-Qamus al-Hadith li al-Tibaʿah wa al-Nashr, no date), 7/61.
53. As for the situation in which there is a tie vote, it rarely occurs, and when it does, the problem can be solved by allowing the chairman, or ruler, to break the tie with his own vote.
54. Hasan Huwaydi, *Al-Shura fi al-Islam* (Kuwait: Maktabat al-Manar, 1975), pp.26-27.
55. Ahmad Rahmani, *Al-Haqiqah al-Jawhariyyah fi Mushkilat al-Akthariyyah wa al-Aqalliyyah: Dirasah fi al-Tafsir al-Mawduʿi* (Cairo: Maktabat Wahbah, 2005), p.445.
56. *Ibid.*, p.452.
57. *Ibid.*
58. Qurʿan 7:60.
59. Qurʿan 11:27.
60. Qurʿan 38:6.
61. Qurʿan 7:88, 90.
62. Abu ʿUmar Yusuf ibn ʿAbd al-Barr, *Jamiʿ Bayan al-ʿIlm*, 1/226.
63. *Sahih al-Bukhari*, The Book of the Heroic Feats of the Supporters (*kitab manaqib al-ansar*), the section entitled, “The Days of Ignorance” (*ayyam al-jahiliyyah*).
64. Ibn Hajar al-ʿAsqalani, *Fath al-Bari*, 7/536.
65. Qurʿan 5:100.
66. Qurʿan 7:86.
67. Qurʿan 5:100.
68. I will be turning shortly to a discussion of the issue of majority-based decision-making on the part of Muslim scholars.
69. He is referring to his shaykh, Muhammad ibn ʿAbd al-Salam, the community’s judge in Tunisia, who died in 749 AH/1251 CE.
70. Muhammad al-Tahir ibn Ashur, *Al-Tahrir wa al-Tanwir*, 7/64.

## Notes

71. The “you” here is plural, and must therefore refer to the Muslim community as a whole. [Translator’s note].
72. Abu Ishaq al-Shatibi, *Al-Muwafaqat*, ed. Abd Allah Darraz (Beirut: Dar al-Ma‘rifah, no date), 3/353–354.
73. Adnan al-Nahwi, *Malamih al-Shura fi al-Da‘wah al-Islamiyyah* (Dammam: Dar al-Islah li al-Tab‘ wa al-Nashr, no date), p.36.
74. Qur’an 27:43.
75. Qur’an 27:44.
76. Qur’an 3:193.
77. *Dhu al-Qamayn* is described in the Qur’an as a leader who “chose the right means [in whatever he did]” (Qur’an 18:83–98). [Translator’s note].
78. Abu ‘Abd Allah al-Qurtubi, *Al-Jami‘ li Ahkam al-Qur’an* (Beirut: Dar Ihya’ al-Turath al-‘Arabi, 1967), 13/194.
79. Qur’an 27:34. Apparently not all commentators attribute these words to God, as evidenced by the fact that in Muhammad Asad’s translation of the Qur’an (which is being relied on throughout this work), they are included in the statement attributed to the Queen of Sheba rather than being attributed to God. [Translator’s note].
80. Al-Qurtubi, *Al-Jami‘ li Ahkam al-Qur’an*, 13/195.
81. Muhammad al-Amin al-Shanqiti, *Adwa’ al-Bayan: Tafsir al-Qur’an bi al-Qur’an* (Beirut: ‘Alam al-Kutub, no date), 1/5.
82. ‘Abd al-Malik ibn Hisham, *Al-Sirah al-Nabawiyyah* (Cairo: Dar al-Fikr, no date), 2/653.
83. Ibid, pp.653–654.
84. Qur’an 8:67–69; *Sahih Muslim*, The Book of Jihad and Military Campaigns (*kitab al-jihad wa al-siyar*), the section entitled, “The provision of angels and the allowance of spoils.”
85. Muhammad al-Tahir ibn Ashur, *Al-Tahrir wa al-Tanwir*, 10/75.
86. Ibid., 10/73.
87. Abu Bakr ibn al-‘Arabi, *‘Aridat al-Ahwadhi*, 7/210.
88. ‘Abd al-Malik ibn Hisham, *Al-Sirah al-Nabawiyyah*, 3/841.
89. Qur’an 3:159.
90. Hasan Huwaydi, *Al-Shura fi al-Islam*, p.13.
91. Qur’an 33:10–11.
92. Ibrahim al-Ali, *Sahih al-Sunnah al-Nabawiyyah*, p.361.
93. ‘Abd al-Malik ibn Hisham, *Al-Sirah al-Nabawiyyah*, 3/1033–1034. See also Ibn Kathir, *al-Bidayah wa al-Nihayah* (Cairo: Dar al-Fikr), 4/106.
94. Qur’an 49:7.
95. *Sahih al-Bukhari*, The Book of Conditions (*kitab al-shurut*), the section entitled, “Conditions pertaining to jihad and reconciliation with foes in war, and recording such conditions in writing.”

The reference to Abrahah is an allusion to the time when, in the year 570 CE,

## Notes

Abraham, the Christian viceroy of Yemen (which was ruled at that time by the Abyssinians) marched toward Makkah with the intention of destroying the Ka'bah. However, God caused Abraham's elephant to turn around and head back where it had come from. [Translator's note].

96. Ibid.
97. Qur'an 48:24.
98. Abd al-Hadi Butalib, *Al-Shura wa al-Dimuqratiyyah* (Rabat: Manshurat al-Munazzamah al-Islamiyyah li al-Tarbiyah wa al-'Ulum wa al-Thaqafah, no date), p.27.
99. Abu Bakr ibn al-'Arabi, *Ahkam al-Qur'an*, 2/225.
100. Abu Ishaq al-Shirazi, *Sharh al-Luma'*, ed. Abd al-Majid Turki, 1st Edition (Beirut: Dar al-Gharb al-Islami, 1988), 2/751.
101. Quoting al-Bayhaqi in *A'lam al-Muwaqqi'in 'an Rabb al-'Alamin*, 4/122.
102. Abu Ya'la al-Farra', *Al-'Iddah fi Usul al-Fiqh*, ed. Ahmad ibn Ali Sir al-Mubarak, 3rd Edition (Riyadh, 1993), 4/1301. See also Ibn 'Abd al-Barr, *Jami' Bayan al-'Ilm*, 2/74.
103. Ibid., 4/1300.
104. Abu al-Husayn al-Basri, *Al-Mu'tamad fi Usul al-Fiqh*, edited and introduced by Shaykh Khalil al-Mays, 1st Edition (Beirut: Dar al-Kutub al-'Ilmiyyah, 1983), 2/182.
105. Shams al-Din Mahmud al-Isfahani, *Bayan al-Mukhtasar: Sharh Mukhtasar Ibn al-Hajib*, ed. Muhammad Zahir Baqa (1986), 1/556.
106. *Majmu' Fatawa Shaykh al-Islam Ahmad ibn Taymiyyah*, compiled and arranged by Abd al-Rahman Muhammad ibn Qasim with the assistance of his son, Muhammad (Rabat: Maktabat al-Ma'arif, no date), 28/387.
107. Cf. Qur'an 22:46.
108. See pp.19-20 above.
109. Ibn Hazm al-Zahiri al-Andalusi, *Al-Nubdhah al-Kafiyah fi Ahkam Usul al-Din*, ed. Muhammad Ahmad Abd al-Aziz, 1st Edition (Beirut: Dar al-Kutub al-'Ilmiyyah, 1985), p.47.
110. These words form the last statement in al-Shatibi's book entitled, *al-It'sam*. The author died before completing the book, which means that these words may have been the last he ever penned.
111. Abu al-Husayn ibn Battal, *Sharh ibn Battal 'ala Sahih al-Bukhari*, ed. Mustafa Abd al-Qadir Ata, 1st Edition (Beirut: Dar al-Kutub al-'Ilmiyyah, 2002), 1/367.

### Chapter Three

1. This statement is taken from a lengthy hadith recorded in both *Sahih Muslim* and *Sahih al-Bukhari* concerning a man by the name of Jurayj who had devoted himself to solitary prayer. One day he was approached by his mother, who addressed him while

## Notes

- he was praying and wanted him to respond to her. Torn between the demand of his mother and his devotion to worship, he cried out, “O Lord, my mother, or my prayer?!”
2. See Abu Bakr al-Tartushi, *Siraj al-Muluk* (Al-Matba‘ah al-Wataniyyah bi Thaghr al-Iskandariyyah, 1872), p.63, and the same expression as used by Ibn Jama‘ah in *Tahrir al-Ahkam fi Tadbir Ahl al-Islam*, p.169.
  3. Abu ‘Abd Allah ibn al-Azraq, *Bada’i‘ al-Silk fi Taba’i‘ al-Mulk*, 1/302.
  4. Qahtan al-Duri, *Al-Shura bayn al-Nazariyyah wa al-Tatbiq* (Baghdad: Dar al-Ummah, 1974), pp.17-25.
  5. Abu Bakr al-Tartushi, *Siraj al-Muluk*, p.90.
  6. Muhammad Amhazun, *Tahqiq Mawaqif al-Sahabah fi al-Fitnah*, 1st Edition (Damascus: Dar al-Albab, 1994), 1/397.
  7. That is, the Muslim community would have been split in two. [Translator’s note].
  8. Al-Bukhari, vol.4, The Book of Divinely Prescribed Punishments (*kitab al-hudud*), hadith no.6830.
  9. Imam al-Haramayn ‘Abd al-Malik al-Juwayni, *Al-Ghayyathi – Ghayyath al-Umam fi Itayath al-Zulam*, p.69.
  10. Ibid., pp.70-71.
  11. That is, Imam al-Shafi‘i, Imam Malik, Imam Ahmad ibn Hanbal, and Imam Abu Hanifah. [Translator’s note].
  12. Ahmad ibn Taymiyyah, *Minhaj al-Sunnah al-Nabawiyyah*, ed. Muhammad Rashad Salim, 2nd Edition (Rabat: Maktabat al-Ma‘arif, 1998), 1/526-527.
  13. Imam al-Haramayn ‘Abd al-Malik al-Juwayni, *Al-Ghayyathi*, p.71.
  14. Ibid., p.70.
  15. Abu Bakr ibn al-‘Arabi, *‘Aridat al-Ahwadhi fi Sharh Sahih al-Tirmidhi*, the sections on heroic feats. Ibn Umm ‘Abd was a name by which ‘Abd Allah ibn Mas‘ud, an Emigrant who fought at Badr and who was known for his heroism and virtue, was known.
  16. Qur’an 9:128.
  17. Qur’an 33:6.
  18. *Tahdhib Tarikh al-Khulafa’ li al-Suyuti*, ed. Nayif al-Abbas (Damascus: Dar al-Albab, 1990) pp.70-71.
  19. Ibid., p.71.
  20. Ibid., p.72.
  21. While leading the dawn prayer in the Prophet’s mosque in Madinah on November 1, 644 CE (24 AH), ‘Umar was stabbed by a Persian slave by the name of Abu Lu’lu’, who had apparently been commissioned to carry out the assassination by enemies of the caliph. ‘Umar died of his wounds three days later. [Translator’s note].
  22. *Sahih al-Bukhari*, The Book of Virtues (*kitab al-fada’il*), the section entitled, “The story of the pledge of allegiance to ‘Uthman and the agreement to nominate him.”

## Notes

23. Apparently, he had feared that ‘Ali would object if allegiance was pledged to anyone other than him, though in fact, this did not happen.
24. *Sahih al-Bukhari*, The Book of Rulings (*kitab al-ahkam*), the section entitled, “How people pledge allegiance to a spiritual and political leader.”
25. Ibn Hajar al-‘Asqalani, *Fath al-Bari bi Sharh Sahih al-Bukhari*, 15/107.
26. Ibn Kathir, *Al-Bidayah wa al-Nihayah*, 7/146.
27. Abu al-Husayn ibn Battal, *Sharh ibn Battal ‘ala Sahih al-Bukhari*, 8/217.
28. *Ibid.*, p. 216 and Ibn Hajar al-‘Asqalani, *Fath al-Bari*, 15/109.
29. Abu ‘Ubayd al-Qasim ibn Sallam, *Al-Amwal* (Cairo: al-Maktabah al-Tijariyyah al-Kubra, no date), p. 58.
30. The footnote reads: Al-Kharaj, 28–29. The reference to “people of unbelief” apparently refers not to the general non-Muslim population, but rather, to non-Muslim combatants. [Translator’s note].
31. Abu ‘Ubayd al-Qasim ibn Sallam, *al-Amwal*, p. 59.
32. *Ibid.*, p. 60.
33. Abu Bakr al-Tartushi, *Siraj al-Muluk*, p. 8.
34. Abu Ja‘far Muhammad ibn Jarir al-Tabari, *Tarikh al-Umam wa al-Muluk*, 7/61.
35. Ibrahim Harakat, *al-Nizam al-Siyasi wa al-Harbi fi ‘Ahd al-Murabitin* (Al-Dar al-Bayda, Maktabat al-Wihdah al-‘Arabiyyah), p. 59.
36. *Ibid.*
37. ‘Abd al-Haqq ibn ‘Atiyyah, *Al-Muharrir al-Wajiz fi Tafsir al-Kitab al-‘Aziz*, 3/397.
38. For a summary of some of the plans referred to, see *Tarikh al-‘Allamah ‘Abd al-Rahman ibn Khaldun*, volume 1 (*al-Muqaddimah*) (Beirut: Maktabat al-Madrasah wa Dar al-Kitab al-Lubnani, 1967), pp. 386–400.
39. Abu al-Abbas al-Wansharisi, *Al-Mi‘yar al-Mu‘rib wa al-Jami‘ al-Mughrib ‘an Fatawa Ahl Afriyya wa al-Andalus wa al-Maghrib* (Beirut: Dar al-Maghrib al-Islami, 1981), 10/77.
40. This work is housed in the National Library in Rabat as Manuscript No. 1552d. Numerous individuals have edited parts of the manuscript under different names.
41. *Ibid.*, leaves 12–13. Quoted in an article on the book by Rabi al-Mighrawi which appeared in *Hawliyat al-Adab wa al-‘Ulum al-Insaniyyah*, The University of Kuwait, Vol. 23, 2002–2003.
42. *Ibid.*
43. Abu al-Abbas al-Wansharisi, *Al-Mi‘yar al-Mu‘rib*, 10/58–59.
44. Ibn Qudamah al-Maqdisi, *Al-Mughni*, ed. Abd Allah ibn Abd al-Muhsin al-Turki and Abd al-Fattah al-Hilw, 2nd Edition (Cairo: Hajar li al-Tiba‘ah wa al-Nashr, 1992), 14/28.
45. Muhammad Abd al-Wahhab Khallaf, *Tarikh al-Qada’ fi al-Andalus*, 1st Edition (Cairo: al-Mu‘assasah al-‘Arabiyyah al-Hadithan, 1992), p. 321.
46. *Ibid.*, p. 326.
47. Allal al-Fasi, *Madkhal fi al-Nazariyyah al-‘Ammah li Dirasat al-Fiqh al-Islami*, p. 148.

Chapter Four

1. Qur'an 39:18.
2. Qur'an 42:36-38.
3. Qur'an 17:26.
4. Qur'an 13:41.
5. Qur'an 10:3.
6. Qur'an 33:38.
7. *Sahih al-Bukhari*, The Book of Divinely Prescribed Punishments (*kitab al-hudud*).
8. Qur'an 59:2.
9. *Tarikh ibn Khaldun* (Beirut: Maktabat al-Madrasah wa Dar al-Kitab al-Lubnani, 1967), vol. 1 (*al-Muqadimmah*), p. 510.
10. Muhammad Umarah, *Umm al-Qura, Dimn al-ʿamal al-Kamilah li ʿAbd al-Rahman al-Kawakibi* (Cairo: al-Hay'ah al-Misriyyah li al-Ta'lif wa al-Nashr, 1970), p. 181.
11. For a definition of *hisbah*, see the Glossary of Terms.
12. *Sahih al-Bukhari*, The Book of Adherence to the Qur'an and the Sunnah (*kitab al-i'tisam bi al-kitab wa al-sunnah*), the section concerned with the words of God, "whose rule [in all matters of common concern] is consultation among themselves," and the Book of Commentary (*kitab al-tafsir*), the section dealing with the words of God, "Hold to forgiveness..." (Qur'an 7:199).
13. The term "al-ʿAliyah" refers to the area of Najd extending from Madinah and its environs to Tihamah, Yaqut al-Hamawi al-Rumi al-Baghdadi, *Muʿjam al-Buldan* (Beirut: Dar Sadir, 1995), vol. 4, p. 71.
14. *Sahih Muslim*, The Book of Dissensions and Portents of the Day of Judgment (*kitab al-fitan wa ashrat al-saʿah*).
15. Qur'an 18:49.
16. Muhammad al-Hijjawi al-Thaalibi, *Al-Fikr al-Sami fi Tarikh al-Fiqh al-Islami*, 1st Edition (Beirut: Dar al-Maghrib al-Islami, 1995), 1/239.
17. This is al-Bukhari's version of the account, which is found in The Book of Heroic Feats (*kitab al-manaqib*), the section on the signs of prophethood in Islam (*ʿalamat al-nubuwwah fi al-islam*). In *Sahih Muslim*, the account is found in The Book of Dissension and Civil Strife (*kitab al-fitan*).
18. Ibn Hajar al-ʿAsqalani, *Fath al-Bari*, 7/310. We read in Ibn Battal's commentary (10/46), "Al-Muhallab (that is, Judge al-Muhallab ibn Abi Sufrah) said, 'If someone were to ask how ʿUmar knew that if a door is broken down, it will never be closed, the answer is that ʿUmar realized this because a door will only be broken down by force, and force will only be used in a situation of civil strife.'"
19. *Sahih Muslim bi Sharh al-Nawawi*, 3/12.
20. *Majmuʿ Fatawa Shaykh al-Islam Ahmad ibn Taymiyyah*, 35/20.
21. Muhammad Amhazun, *Tahqiq Mawaqif al-Sahabah fi al-Fitnah*, 2/110.
22. The temptation would apparently have been a result of the Muslim women's not

## Notes

- having husbands to meet their sexual needs. [Translator's note].
23. Ibn Qayyim al-Jawziyyah, *A'lam al-Muwaqqi' in 'an Rabb al-'Alamin*, 3/159.
  24. The Almohad Dynasty (1121-1269 CE) was a Berber Muslim state that founded the fifth Moorish dynasty and conquered all of northern Africa as far as Egypt, together with Muslim Spain. [Translator's note].
  25. Abu 'Abd Allah Muhammad ibn Ibrahim al-Lawlawi, better known as al-Zarkashi, *Tarikh al-Dawlatayn al-Muwahhidiyyah wa al-Hafsiyyah* (Tunis: Matba'at al-Dawlah al-Tunisiyyah al-Mahrusah, 1279 AH/1862 CE), p.44.
  26. Ibn Qayyim al-Jawziyyah, *A'lam al-Muwaqqi' in 'an Rabb al-'Alamin*, 3/3.
  27. Qur'an 16:90.
  28. Qur'an 22:77.
  29. Qur'an 99:7-8.
  30. Qur'an 103.
  31. Abu Ishaq al-Shatibi, *Al-Fitisa*m (Riyadh: Maktabat al-Riyad al-Hadithah, no date), 2/129-133, with slight modifications.
  32. Qur'an 27:22.
  33. Qur'an 27:44.
  34. Qur'an 5:30-31.
  35. Ibn Hajar al-'Asqalani, *Fath al-Bari bi Sharh Sahih al-Bukhari*, 8/148.
  36. *Sahih al-Bukhari*, The Book of the Call to Prayer (*kitab al-adhan*), and al-Tirmidhi, the sections on prayer (*abwab al-salah*).
  37. Quoted by Al-Hafiz ibn Hajar in *Fath al-Bari*, 3/60.
  38. This account is taken from *Sahih Muslim*, The Book of Adornment (*kitab al-zinah*); it is also found in al-Tirmidhi, The Book of Knowledge (*kitab al-'ilm*), The Book of Attire (*kitab al-libas*), and elsewhere.
  39. *Sahih Muslim*, The Book of Virtues (*kitab al-fada'il*).
  40. *Sahih Muslim*, The Book of Dissensions and Portents of the Day of Judgment (*kitab al-fitan wa ashraf al-sa'ah*).
  41. Al-Qadi 'Ayad al-Yahsi al-Sabti. *Baghyat al-Ra'id li ma Tadammnanahu Hadith Umm Zar' min al-Fawa'id*, ed. Salah al-Din al-Idli, et. al. (Rabat: Wizarat al-Awqaf al-Maghribiyyah, 1975), p.18.
  42. Ibid.
  43. Ibid., p.36.
  44. Ibid., p.171.
  45. Narrated by Abu Dawud in The Book of Prayer (*kitab al-salah*) in his *Sunan*, and by al-Tirmidhi in the sections on prayer in *al-Jami' al-Kabir*.
  46. Al-Tirmidhi, the sections on prayer, the section entitled, "Concerning those who visit a mosque, that they should not lead its worshippers in prayer."
  47. See al-Tirmidhi, the sections on prayer, the section entitled, "Concerning him who leads a congregation in prayer when its members dislike him."
  48. Abu Bakr ibn al-'Arabi, *Aridat al-Ahwadhi fi Sharh Sahih al-Tirmidhi*, 1/153.

## Notes

49. Qur'an 25:2.
50. Qur'an 65:3.
51. Qur'an 13:8.
52. *Sahih al-Bukhari*, The Book of the Call to Prayer (*kitab al-adhan*), the section entitled, "The call to prayer for the traveler..."
53. *Sahih Muslim*, The Book of Pilgrimage (*kitab al-hajj*), the section entitled, "On the desirability of throwing stones at the Aqabah pillar while mounted."
54. Muhammad al-Tahir ibn Ashur, *Usul al-Nizam al-Ijtima'i fi al-Islam*, 2nd Edition (Tunis: al-Sharikah al-Tunisiyyah li al-Tawzi', and Algiers: al-Mu'assasah al-Wataniyyah li al-Kitab, no date), p.213.
55. *Ibid.*, p.214.
56. Ibn Qayyim al-Jawziyyah, *A'lam al-Muwaqqi'in 'an Rabb al-'Alamin*, 3/181.
57. *Ibid.*, 4/372.
58. Qur'an 21:47.
59. Ibn Hajar al-'Asqalani, *Fath al-Bari*, 15/523.
60. Ibn al-Qayyim al-Jawziyyah, *A'lam al-Muwaqqi'in*, 4/373, and *al-Turuq al-Hukmiyyah fi al-Siyasah al-Shar'iyyah* (Beirut: Dar Ihya' al-'Ulum, no date), p.21.
61. Qur'an 5:42; for an explanation of this verse, see Ibn 'Atiyyah, *al-Mihwar al-Wajiz*, 4/451-452.
62. Qur'an 45:30.

## Conclusion

1. I say "certain high-minded politicians" because many politicians declare candidly that there is no place for morals in politics, in other words, that politics are one thing, and morals are another. Moreover, there are many who, though they do not say so directly, their conduct says it for them. And as the saying goes, actions speak louder than words.
2. Qur'an 7:109-112.
3. Qur'an 26:34-35.
4. Qur'an 12:7-15.
5. Narrated by Imam Muslim in The Book of Faith (*kitab al-iman*), the section entitled, "An explanation of the fact that religion consists in giving [sound] advice."
6. *Ibid.*
7. Qur'an 7:199.
8. *Sahih al-Bukhari*, The Book of Commentary (*kitab al-tafsir*), the section entitled, "Hold to forgiveness, command what is right, but turn away from the ignorant," and The Book of Adherence to the Qur'an and the Sunnah (*kitab al-i'tisam bi al-kitab wa al-sunnah*), the section entitled, "Emulating the examples set by the Messenger of God."
9. Qur'an 11:114.

## GLOSSARY OF TERMS

**Ahad**, or solitary hadiths: A solitary hadith is a report narrated on the authority of the Prophet by one or more individuals, but whose chain of transmission does not fulfill the requirements of *tawatur*.\*

**Faqih** (plural, *fuqaha'*): A scholar of Islamic jurisprudence who concerns himself with the details of Islamic legal rulings and their legal bases.

**Fatwa** (plural, *fatawa*): A formal legal opinion issued by a mufti, that is, a qualified scholar of jurisprudence, based on a question posed to him.

**Fiqh**: The study and application of Islamic legal rulings as based upon detailed evidence; the corpus of practical legal rulings in Islam.

**Hisbah**: A type of religious authority based on the commanding of what is good and the prohibition of what is evil, which emerged as an independent function in the Abbasid era. The person assuming this function would oversee markets, cleanliness and hygiene, and public morals.

**Ijtihad**, or independent reasoning: The effort exerted by a suitably qualified scholar of jurisprudence to arrive at an accurate conceptualization of the divine will based on Muslim legal sources (the Qur'an,

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\*The definitions in this glossary are drawn for the most part from the following two sources: Koutoub Moustapha Sano, *Mu'jam Mustalahat Usul al-Fiqh*, <sup>ᶜ</sup>*Arabi-Inkilizi* (Concordance of Jurisprudence Fundamentals Terminology), (Damascus: Dar al-Fikr, 2000) and Qalanji, Muhammad Rawwas, et. al., *Mu'jam Lughat al-Fuqaha'*, English-French-Arabic, (Beirut: Dar al-Nafa'is, 1996).

the Hadith, analogical deduction and consensus) and the means by which to apply this will in a given age and under given circumstances; as such, *ijtihad* is the effort exerted by such a scholar to derive a legal ruling from Muslim legal sources, and to reach certainty on questions of an ambiguous nature.

***Istihsan***, or juristic preference: A decision, in the process of arriving at a legal ruling, to refrain from applying to a given situation the same ruling which has been applied to analogous situations in favor of another ruling which is more in keeping with the aims of Islamic Law. In other words, juristic preference involves giving human interests and the aims of the Law priority over the results of *qiyas*, or analogical deduction.

***Istislah***, or reasoning based on unrestricted interests: 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 (see below, *al-masalih al-mursalah*).

***Al-Masalih al-Mursalah***, or unrestricted interests (sometimes referred to also as public interests): Interests which are not explicitly identified by any text in the Qur'an or the Sunnah but which are generally agreed upon based on circumstances which arise in human society. Examples of unrestricted interests include the paving of roads, the setting up of administrative offices to handle public needs, the use of traffic signals, the construction of sewers and waste disposal facilities, etc.

**Mufti**: A jurist who expounds Islamic law and issues legal decisions concerning specific situations and cases outside a court of law.

***Mujtahid***: Someone who is qualified to offer interpretations of Islamic law based on his own independent reasoning, or *ijtihad*.

***Qiyas***, or analogical deduction: The practice of basing a new legal

## *Glossary of Terms*

ruling on a previous ruling concerning a similar case, given the similarity between the two cases with respect to their underlying basis or occasion (*‘illah*).

***Sadd al-Dhara’i’***: The prohibition of evasive legal devices, or of anything which has the potential of leading to that which is forbidden.

***Al-Shura***: Consultation. To seek the opinion of knowledgeable people or mutual advice.

***Tabi’i***: A successor of the Prophet, namely, someone who was a believing Muslim, and who was acquainted with one or more of the Prophet’s Companions.

**Unrestricted interests**: See *al-masalih al-mursalah* above.

***Usuli*** (plural, *usuliyyun/usuliyyin*): A scholar who devotes himself to the study of the principles of Islamic jurisprudence (*usul al-fiqh*).

***Usul al-Fiqh***: Principles or fundamentals of Islamic jurisprudence.

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...and whose rule [in all matters of common concern] is consultation among themselves...  
(THE QUR'AN: *Al-Shura*, 42:38)

Muslims remain largely unaware of the importance and value of the Qur'anic principle of *al-Shura* (mutual consultation) and the significant role it can play in the advancement and reform of Muslim society. In this work, the author attempts to introduce and examine key meanings and practices of *al-Shura*, trace its historical evolution, and explore ways in which the principle can be introduced, institutionalized and applied in Muslim societies. There is no doubt that *al-Shura* has been sidelined throughout the Muslim world and the reasons for this are both historically and politically complex. According to the author, although much has been written on the subject, in reality it has been at best ineffectively applied and at worst heedlessly ignored. Even today it is a hotly contested issue. As *al-Shura* is increasingly associated with democratic participation in a decision-making process, debate has ignited with critics challenging the notion of equating the principle with western notions of democracy, with others claiming that the principle allows for a meaning that breaks the grip of centralized power. These and other issues are investigated with careful scholarship. Al-Raysuni concludes that *al-Shura* should be adopted as a way of life for all Muslims to protect their interests and as a vital tool for reconstruction and reform. In doing so he addresses the subject from some intriguing new angles, giving insight into areas hitherto little, if at all, examined.

*The tide of popular protest against dictatorship that is currently sweeping Arab countries is evidence at once of the failure of participatory and consultative governance and an opportunity in the meantime for them to reclaim their all but lost heritage that is so germane to their own culture and Islam. Al-Raysuni's timely contribution unfolds the place of al-Shura in the scripture, juristic and historical precedent as well as the manner of its revival in contemporary Muslim polities. His focus on pragmatic issues and the lines of convergence between al-Shura and democracy he has highlighted, make this a particularly interesting reader on the subject.*

Professor Mohammad Hashim Kamali  
Founding Chairman & CEO, International Institute of Advanced Islamic Studies (IAIS) Malaysia.

*'In the Beginning there was Consultation'. Thus begins Ahmad al-Raysuni's remarkable new book Al-Shura, a passionate plea for reviving and incorporating the principle of consultation in all walks of life. His message is that the principle is divine in origin, and its application was coeval with man's very creation. The author thus regards the principle as inherent in the creation process itself, and not merely a doctrinal matter. Further, he sees no objection to enhancing the principle by borrowing from (and further enriching) modern democratic theory and practice. 'Democracy,' he argues, 'needs us as much as we need it.' The book offers a comprehensive and compelling treatment and rethinking of this central Islamic principle.*

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