

CHAPTER I

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.”¹

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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.²

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:

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...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!"³

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."⁴ 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!"⁵

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."⁶ 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

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marrying their (former) husbands”]⁷ 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].⁸

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.”⁹

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].”¹⁰

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.

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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.¹¹

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.¹²

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."¹³ 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

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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!”¹⁴

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.”¹⁵ 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!”¹⁶

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.”¹⁷ 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.¹⁸

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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.¹⁹

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'."²⁰ 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]

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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.²¹

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."²²

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."²³ 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.²⁴

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,²⁵ 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:

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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 application²⁶ unless there is clear evidence in support of the latter.²⁷

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.

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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].²⁸

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.”²⁹

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.”³⁰ 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:

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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.³¹

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:³²

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.”³³

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.”³⁴

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.³⁵

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.³⁶

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),³⁷ while Ibn Habban judges it to be *sahih* (authentic).³⁸ 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."³⁹

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?"⁴⁰ 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.⁴¹

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."⁴²

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:

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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.⁴³

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."⁴⁴

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],⁴⁵ I shall give him a sound thrashing.'⁴⁶

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.⁴⁷ 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."⁴⁸

'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."⁴⁹ '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.⁵⁰

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

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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.⁵¹

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.”⁵²

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

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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.⁵³

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.⁵⁴

Elsewhere, Ibn al-^ᶜArabi 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."⁵⁵

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.⁵⁶

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,”⁵⁷ “And tell My servants that they should speak in the most kindly manner...”⁵⁸ Moreover, God praises those “who listen [closely] to all that is said, and follow the best of it.”⁵⁹ 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."⁶⁰ 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."⁶¹

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-ʿArabi 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"?⁶² 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!"⁶³ 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!"⁶⁴, 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.'"⁶⁵

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.⁶⁶

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.⁶⁷

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."⁶⁸

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."⁶⁹ 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.⁷⁰

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:

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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...⁷¹

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."⁷²

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.⁷³

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].”⁷⁴

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."⁷⁵ Ibn Ashur states, "It is through consultation that the right becomes apparent and mutual consent comes about."⁷⁶

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:

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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.⁷⁷

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.⁷⁸