

5.1.4 *Conferring and Holding Rulership*

According to the Sunni view, theoretically the power was not vested in the ruler but in the community; this was legitimised through the election. It is true that the name of the caliph does not appear on coins of the time before al-Mahdī;¹ they only showed a religious formula. Here we see the attraction of the last of the concepts belonging in this chapter: *shūrā* 'counsel, consultation'. This is once again a fundamentally pre-state concept as it presumed a localised, segmentary society; as such it could be promoted by different parties for different reasons. It might be seen as an election model; it is well-known that 'Umar settled his succession in this way. In such a case the Shī'a would say that people agreed on someone 'with whom everyone was content' (*al-riḍā*), upon whose death another election would be necessary.² On the other hand a *shūrā* could also be demanded against a ruler in office, in which case it implied his previous deposition. This was how the rebels proceeded against Walīd II;³ Jāhm b. Ṣafwān would later demand the same in the case of Naṣr b. Sayyār.⁴ This gave rise to the question of whether a ruler who has been elected lawfully can stand again. The procedure had displayed pitfalls in the case of Ṣiffīn, and pointing out that the prophet, too, had called an arbitrator at the time of his quarrels with the Jewish tribes, was not helpful, either.⁵ As long as the *shūrā* was linked to the institution of the *ḥakam*, it remained rooted in the egalitarian tribal ethos of the pre-Islamic period, like the *amr bil-ma'rūf* or the *ijmā'*.

Thus it is no surprise that the term soon took a different course. It had never been in any way 'democratic', as the electoral bodies, be they appointed by the authorities or demanded by the opposition, were always oligarchical in nature.⁶ This was what made it so easy to reduce the numbers needed; Sulaymān al-Raqqī thought that two competent people were enough to form a *shūrā*.⁷ This may have been part of the reason why Aṣamm, who had believed that an electoral body was suitable for resolving difficulties under the conditions of the early period, demanded that the election of a caliph in his

1 Cf. T. El-Hibri in: JESHO 36/1993/61f.; also in more detail J. Bacharach in: JAOS 113/1993/271ff. Interestingly the custom started with Maṣṣūr naming his son on coins as the successor to the throne, probably in order to show that he truly was the *mahdī*.

2 Cf. Crone in: Festschrift Lewis 95ff.

3 See vol. I 99 above.

4 See vol. II 556 above.

5 Text XVII 60, e.

6 Rotter pointed out the kinship between 'Umar I's *shūrā* and the Meccan *mala'*, to which the most important clans of the city sent representatives (*Zweiter Bürgerkrieg* 12).

7 See vol. II 540 above.

4.3.3 *Consensus and Controversy*

The respect for consensus had deep roots in ancient Arabian tradition; the tribal elders had never ruled autocratically but always as first among equals who had to persuade others to their point of view.¹ In the Islamic environment groups with a presbyterian structure such as the Ibāḍiyya were most indebted to this idea; the Basran Ibāḍite community's submission to the decrees of a body called *jamā'at al-muslimīn* suggests not least linguistically that their decisions were based on *ijmā'*.² And the one could be inferred from the other elsewhere, too. Of course, this should not be imagined too much like 'grass-roots democracy'; authority in the community was linked to knowledge and property. The importance of property was demonstrated by G. Rotter using the example of the *shūrā* after 'Umar I's death;³ while knowledge played the main part in the *istishārat dhawī l-ra'y wal-'ilm*, the consultation with discriminating and competent people that 'Umar II was said to have recommended to his Basran governor 'Adī b. Arṭāt once the other sources, i.e. Quran, *sunna* and caliphal custom, had been exhausted.⁴ The *shūrā* meant that consensus was brought by the authorities; after all, *sunna* and caliphal custom were not yet separate. The opinion of certain scholars was consulted, but comprehensive consultation was not required.⁵ The same was true of the ancient law schools in Iraq and in Medina. While they had no great esteem for the authorities, the consensus was the consensus of their leading minds and personalities; vetoing minorities were unknown.⁶ The approach was similar to that of the Jews; the Babylonian Talmud includes a legend in the treatise *Bābā Meṣīā* which has God submitting to the majority of the rabbis.

Cf. the text cited by Peters, *Judaism, Christianity, and Islam* II 172f.; also the material collected by J. R. Wegner in her comparative article in: *The American Journal of Legal History* 26/1982/39ff. Schacht already pointed out the kinship with the *opinio prudentium* in Roman law (*Origins* 83). Regarding antique philosophers' and the Church Fathers' assessment of

1 Jacob, *Beduinleben* 223; Bravmann, *Spiritual Background* 198; A. Hasan, *The Doctrine of Ijmā' in Islam* 1ff. Concerning the situation in the present day cf. S. Lavie, *The Poetics of Military Occupation* 259ff.

2 This applies independently of the question of whether the *jamā'at al-muslimīn* was a decision-making or an advisory body (see vol. II 223ff. above). In Tāhart, however, the *imām*'s authority held sway, as the conflict with the Nukkār proves (ibid. 199).

3 *Die Umayyaden und der Zweite Bürgerkrieg* 12f.

4 See vol. II 153f.

5 Dannhauer, *Qādī-Amt* 66ff.; further details see p. 785ff. below.

6 Cf. Schacht, *Origins* 68 and 82ff.