

# The Islamic External Critics of Public Administration: A Comparative Perspective

by Naim Nusair\*

“Whence did you enslave people who were born free?”

(Umar Ibn-al-Khattab)

The growth of public administration and the increasing influence of administrative agencies on public policy make the perennial political problem of the control of administration more important than ever. Governmental activities nowadays touch so many people, in so many ways, that citizens' dissatisfaction with administration is inevitable. Many countries have sought protections and safeguards against oppressive, mistaken, or careless exercise of public authority.

Although the bureaucrats act as a leveling and rationalizing force, they are susceptible to certain persistent maladies. W.A. Robson has identified these as excessive sense of self-importance; indifference to the feelings or convenience of others, obsessive to established practice regardless of resulting hardships, persistent addiction to formality, and astigmatic inability to perceive the totality of the government because of preoccupation with one of its parts.<sup>1</sup> When these maladies exist, they may not be instantly recognized and treated, because administrative work often occurs beyond the gaze of professional observers. Moreover, many of the individuals with whom administrators deal offensively are likely to be anonymous and the injustices invisible.<sup>2</sup>

The purpose of this study is to show that Islam had developed prominent external critics of administration long before the modern countries had developed their current protective mechanisms against bureaucratic excesses. The main objective is to integrate the major Islamic critics of administration found in Islamic literature and their current equivalent in modern countries so that they become more compatible with the contextual timing and demands of daily administrative life. A comparative approach will facilitate the

---

\*Naim Nusair is Assistant Professor of Public Administration at Yarmouk University, Irbid, Jordan.

<sup>1</sup>W.A. Robson, *The Governors and the Governed*, 17 (1964):

<sup>2</sup>C. Frankel, "Bureaucracy and Democracy in the New Europe", 93 *Daedalus* 471, 481, (1964).

achievement of this purpose and, if possible, to draw some generalizations about the common attributes shared by Islamic and non-Islamic external critics of public administration.

### External Critics of Public Administration

Traditionally, there have been two broad schools of thought regarding the control of administration. The first assumes that responsibility is "an inward sense of personal obligation"; the second assumes that the first is not enough, and some external forces must be employed in order to enforce responsible behavior.<sup>3</sup> The first approach is based on the assumption that civil servants have ethical values and professional standards that will guide them in the performance of their tasks. The second assumes that these values are not sufficient; there must be a means of punishing behavior not in accordance with stated law and legislative intent.

Nations have developed many external examiners of administration such as legislatures, courts, and special tribunals. They mark the boundaries of what officials may permissibly do, and they have the power to make officials pay attention. These processes, valuable as they often are, are too costly and cumbersome for general use. Other measures must be designed to make protests against faulty administration meaningful.

In this regard, a significant worldwide movement toward reliance on systemized, professionalized critics of administration can be distinguished. External administrative critics, unlike courts, cannot overturn decisions. Unlike legislatures, they cannot issue new directions. They are commentators and counselors, not commanders; they do oversee public administration, but they are not themselves super-administrators to whom all others defer.

### Modern External Critics of Public Administration

The most prominent types of administrative critics mentioned by Walter Gelhorn are the ombudsman, the procurator, and the impersonal inspection bureau.<sup>4</sup> These three types construct a fence along the administrative road, not a gate across it.<sup>5</sup> They are mere samples of current development of protective mechanisms against official mistakes, malice, or stupidity.

---

<sup>3</sup>Carl J. Friedrich, "Public Policy and the Nature of Administrative Responsibility", in *Public Policy*, ed. Friedrich and Mason (Cambridge, Mass.: Harvard University Press, 1940); Herbert Finer, "Administrative Responsibility in Democratic Government", *Public Administration Review* 1 (1941): 335-50.

<sup>4</sup>Walter Gellhorn, *When Americans Complain: Governmental Grievance Procedures*, (Cambridge, Mass: Harvard University Press, 1966) p. 6.

<sup>5</sup>D.C. Rowat, "An Ombudsman Scheme for Canada," 28 *Canadian Journal of Economics and Political Science*, pp. 543-556, 1962.

## Ombudsman:

The ombudsman has been most commonly associated with Scandinavian countries and was established in Sweden in 1809. Although often presented as a magical cure for what ails administration and society, this method of control generally relies upon the legislature as a means of implementation. The institution has now been adopted in the United Kingdom, New Zealand, West Germany, and Yugoslavia. They are men of exceptional professional distinction. They function as general complaint bureaus to which everyone can turn, at little or no cost, to complain about administrative malpractices.

Regarding the responsibilities and powers of ombudsman, there are variations among countries. Some have the capacity to initiate prosecutions; others can, at most, exclaim in horror. Some are expected to roam the land, dropping into public offices with little or no warning in order to take idlers by surprise; others remain steadily at their own desks. Some can look into the affairs of cabinet ministers; others stop at the departmental level. Ombudsmen have shared the following attributes:<sup>6</sup>

1. They are tools of legislature but function independently of it. They have no links to the executive branch and with only the most general accountability to the legislature itself.
2. They have practically unlimited access to official papers and documents bearing upon matters under investigation so that they themselves review what prompted administrative judgment.
3. They can express an ex-officio expert's opinion about almost anything that rulers do and that the ruled do not like.
4. They take great pains to explain their conclusions so that both administrators and complaining citizens well understand the results reached.

In sum, the ombudsmen are prominent administrative critics. When they find fault, administrators are likely to be persuaded by their reasoning. And when they see a chance to make everybody tolerably happy by sensibly adjusting desires, they seize "the possibility of some hitherto undiscussed arrangement that will let both parties have what they want without undue cost to either."<sup>7</sup>

## Procurators:

Procurators are multitudinous ombudsmen in the Soviet Union and to a much lesser extent in other countries whose legal systems the U.S.S.R. has influenced. They are law enforcement officers—prosecuting

---

<sup>6</sup>Walter Gellhorn, *op.cit.*, pp. 9-10.

<sup>7</sup>L.L. Fuller, "Irrigation and Tyranny", 17 *Stanford Law Review* 1021-1031, 1965.

attorneys, in short. But their duties go beyond securing citizens' observance of penal laws. They are supposed to be the guardians of legality, and in this capacity must see that officials as well as citizens fulfill their obligations. Hence, they can be appealed to by anyone who thinks an administrator is doing more or less than what the law says is proper. Whether the grievance is about the sanitation of a railway station, the failure to observe factory safety regulations, the promulgation of ultra vires rules, or the exaction of a "voluntary contribution" toward the cost of a public enterprise, citizens can ask the local procurator's office (of which two thousand are to be found in the U.S.S.R.) to spring to the action as the official defender of socialist legality. To a great extent, citizens do ask and procurators do respond.

Like the ombudsman, the procurator has access to files and can give advice, both substantive and procedural, about the issues he perceives. Moreover, he has a heavy club behind his back, since he can prosecute those whose behavior flouts procuratorial notions about permissible administration. The procurators are so numerous, however, that they lack personal distinction; their range of vision, being geographically confined, does not encompass the entire sweep of public administration; and their insulation against external pressures is far from being as complete as the ombudsmen's. Hence the parallelism between procurators and ombudsmen is not at all precise. They nevertheless do function as administrative critics, and they can claim considerable accomplishments in that role.

### **Administrative Inspection Bureau:**

The Japanese traditions show little enthusiasm for challenging administrative abuses. The growth of governmental activities have led to the creation of a highly decentralized bureau to be the critic of other bureaus. Beginning merely as an efficiency expert or Organization-and-Methods Consultant, the Administrative Inspection Bureau has lately become a wide-open grievance office, soliciting all manner of individual complaints about the conduct of public affairs. With fifty offices scattered throughout the country and with the unpaid aid of more than 3,500 "local administrative counselors," the bureau attempts to eliminate irritations by negotiating acceptable settlements. Some 5,000 cases are being disposed of monthly. The results seemingly relieve most of the complaint without unsettling the administrators. The system is accounted a definite success.

The Bureau's administrative criticism is regarded to be rather shallow. Too many persons deal too uncoordinatedly with too diverse grievances to be able to achieve large-scale improvement of public administration. A goodly number of mistakes are being corrected at low levels, but in a piecemeal way that does not ensure their future avoidance.

In sum, the Japanese system of criticism has not yet discovered how to

derive general lessons from isolated episodes, nor how to place emphasis on protection. In this respect the dispersed Administrative Inspection Bureau, speaking as it does through many local voices, is not so coherent a teacher as an ombudsman; whose authoritative voice can be heard throughout the land. Yet the Japanese Bureau of administrative criticism has already significantly reduced governmental frictions. Officials have become increasingly conscious that, even in the nation's remotest corners, authorized critics are able and willing to pounce upon their judgments and their conduct. This may lead to intellectual and behavioral refinements that would otherwise develop much more slowly.

### The Islamic External Critics of Public Administration

Islam, as a religion, involves the whole being, and is not only a name for beliefs or certain forms of worship; it is in fact a way of life—a complete code of guidance from the cradle to the grave, and from the grave to the world beyond. Islam is all embracing and therefore affects all aspects of human activities, such as social, economic, and political, and subjects them to its moral and spiritual imperatives.

At the time of the emergence of Islam, the Prophet's authority was supreme, although he usually consulted his companions on all matters of importance. He was the Prophet, the lawgiver, the ruler, the commander, the chief justice and the head of the administrative machinery. He regulated social relations; he formulated laws in the light of the Qur'an and enforced them; he raised armies and commanded them; he acquired territories and administered them.<sup>8</sup>

The Prophet and, after him, his pious successors (Caliphs) heard appeals from all parts of the Islamic territories, and investigated into all grievances of the subjects.

The Prophet himself looked into grievances of the Juthyma tribe against commander Khalid ibn al-Walid when he killed few members of this tribe after they had announced their allegiance to Islam. The Prophet denounced this act and sent Ali ibn Abi-Talib to compensate the tribe's human losses. The Prophet raised his hand and turned his face to the sky and said: "Oh Allah, I denounce Khalid's act."<sup>9</sup>

The Pious Caliphs followed the same procedures in dealing with citizens' grievances against provincial governors. Caliph Umar Ibn al-Khattab was firm and strict with his governors. The Case of Jabalah Ibn Al-Aiham, the ruler of Ghassan, may be mentioned in this connection as a classic example. He was ordered by Caliph Umar in Mecca to conciliate a bedouin whom he had hurt, otherwise retaliation would be

---

<sup>8</sup>S.A.Q. Husaini, *Arab Administration*, 6th Ed., (Lahore, Pakistan, Sh. Muhammad Ashraf, 1970) p. 21.

<sup>9</sup>Ahmad Ibraheem Abu-sin, *El-edarah fel-Islam* (In Arabic) (Administration in Islam), (Dubai: el-Matba'ah el-Asrieh, 1980), p. 135.

taken upon him in the ordinary process.<sup>10</sup> Umar did the same with Amr ibn al-As, Governor of Egypt, and his son who whipped an Egyptian. Umar asked the Egyptian to take retaliation upon Amr ibn Al-As's son. Also, Umar asked another Egyptian to retaliate upon Amr Ibn Al-As because he insulted the Egyptian and Umar said: "Whence did you enslave people who were born free."<sup>11</sup>

Umar used to address the governors designate: "Listen, verily I am not sending you as rulers and potentates; on the contrary, I am sending you as the leaders of guidance so that men may follow you. Render unto Muslims their rights; beat them not, lest you humiliate them; praise them not lest you make them indisciplined. Do not shut your doors against them, lest the strong amongst them devour the weak ones."<sup>12</sup>

The rapid growth and expansion of the Islamic state necessitated the emergence of formal institutions to process all grievances and complaints of citizens against their governors and their subordinate public officials.

Apart from the Qadi (Judge), whose function it was to interpret the laws as well as apply them to particular cases and who derived his authority directly from the Caliph himself, there were two special external critics of public administration that deserve special attention. The first of these was the institution of *Diwan's Nazri fil-Mazalim* (The Board of Investigation of Grievances), the highest administrative tribunal of which was generally presided over by the Caliph himself. The other was the office of *Muhtasib* (Market Supervisor) who apparently was the agent of the Caliph and who executed the decisions of the Qadi.<sup>13</sup> The latter part of this article will describe in greater detail the operations of these two institutions.

### ***Diwan's—Nazri fil-Mazalim* (The Board of Investigation of Grievances):**

Since the assassination of Ali and the attempt on Muawiyah's life, the Caliphs had become less accessible to the public. But the Umayyad rulers did set apart some time for hearing appeals and inspection of grievances. According to Ibnul Athir,<sup>14</sup> Abdul Malik was the first Caliph to devote a special day for hearing cases of grievances. Umar ibn

---

<sup>10</sup>Ibn Sa'd, "*el-Tabulat*", (In Arabic), [Classes] Vol. 1-2, p. 97, in Muhammad Hamidullah, "The Muslim Conduct of State, 7th ed. (Lahore, Pakistan; Sh. Muhammad Ashraf, 1977), p. 139.

<sup>11</sup>Ahmad Ibraheem Abu-sin, *op.cit.* p. 135.

<sup>12</sup>Abu Yusuf, "*Kitabul-Kharaj*", (In Arabic), Bulag, 1302 A.H., p. 66 in S.A.Q. Husaini,

<sup>13</sup>Ibn Taimiyah, *el-Siyasatu' Shari'ayh* (In Arabic) [The legitimate policy] (Cairo, Egypt: Dar el-Katub el-Arabieh, 1979) p. 9.

<sup>14</sup>Ibn'l-Athir, *Tariku'l-Kamil*, (In Arabic), Leiden, 1851-76, Vol. 1, p. 46).

Abdul-Aziz followed the precedence set by his uncle with great zeal.<sup>15</sup>

The Abbasids continued this practice and established a regular department which was the highest court of criminal appeal. Under Haroon ar-Rashid, Ja'far presided over this Board. On a certain day Ja'far decided more than a thousand cases and passed brief decrees. On examination, it was found that none of the sentences was repeated and none was against truth and justice.<sup>16</sup>

Al-Ma'mun set apart Sundays for deciding cases of grievances. A woman brought a case against the Caliph's son. Al-Ma'mun ordered a judge (Qadi) to hear and decide the case in his presence. The judge decided the case against the prince and the decree was executed.<sup>17</sup>

The cases of grievances included:<sup>18</sup> (1) official excesses, (2) excessive collections, (3) omission of names in the register, (4) misappropriations, (5) unjust confiscation of property, (6) non-payment of salaries, (7) withholding of conjugal rights, (8) non-compliance with the Qadi's (judge) judgment, (9) non-performance of public prayers, and (10) improper behavior in public.

The Board of investigation and grievances is very similar to the contemporary administrative courts which is responsible for reviewing allegations by the citizens of administrative excesses.

According to Shaikh Muhammad Abu-Zahra, former Shaikh of Al-Azhar, the investigation of grievances is not a mere judicial function; it is a judicial *and* an executive function. The investigator of grievances can make decisions on issues and enforce them.<sup>19</sup>

The Investigation Board may include the following different groups:

1. Protectors and assistants who are responsible for disciplinary action against individuals who tend to use violence or escape from the law.
2. Judges (*Qadis*) and arbitrators who are responsible for finding the best ways of giving back the rights of people with grievances.
3. Jurists (*Faqih*) to whom the judge refers in order to interpret judicial questions.
4. Clerks who record the complaints or petitions of the people and state their rights and duties.
5. Witnesses who witness that the decision of the judge is not against truth or against justice.

---

<sup>15</sup>S.A.Q. Husaini, *op.cit.*, p. 190.

<sup>16</sup>*Ibid.*, p. 191.

<sup>17</sup>Al-Mawardi, *el-Ahkamu's-Sultaniyeh* (In Arabic) (Cairo, Egypt, 1289, A.H., Chapter VII).

<sup>18</sup>*Ibid.*, Chapter VII.

<sup>19</sup>Suliman Muhammad el-Tmawi, *Umar Ibn al Khatab Wa Uswol el-Seyasah Wal-edarah el-Hadithah* [Umar Ibn al Khatab and the principles of Modern Politics and Administration] (Cairo, Egypt: Dar el-Eiker el-Arabi, 1967) p. 342.

The Board of Investigation of grievances is very similar to the institution of the ombudsman in the sense that both of them are general complaint bureaus to which every citizen can turn to complain about administrative malpractices. But the Board of Investigation of grievances is characterized by the speed of decision making process and the enforcement of those decisions without any delay; this is due to its dual nature as a judicial and executive institution.

### The Muhtasib (Market Supervisor):

The office of Market Supervisor (Muhtasib) is a religious position. The Muhtasib was appointed for the maintenance of law, especially the religious and moral. His duty was to see that the religious and moral precepts of Islam were obeyed. The office was created by al-Mahdi, and Abbasid Caliph, and continued under his successors.

Islam sets forth a standard conduct for all individuals. A Muslim, whether he is a Caliph or an ordinary member of the Muslim society is directed to "enjoin good and forbid wrong." The Qur'an says: "Those who should we establish them in the land, will keep up prayer and pay the poor rate and enjoin good and forbid wrong."<sup>20</sup> The office of the Market Supervisor falls under the religious obligation to command good and forbid evil, which rests with the person in charge of the affairs of the Muslims. He appoints to the position men whom he considers qualified.

According to Al-Mawardi, the Market Supervisors were of two kinds, volunteers and paid officials. Their function was to order people to do good and prevent them from doing wrong. In his capacity as the superintendent of markets, the Muhtasib went through the city daily accompanied by a detachment of subordinates, inspected provisions to see if they were adulterated and tested weights and measures.<sup>21</sup> He saw to it that the people acted in accordance with the law.

Ibn Khaldun counts the following among the duties of the Muhtasib: (1) he prohibits the obstruction of roads; (2) he forbids porters and boatmen to carry very heavy loads; (3) he orders the owners of buildings threatening to collapse to tear them down and thus remove the possibility of danger to passers-by; (4) he prevents teachers in schools and other places from beating young pupils too much; (5) and he has authority over everything relating to fraud and deception in connection with food and other things that do not require hearing of evidence or a legal verdict. His authority is not restricted, however, to the above cases; he can take up anything which comes to his knowledge or is reported to

---

<sup>20</sup>Al-Qur'an, 22:3

<sup>21</sup>Al-Mawardi, *op cit.*, Chapter XX.

him.<sup>22</sup>

In addition to that, Al-Mawardi writes that the duties included prevention of cruelty to servants and animals; encouraging regular attendance at the mosque; preventing public eating in the month of Ramadan; enforcement of *al'iddah* (the period of waiting on widows and divorced women before remarriage); encouragement of the marriage of unmarried girls; preventing men consorting with women in public; chastising anyone found in a state of drunkenness; and supervision of games.<sup>23</sup>

The Muhtasib was also expected to inspect public eating houses and order pots and pans to be re-tinned or replaced. He was expected to keep a close check on all doctors, surgeons, blood-letters and apothecaries. He was charged with checking the doctor's equipment and administering the Hippocratic Oath. The druggist likewise came under the watchful eye of the Muhtasib, and the adulteration of expensive drugs with cheaper ones was severely punished. The Muhtasib also had the right to appear unexpectedly, at any hour of the day or night, to inspect the shop and to make sure that it was tidy and everything clean and scoured, including the jars containing drugs.<sup>24</sup>

The Muhtasib was a government official with the sweeping powers of interference for the public good. But he could only try cases not dealt with by a judge because they were so common and simple, or cases where the truth was not in doubt. If a case required evidence and administering of oaths, it had to go to the judge (Qadi). The position, consequently, was subordinate to the office of judge. It stood midway between those of the judge and the investigator of grievances (*Nazirul-Mazalim*), but in rank and power it was inferior to both of them.<sup>25</sup>

The Prophet was the first to practice the functions of Muhtasib. While he was roaming the streets of Al-Madina, he passed by a food seller and inspected the food. The Prophet found that the food was wet and said: "Why is this?" The seller responded: "It is wet because of the rain." The Prophet said: "You are supposed to put the wet food at the top in order to be seen by the buyers. Whoever deceives us does not belong to us."

## Summary

As is evident from the above discussion, the Board of Investigation of Grievances (*Diwan—Nazri fil-Mazalim*) is similar to the institution of ombudsman in a sense that both of them are general complaint

---

<sup>22</sup>Ibn Khaldun, *The Mugaddimah: An Introduction to History* (translated by Franz Rosenthal) (Princeton, New Jersey: Princeton University Press, 1967), pp. 178-179.

<sup>23</sup>Al-Mawardi, *op cit.*, Chapter XX.

<sup>24</sup>Caroline Stone, "The Muhtasib", *ARAMCO World Magazine*, Vol. 28, No. 5 (September 1977): 25.

<sup>25</sup>Al-Mawardi, *op cit.*, Chapter XX.

bureaus to which every citizen can turn to complain about the administrator's failure to act. Unlike the ombudsman, the Board of Investigation of Grievances is not an instrument of legislature; it functions as an instrument of the Caliph and executes the decisions of the Judge (Qadi). Its effectiveness as an external critic of public administration was dependent on honesty, justice, and firmness of the Caliph. During the period of the Prophet and his pious successors (Caliphs), the investigation of grievances of the subjects was a matter of great concern. But after them, this important institution was ignored by many tyrant rulers. Moreover, the Board of Investigation of Grievances is distinguished by the speed of making and enforcing its decisions due to its dual nature as a judicial and executive institution.

The role of Muhtasib is similar to the procurator in the U.S.S.R. Both of them are law enforcement officers. They are the guardians of legality and they secure citizen's observance of penal laws. They must see that officials as well as citizens fulfill their obligations. But the scope of the Muhtasib's activities is more extensive. His duty is to see that religious and moral precepts of Islam are also obeyed; he enjoins good and forbids wrong. The procurators are paid officials whereas Muhtasibs were either volunteers or paid officials.

The Islamic critics of public administration incorporate a system of control which encompass the two broad approaches of administrative accountability. The first is an inward sense of personal obligation. This approach assumes that a Muslim civil servant has ethical values and professional standards that will guide him in the performance of his task. The end of organization is the spiritual uplift of humanity and the ethical ideal of Islam—"enjoin good and forbid wrong" as enunciated in the Qur'an—gradually unifies individuals and groups into a well-knit community. The second approach assumes that these ethical values are not sufficient; there must be a means of punishing behavior not in accordance with the stated Islamic laws. This approach has ensured control of administration by two external critics. The first of these is the institution of *Diwan Nazri fil-Mazalim*, and the other is the office of Muhtasib who may be said to be the agent of the Caliph and who executes the decisions of the Qadi.