

work is a useful contribution to the literature on the subject and will provide stimulating reading for all.

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OMBUDSMEN FOR AMERICAN GOVERNMENT? By Stanley V. Anderson (ed.). Englewood, N.J.: Prentice-Hall, Inc., 1968. Pp. 176.

This paper-bound book is yet another in the increasing number of recent contributions to the literature on the subject of the Ombudsman. The subject is one of special interest to Albertans, who have had the first Ombudsman in Canada since September, 1967. The principal other jurisdictions already having Ombudsmen are the Scandinavian countries, New Zealand, the United Kingdom and New Brunswick. In the United States of America, only the state of Hawaii has passed an Ombudsman statute (in 1967) but no Ombudsman was to be appointed by the Hawaii state legislature until at least 1968. In Canada, the government of the Province of Quebec undertook, in the last Speech from the Throne, to introduce the Ombudsman (or Public Protector) in that province. We in Alberta will naturally be primarily interested in seeing how the institution develops in our own province. Nevertheless, it will be of considerable interest to us to see the institution finding a home in other provinces and states in North America, in the knowledge that those other jurisdictions will be looking to the Alberta experience for guidance.

This book contains five essays, each on a different aspect of the subject. Professor Donald C. Rowat of Carleton University, Ottawa, opens with a general discussion of "The Spread of the Ombudsman Idea." He points out that in most jurisdictions where there is an Ombudsman, the latter rarely criticizes the substance of decisions because he realizes that in such matters he should not substitute his judgment for that of the responsible administrators.

Since the line between the content of a decision and the way in which it is made is a thin one, the Danes have wisely given the Ombudsman a chance to intervene if necessary, by using a vague word to restrict his powers. He may challenge a decision if he thinks it 'unreasonable'. The Norwegian law restricts his powers a little more by saying that the decision must be 'clearly unreasonable.' The New Zealand law, on the other hand, may have gone too far in the other direction, by allowing him to intervene if he thinks a decision is 'wrong'.<sup>1</sup>

The Alberta Statute, s. 20,<sup>2</sup> sets out exactly the same grounds of intervention as s. 19 of the New Zealand Act, that is where the decision was "unreasonable, unjust, oppressive, improperly discriminatory," based on a "mistake of law or fact," or was "wrong," or where a discretionary power has been exercised for an improper purpose or on improper grounds, or on the taking into account of irrelevant considerations or where reasons should have been given for the decision.

Professor Rowat also criticizes the "Ombudsmouse," as the Parliamentary Commissioner for Administration, recently created in the United Kingdom, has been called. In Professor Rowat's opinion, the differences between the British scheme and the legislation found in the other Commonwealth jurisdictions are so great that "one hesitates to

<sup>1</sup> At 17.

<sup>2</sup> S.A. 1967, c. 59.

call it a genuine Ombudsman plan."<sup>3</sup> He points out that the most radical difference is that citizens in Great Britain may not complain directly to the Parliamentary Commissioner. Instead, he must wait for complaints to be referred to him by Members of Parliament, and he reports the results of his investigations to them rather than to the complainants. In Professor Rowat's opinion,

This change in the scheme deprives the citizens of two of the main advantages of the Ombudsman system—the complainant's right to appeal to a politically independent and impartial agency, and his right to be a direct party in his own case. It also prevents the Commissioner from investigating on his own initiative. . . . A further serious limitation upon the Commissioner's powers is that a schedule to the Act gives a long list of matters which are not subject to his investigation. . . . Also, he is debarred from matters for which there are remedies in the courts. . . . The Government finally substituted another amendment which says that he may not question a discretionary decision 'taken without maladministration.'<sup>4</sup>

In the second chapter, Professor William B. Gwyn, of Tulane University, discusses problems involved in "transferring the Ombudsman" to the United States. He refers to the traditional American constitutional doctrine of the separation of powers, and discusses whether the Ombudsman is compatible with, or contributes to, the goals of that doctrine. He repudiates the notion that the Ombudsman is inconsistent with the common American understanding of the relationship between the legislative and executive branches of government. He says that those countries with successfully operating Ombudsmen have by no means identical forms of government, and that the Ombudsman fits easily into a variety of democratic governmental settings. Another American problem which he discusses is that of the method of the appointment of the Ombudsman. He evidently is not very concerned that appointment by the chief executive, rather than by the legislature, would necessarily open the possibility of undue executive influence. Nevertheless, in the event of such a method of appointment being adopted, he suggests that the independence and impartiality of the Ombudsman could be guaranteed by giving him a single term of "say 10 or 12 years." Professor Gwyn also asks whether there are certain parts of the United States where "lack of consensus on perceptions and norms could diminish the effectiveness of a state or local Ombudsman."<sup>5</sup> By this he presumably means that some sections of American society, not necessarily to be defined geographically, do not expect those high standards of public service, which the Ombudsman is intended to encourage. To this Professor Gwyn simply answers that the Ombudsman is "never a panacea for all of the ills of society and especially not for the major ones."<sup>7</sup>

Professor Gwyn aptly summarizes the desirable qualities of an Ombudsman as follows:

1. He should be a creative, imaginative person, possessing at the same time a strong sense of the politically possible to guard him in the absence of an established role against the dangers of attempting too much or too little.
2. As he will take a large part in making citizens aware of and confident in the Ombudsman's office, he should be an enthusiastic and convincing proselytizer.
3. He should have considerable experience with public administration and training in the law.

<sup>3</sup> At 24.

<sup>4</sup> At 24.

<sup>5</sup> At 66.

<sup>6</sup> At 66.

<sup>7</sup> At 67.

4. "He should be especially persuasive and tactful."

In a chapter by Professor John E. Moore, of the University of California in Santa Barbara, there is an examination of present complaint-handling machinery in the Government of the State of California, where so far attempts to introduce an Ombudsman have been unsuccessful. A chapter is also devoted to complaint-handling machinery and experiments with an Ombudsman-type facility at the local government level, particularly in the city of Buffalo, New York. The latter study is by Professor William H. Angus and Milton Kaplan of the State University of New York. Professor Angus is a former member of the Faculty of Law at the University of Alberta. The several experiments in Buffalo described by Professors Angus and Kaplan include "action line" columns in the two Buffalo newspapers and a University Seminar on the Ombudsman in which University law students are assigned complaints to be processed in the fashion of the Ombudsman. While the activities of a newspaper cannot be regarded as satisfying the usual requirements of an Ombudsman's office, statistics compiled by the Buffalo Evening News for a six-month period in 1967 are interesting in that the vast majority of complaints received by the newspaper related to local government matters. These amounted to 313, compared to 63 relating to State Government matters and 34 relating to Federal Government matters. This gives some idea of the large volume of complaints which would likely be received if an Ombudsman's office were introduced at the local government level in Canada.

Professors Angus and Kaplan warn that a danger exists that a municipal Ombudsman may be turned into a combination complaint bureau, investigation office and neighbourhood handy man, which makes it difficult for him to carry out his primary function of promoting administrative reform.

He cannot be a substitute for the supervisory personnel in the streets, sanitation and police departments in disciplining the civil servants under their command; he can only criticize the methods by which they discharge these responsibilities, and possibly offer constructive criticism leading to procedural improvements. . . . This means that in a city like Buffalo, the ultimate success of an Ombudsman would be measured in terms of his influence in promoting the re-establishment of an efficient complaint bureau at City Hall, and the smooth functioning of complaint handling apparatus in the County Welfare Department.<sup>8</sup>

Professors Angus and Kaplan also discuss briefly the problem of jurisdictional conflicts which might face a municipal Ombudsman. They recommend that the state, county and municipality enter into a co-operative Ombudsman enterprise covering all, or the major units of government operating within the given areas.

The concluding chapter is by Professor Stanley V. Anderson of the University of California, Santa Barbara, who also edited the book. Professor Anderson urges that the time for adopting the Ombudsman in the United States has now arrived. He warns against expecting too much of the Ombudsman, but feels that, whatever variations there may be in defining his powers from one jurisdiction to another, his virtues are bound to make a worthwhile contribution to the governmental process. The experience in Alberta so far supports his conclusion.

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<sup>8</sup> At 69.

<sup>9</sup> At 132.

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