

THE SPREAD OF THE OMBUDSMAN IDEA  
IN THE UNITED STATES

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In recent years the office of legislative ombudsman, which originated in Sweden and Finland, has spread rapidly around the world. By mid-1982, according to the annual survey of the International Ombudsman Institute, 88 legislative ombudsman plans had been adopted at either the national, state or local level in 33 countries.<sup>1</sup> Among the English-speaking countries, the United States was one of the first to take an interest in the idea.

The first jurisdiction in the United States to create a version of the office was Nassau County, New York. On May 31, 1966, the county executive, a Democrat, appointed to the office of commissioner of accounts a person to act as Public Protector, and gave him authority to "protect the public and individual citizens against inefficiency, maladministration, arrogance, abuse, and other failures of government". The person appointed was formerly a judge and chairman of the county board of ethics. By the end of May 1967, he had handled about 500 cases. Meanwhile, however, the county's board of supervisors, which was predominantly Republican, had appointed an advisory committee on the ombudsman, with the county prosecutor as chairman. After a trip to Scandinavia, he recommended that the Public Protector should become an agent of the legislative rather than the executive branch of the county's government; he should be appointed by the board of supervisors and, to ensure his political neutrality and independence, should be removable only by a two-thirds vote of the board.<sup>2</sup> But these proposals were not adopted. Although the Public Protector was popularly referred to as an ombudsman,

he did not meet the essential qualification of being an independent agency of the legislative branch.

#### **THE STATE-LEVEL OMBUDSMEN**

More significant was the adoption of genuine ombudsman plans at the state level by Hawaii, Nebraska, Iowa and Alaska. Hawaii's ombudsman bill was approved by the legislature on April 30, 1967, and sent to the state governor for signature. Under the provisions of Hawaii's constitution, since the bill was approved within the last ten days of the session, it automatically became law on June 24th, even though Governor Burns refused to sign it. Since the ombudsman was to be elected by the legislature, the scheme did not come into operation until the 1968 session. Herman S. Doi, former head of Hawaii's legislative reference bureau, was chosen for the post. Late in 1965, the reference bureau had produced a brief report on ombudsmen, which reprinted the acts for Denmark and New Zealand, the bill for Connecticut (the first bill drafted for a state), and a model state bill produced by the Harvard Student Legislative Research Bureau. These clearly formed the basis for drafting Hawaii's legislation. Though all of them are similar, a comparison reveals that Hawaii's act is based mainly on the Harvard bill, except that the former wisely provides for the ombudsman to be elected by the legislature rather than appointed by the governor. He is elected for a six-year term and has been re-elected twice. A two-thirds vote

in both houses is needed to remove him from office. To make the office accessible throughout Hawaii, he makes periodic visits to the outer islands. He also pioneered the practice of encouraging complaints to be made by collect long-distance telephone calls. As a result, a very large proportion of his complaints are initiated by telephone. This practice was later followed by other state ombudsmen.

In 1969 and 1972 Nebraska and Iowa approved similar acts for a legislative ombudsman, formally named the Public Counsel in Nebraska and the Citizens' Aide in Iowa, but popularly called ombudsmen. Thus Nebraska and Iowa became the first mainland American states to have a genuine ombudsman. In Nebraska he is appointed for six years and in Iowa for four, and can be removed only by a two-thirds vote of the legislature. Nebraska's first ombudsman, Murrell McNeil, was formerly state tax commissioner, while the first one in Iowa, Lawrence Carstensen, had been a county attorney and an assemblyman.

In 1975 Alaska became the fourth state to adopt the plan, and Francis M. Flavin, a lawyer, was elected as ombudsman for a six-year term. An interesting feature of Alaska's plan is that a municipality may join it by passing an ordinance, though the City of Anchorage has its own plan, dating from 1974.

In addition to these four states, the Commonwealth of Puerto Rico and the Territory of Guam set up legislative

offices in 1977 and 1979. As a way of reaching the public, Puerto Rico's ombudsman began a program of visits throughout the island in 1979.

For the six state-level plans, the number of complaints and enquiries received per year ranges from about 1,000 in Guam and Nebraska to nearly 8,000 in Puerto Rico.

#### **FEDERAL-LEVEL DEVELOPMENTS**

The first proposal for a federal ombudsman was made in 1963, when Congressman Reuss introduced a bill providing for a Legislative Counsel who would investigate complaints passed on to him from members of Congress. This bill was re-introduced in January 1967 with the name changed to Congressional Ombudsman. Senator Long also introduced a bill in 1967 to create an Administrative Ombudsman who, unlike the Congressional Ombudsman in the Reuss proposal, would receive complaints directly rather than through Congressmen, but whose jurisdiction would be restricted initially to a few agencies such as the Social Security and Veterans Administrations. Earlier, Senator Long and two co-sponsors had introduced a bill for an ombudsman in the District of Columbia. Senators Magnuson and Long also filed a Tax Ombudsman Bill, but this was really a proposal to create regional commissioners within the Tax Court to decide appeals on small tax claims.

In February 1967 Congressman Reuss decided to dramatize his ombudsman bill and test the ombudsman idea by

appointing a personal assistant as a temporary 'ombudsman' for his Milwaukee constituency. Professors Walter Gellhorn and Stanley Anderson and I agreed to act as consultants on the project.<sup>3</sup> The assistant held office hours at six postal stations as well as in a central office. Over a four-month period he received nearly 500 complaints and enquiries requiring some form of action. Most of these were by telephone or personal call, with very few by mail. Surprisingly, 40 percent of them concerned state or local government. A large number of the complaints were justified, many of them cases of administrative delay. Backed by Mr. Reuss's influence, the 'ombudsman' had good success with remedial action. At the end of the project the assistant prepared a brief analysis of the results, in which he not unexpectedly recommended the Reuss proposal for the screening of complaints by Congressmen.

In October 1967 the American Assembly chose the ombudsman as the subject of its national conference, and the background papers later became the book edited by Stanley Anderson, Ombudsmen for American Government?<sup>4</sup> The conference also issued a brief report favouring ombudsmen for state and local governments and experimentation with the idea at the federal level. The subject was also discussed at regional conferences of the Assembly throughout the following year. The American Bar Association also took up the idea, and its section on Administrative Law formed an Ombudsmen Committee under the enthusiastic and able chairmanship of Bernard Frank. At the

initiative of this Committee, the Bar Association in 1969 adopted a resolution similarly favouring ombudsmen for state and local governments and experimentation at the federal level. It proposed that the Administrative Conference of the United States, a body created to review and recommend improvements in administrative procedures, should experiment by constituting itself an ombudsman for limited areas of federal activity and should encourage and study experimentation with the idea. The Administrative Conference, however, was not adequately equipped to take on more than a very limited complaint-handling role, though it was willing to encourage studies of and experiments with the ombudsman idea. In 1971, for instance, it launched a study of how complaints are handled by federal agencies and departments. The Bar Association resolution was amended in July 1971 to make clear that experimentation at the federal level should not be restricted to the Administrative Conference.

During the 1970's, various additional legislative proposals were made at the federal level. Unfortunately some of these departed from the original ombudsman concept. In March 1972, for instance, Congressman Aspin introduced a bill to provide each member of the House of Representatives with an 'ombudsman", who would be trained and assisted by a proposed Ombudsman Center in Washington. These so-called ombudsmen, to be paid only up to \$15,000 per year, would be little more than errand boys for House members.

Regarding proposals that are closer to the original concept, the approach has been to propose an experimental plan of limited scope because of a fear that a full-blown ombudsman institution would itself turn into a cumbersome bureaucracy, and would lack the expertise necessary to deal with the myriad of specialized agencies at the federal level. Thus in 1971 Senator Javits, along with four other Senators, and Representatives Steiger and Reuss, introduced in the Senate and House similar bills called the Administrative Ombudsman Experimentation Act (S. 2200 and H.R. 9562). This Act would add to the Economic Opportunity Act of 1964 a section providing for an ombudsman who would be limited to demonstration projects in three regions and to programs directed at the low-income groups, in fields such as education, health and employment. At the same time, there would be an American Ombudsman Foundation, which would initiate and support ombudsman research and demonstration projects among state and local governments. The ombudsman would be appointed by the Speaker of the House and the President of the Senate after consultation with the majority and minority leaders, while the Foundation's fifteen-man board would be appointed by the President with the advice and consent of the Senate. Also, in April 1972, Representative Ryan introduced a bill (H.R. 14338) to restrict grants under the Omnibus Crime Control and Safe Streets Act of 1968 to states that appoint "correctional ombudsmen" for prisoners, parolees and probationers.

During this period, too, the federal Office of Economic Opportunity funded ombudsman studies and complaint-handling experiments by state and local governments, notably in cooperation with the University of California, whose Institute of Governmental Studies at Berkeley and Ombudsman Activities Project at Santa Barbara have pioneered research and activities on the subject in the United States. Thus the OEO initially supported the Nebraska plan, and the schemes for Iowa, Dayton, Buffalo, Newark and Seattle, discussed below. It also supported what may turn out to have been an historic occasion: the first conference of the American ombudsmen. This was a workshop organized by the director of the Ombudsman Activities Project, Stanley Anderson, and held at Seattle in August 1972. It was attended by OEO and Project officers, academic ombudsman-watchers like myself, two foreign ombudsmen, and five genuine American state and local ombudsmen.

#### **OTHER STATE-LEVEL DEVELOPMENTS**

Because of the magnitude of the problems encountered at the federal level, a full-scale federal plan is not likely to be adopted, at least for some years. More likely will be further adoptions at the state and local levels. By 1968 legislators had filed ombudsman bills in over half of the states, while by 1971 they had filed about 50 ombudsman bills of various kinds in 33 of the states, including such important states as California, Illinois and New York. Around 1975,

however, there began a rapid decline in the popularity of general legislative ombudsmen for states. After Alaska's adoption in 1975, no new general legislative plans had been adopted by 1982. This may be partly explained by a shift in favour of ombudsmen appointed by the state governors, and by the growing popularity of ombudsmen for particular services such as institutional care, where the need was clearest.

At the end of 1966 the newly elected Lieutenant Governor of Colorado, a Democrat in a predominantly Republican state, announced that, like an ombudsman, he was prepared to receive and investigate complaints. By the end of May 1967, he had received about 500 complaints and enquiries. The Lieutenant Governor of Illinois similarly decided to handle complaints on his own initiative, while in New Mexico the Lieutenant Governor was given specific powers to receive and refer complaints, through legislation passed in 1971. The Governor of Oregon appointed an ombudsman in 1969 by executive order. Similar offices were created in Iowa (1970) and South Carolina (1971). Iowa's office was funded by the OEO, was set up in cooperation with the University of California's Ombudsman Activities Project, and was succeeded in 1972 by the earlier-mentioned legislative office, but with the same incumbent.

Although one or two of these executive complaint schemes were set up partly to give a push to the idea of a legislative ombudsman, unfortunately they made one appear to be unnecessary, and were influential as precedents for other

states. Thus many of the state bills mentioned above proposed an ombudsman appointed and virtually controlled by the chief executive.

During the 1970's many governors set up central information and referral services, some of which also handle complaints, often with a toll-free telephone service. Counting these complaint services, by 1982 there were executive central complaint offices in about twelve of the states. These and the new central information and referral services seem to be regarded as an alternative to legislative ombudsmen, even though they do not have the same functions.

Similarly, after 1975 the idea of ombudsmen for special purposes partly eclipsed that of a general ombudsman. Thus by 1982 special ombudsman plans for correctional institutions had been established in 18 states. And under a federal law of 1978 all states had set up ombudsman programs for long-term care institutions. Much effort went into the design of these programs, to the neglect of the idea of a general ombudsman.

#### **LOCAL DEVELOPMENTS**

At the local level, the developments in New York city during 1966 and 1967 were of great significance in promoting the ombudsman idea. In November 1966 the Civilian Review Board for investigating complaints against the city police was abolished in a bitterly fought referendum. The Policemen's

Benevolent Association, which took the stand that such a board should not single out the police, is reported to have spent \$400,000 in the campaign against Mayor Lindsay's support of the Board. After the Board's defeat, both sides agreed that a version of the ombudsman institution, which would be able to review complaints against any part of the civic administration, might be a suitable compromise. The ombudsman idea was already well known there because Judge Bexelius, Sweden's ombudsman, and Sir Guy Powles, New Zealand's ombudsman, had crossed paths in New York during tours of the United States early in 1966. In the course of his tour Judge Bexelius had also given evidence before committees of the Congress and the California legislature. In New York, the two ombudsmen appeared simultaneously at a meeting chaired by Professor Gellhorn in a kind of all-star show before the powerful local bar association. Bills on the subject had also been submitted to the City Council.

Mayor Lindsay therefore referred the idea to a team of city officials to draft a plan. Later, however, he re-introduced his scheme for city-wide Neighborhood City Halls, which would be run by the executive branch on a budget of \$250,000. The Democratically controlled city council opposed this scheme for fear it would be used for political purposes. In May 1967 the local bar association produced a draft bill for an independent ombudsman, to be appointed with the advice and consent of two-thirds of the Council and removed only for cause

by a three-quarters vote. The President of the Council immediately supported and introduced the bill, but Mayor Lindsay's reaction was to favour instead expanding the office of the Commissioner of Investigation, who was an executive officer, and making his appointment subject to Council approval. Partly as a result, the bill was not approved.

However, New York's new city charter, which became effective in January 1977, provided for a version of the legislative ombudsman plan. The president of the city council is to be the ombudsman. Paul L. Dwyer, a strong advocate of the ombudsman plan, was the first to hold the office. The ombudsman's functions are to coordinate city-wide complaint programs, review recurring complaints, and propose better complaint procedures.

Other developments have also given a strong push toward ombudsman adoptions for cities. In July 1966 the law school at the University of Buffalo began a pilot project under two professors as unofficial ombudsmen for the City of Buffalo. This project, which ran for eighteen months, was highly successful, carefully analyzed and widely reported. Early in 1967 Professor Gellhorn produced a model ombudsman bill for state and local governments, and in March 1967 the President's Commission on Law Enforcement and Administration of Justice recommended replacing local police review boards with general "ombudsman-type" complaint agencies.

As a result of this popularization of the ombudsman

idea, numerous ombudsman proposals and adoptions have been made in many cities, and various related complaint-handling mechanisms have been developed. In some cities, such as Philadelphia and Flint, private organizations took up the Buffalo precedent by establishing an unofficial "community ombudsman". Because of the long history of complaint bureaus in American city administration, a common official reaction to the ombudsman idea has been for the mayor or city manager to appoint a complaint officer as part of his office and call him an ombudsman. Such an officer can only be a pale shadow of a real legislative ombudsman.

#### **THE OMBUDSMEN FOR LOCAL GOVERNMENT**

Progress has been made with genuine ombudsmen for local government, however. It should be noted that municipalities can come under the state plan in Alaska, and that the ombudsmen in Hawaii and Iowa have jurisdiction over local government, including mayors and councillors. Some of the state bills would also give the state ombudsman supervision over local government, while others propose separate ombudsmen at the county level. A similar proposal has been made for the Province of Ontario in Canada, to create provincially appointed ombudsmen for local government at a regional level.

Two of the first ombudsman plans to be adopted at the local level were joint city-county schemes: Dayton-Montgomery County in Ohio, and Seattle-King County in Washington. The

Dayton-Montgomery scheme, set up in March 1971 with financial support from the OEO and the Kettering Foundation, has a joint office of citizen complaints headed by a director and a supervisory ombudsman board. The members of the board are appointed by Dayton's city council, Dayton's school board and Montgomery County's board of commissioners. The ombudsman board elects the director and approves the budget. It may dismiss the director, but only by a two-thirds vote. The director handles complaints against the administration of the city, the school board or the county. The first director, T. Bingham, a former newsman, publicized his office by presenting interesting cases on TV and in the press. Hence the volume of complaints, mostly by telephone, was large from the start. In recent years, there have been about 3,000 complaints plus nearly 6,000 enquiries per year.

The Settle-King County plan originated with an office of citizen complaints for King County only, which began in January 1970. Arrangements were then made for a joint city-county scheme, set up under an ordinance approved by the councils of both governments in July 1970. This ordinance, which is based on Professor Gellhorn's model ombudsman bill, provides for a joint office of citizen complaints, with a director appointed for five years by a two-thirds majority vote of each council and removable only by a similar two-thirds vote. He must be selected from a list of at least five names submitted by a citizens' advisory commission, and in

formulating policies and procedures he is assisted by an advisory committee of three members from each council. The first director, L. Walton, was a former city manager. When the second director left office in 1979, he was replaced by two ombudsmen, one appointed by the city council and one by the county council. In 1982 Seattle withdrew from the joint scheme.

With the help of federal funding, Newark, N.J., in May 1972 became one of the first American cities to provide for a legislative ombudsman. To be appointed for five years by the mayor, with the consent of the city council, he could be removed only by a two-thirds vote of the council. The plan was approved by a council vote of only six to three, and the federal funding covered only two years, so it was not established on very firm foundations. In October the council rejected Mayor Bigson's choice for ombudsman by a vote of six to two, some councillors using arguments which revealed that they were opposed to the plan rather than the man, who was a professor of law and had been reared in Newark. Interpreting this to mean that the council did not wish to implement the plan, Mayor Gibson announced in October that he was returning the federal grant of \$262,000.

This early failure illustrates that the establishment of local plans is often subjected to the vagaries of partisan politics. Combined with the tendency of executive heads to set up their own complaint offices, the result has been slow

progress in establishing legislative plans. However, several more have been adopted, mainly during the period 1970-75. By July 1982, there were twelve local schemes classed by the International Ombudsman Institute as independent legislative ones. Besides the two city-county schemes already described, one of these was for a county: Cuyahoga, Ohio (1980). The largest cities with a legislative plan were, besides New York: Detroit, Mich. (1973); Flint, Mich. (1974); Atlanta, Ga. (1974); and Berkeley, Cal. (1975).

The ombudsman idea has become so widespread in the United States that ombudsmen have been appointed for universities, school systems, hospitals and other public and private organizations. By 1983 there were over 150 university ombudsmen of various kinds. Unfortunately, some of them are executive officers appointed directly by the university president, while others are appointed or elected by students, and thus often become advocates for either the administration or the students, rather than independent judges of fairness. The ombudsman idea has spread so far afield that in 1966 the president of the Michigan Bar Association appointed all seventeen past-presidents as "ombudsmen" to hear complaints from lawyers against officials of their own Association. The name ombudsman has even been given to complaint columns in newspapers, and to the person handling customers' problems in a San Francisco department store.

As this survey shows, a serious problem connected

with implementing the ombudsman plan in the United States is how to preserve the precise meaning of the ombudsman concept. Other problems are how to prevent the ombudsman from becoming an arm of the executive, and how to keep him independent and non-partisan. Because of the strong tradition of executive and partisan appointment in the United States, special qualifications and procedures for his appointment are required if these problems are to be solved. Nevertheless, the new state and local offices in the United States have already developed a unique feature that is a significant improvement over plans elsewhere: the simple expedient of allowing and encouraging complaints to be initiated by telephone.

ENDNOTES

1. Totals were derived from International Ombudsman Institute, Ombudsman and Other Complaint-Handling Systems Survey, Vol. XI (Edmonton: the Institute, 1982), 3-21.
2. William Cahn, Report on the Ombudsman (Mineola, N.Y., November 1966), pp. 28 (mimeo).
3. Professor Gellhorn had, the year before, published two books on the ombudsman, one a comparative study, Ombudsmen and Others, and the other on the applicability of the idea to the United States, When Americans Complain, both published by Harvard University Press. Professor Anderson had written articles on the idea and had worked with Congressman Reuss, while I had edited a book, The Ombudsman: Citizen's Defender (Toronto: University of Toronto Press, 1965, 2nd ed. 1968).
4. Published by Prentice-Hall in 1968.