

AN ADDRESS TO THE
AMERICAN ASSOCIATION OF OMBUDSMEN
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I. An Address to the American Association of Ombudsmen

Twenty years ago on May 1st., 1967, the first Ombudsman's office in North America was opened in Edmonton, Alberta, Canada. That is a short time in the history of Ombudsmanship, for the first "official" Ombudsman is said to have been established in Sweden in 1809 - that is 178 years ago. In fact we can go back a considerable time before that to the Yuan or Mongolian Dynasty in China which ruled from 1260-1368 and see that there were "officials" appointed to supervise and control under the great Kublai Khan who founded the dynastic line. I can take you back even further in history of "complaint-handling" to the Prophet Mohammed in the Islamic legal system, because it was the Prophet who introduced "administrative authorities", and appointed judges, governors and tax-collectors. It was the Second Caliph, OMAR, (634-644) who organized an administrative system and introduced administrative controls.

And if we really reach, I think I can make a case for the first Ombudsman among the Prophets of the Old Testament. Amos who was a Jew prophesying about 776-763 BC certainly fulfilled the role of Ombudsman and one would have to say that he was appointed by no one less than Jehovah Himself to warn King Jeroboam II, a very able but idolatrous king who brought his kingdom to the zenith of its power. Because the king did not heed the warnings of the prophet Amos, his kingdom lasted a mere fifty years before it was utterly destroyed.

The example might be useful for some of our current rulers who tend not to pay attention to good ombudsmen who seek to improve the system!

The Ombudsman Institution has undergone major changes over the years and the nature of the Institution has been altered considerably. Throughout the world, the number of Ombudsmen have increased substantially and the office has become suited to the various forms of government in the countries in which it is resident. In most cases the Ombudsman has become a supplement to the existing judicial and legislative institutions that form part of a state under the rule of law.

I became Ombudsman for the Province of Alberta, Canada in 1974 and served two terms until 1984. During that period of time the Ombudsman fraternity became loosely organized on a world-wide basis. The International Ombudsman Institute was created for the purposes of research, library, and publications. It has been my privilege

to continue that work on behalf of Ombudsmen around the world since I left office in Alberta, and, I have seen the value of its existence in a University setting.

The other important thing that has happened is that every four years Ombudsmen meet for an International Conference. The first was held in Edmonton in 1976, then in Jerusalem 1980, in Stockholm 1984 and next year in Canberra, Australia. These Conferences have served to bring Ombudsmen around the world together for a sharing experience of their work and their problems, and give the opportunity of meeting one another and so strengthening the bond between them.

There can be no doubt that the Ombudsman concept is making progress in the world. I have just been advised before leaving to come here that the latest Ombudsman office has been established in Uganda, known as "The Inspector General of Government." In the Third World, or the developing countries, the Ombudsman idea has certainly caught on and to a large extent it is being used effectively.

I have said that the Ombudsman concept is making progress in the world. Without wanting to be presumptuous, or to insult the very people who have invited me to this gathering, I have to wonder why the Ombudsman concept has never really caught on in the United States of America. Certainly, as witnessed by this gathering, you have Ombudsmen - Municipal, County, Nursing Home, Hospital, School, Correctional, University, and a host of others who claim the name Ombudsman. Yet, there are only four State Ombudsmen Alaska, Nebraska, Hawaii, Iowa - There is an Ombudsman in the Territory of Guam, and in the Commonwealth of Puerto Rico, and, also in the Panama Canal Zone - yet there are some forty odd States without Ombudsmen and no National or Federal Ombudsman. I would love to do a PH.D study as to the reasons for such omissions.

The United States is the most progressive nation on earth and in most areas has set the example for the world in Democratic matters. Yet in the Ombudsman area it is lagging far behind other less developed nations.

Then having read the Annual Report from the Acting Ombudsman in Alaska I was terrified to learn that the State Office in Alaska might be closed. This would be a great blow to Ombudsmanship. It could have a rippling effect, certainly in Canada, where at the present time there are economic problems. In my own Province of Alberta I can

visualize the government cutting back on the Ombudsman and Human Rights office, or shutting them down altogether, simply because there is not sufficient funds available. We have to be aware of the problems even though, as I have stated, Ombudsmanship has made great progress during the past twenty years.

There is no room for complacency. When governments tend to deal with essentials, we have to work hard at being certain we are one of the essentials.

I believe that the time has come for a critical analysis of the Ombudsman movement to be made. In many instances we are one of the best kept secrets in the location in which we work and live. It is time for us to consider our weaknesses and our strengths. It is time for a major research project to be launched involving Ombudsman offices throughout the world. There should be established soon a Profile of Effectiveness for Ombudsman offices - this would include an evaluation of Planning, Organization, Policy, Legislation and Management.

While we have had, over the years, many excellent articles written on the subject of Ombudsmanship, while each year, each office produces an Annual Report, in most cases these have been only complimentary, and self-serving. The time has come for more ground level reporting rather than further comparative studies or other purely "academic" writings. Not everything worth writing has been written! Close examination of case files, and extensive on-site interviewing of complainants, respondents, officials, legislators, journalists, and others, for the purpose of appraising how Ombudsmanship is in fact functioning in any particular jurisdiction must be undertaken. These studies must be publicized and we must learn from each others successes, and more important, from each others mistakes.

If the threat that is at present evident in Alaska is to teach us anything - it teaches us that we may be expendable! If not expendable in the eyes of Ombudsmen and the public at large, then certainly expendable in the minds of some government officials. We cannot afford to be caught unawares.

Let me now try to say one or two things to you about what I think the Ombudsman should be all about in the late 1980's and in the next decade. We tend, I believe, to rest on our laurels; we tend to trust that society at large is aware of our existence and therefore there is little need for us to publicize our offices and the work

we do. We tend to be afraid that the very organ which provides our budget will if we are really advocates for any cause, cut us off. This, I grant you is a real possibility, in view of what I already said. But must we be so low-key, and simply withdrawn within ourselves?

A half dozen years ago the Ombudsman in Finland said to me, "The Ombudsmen in North America, if they are not careful, will defeat their whole purpose. They are amateurs when it comes to dealing with officials in government. They do not know how to conduct themselves, and, they are overly-aggressive in their functions".

Perhaps he was right. But, in the last few years I believe we have let the pendulum swing too far in the other direction. Each person has his own style. But an Ombudsman must be comfortable in the spotlight and must turn his or her office into the high profile it deserves. An Ombudsman must know the difference between discretion and secrecy, and not be afraid to voice constructive criticism at the appropriate time. People must know we are about and we must not shy away from publicity and controversy. In Canada, unfortunately, we have not been able to persuade the Federal Government to institute a National Ombudsman. There is a great need in this area, but so far, little success in making the point to those in authority.

Ombudsmen should not be involved in politics. By and large this is a true, and good statement. Yet, most of the real problems in our country seem to be in the political field. We are having a scandal a week in Canada at the National level. People are calling for Public Inquiries to be held on at least ten matters just now. You have your own share in the United States. On the International scene there is an increase in terrorism which affect your countrymen more than any other. On the provincial or State level, there are increasing problems in Child welfare, adoptions, abuse of children and women. Problems affecting the elderly - which will continue to increase as the next few years go by. Are we as Ombudsmen simply prepared to await what we know is going to happen and then react, or should we be innovators and planners anticipating the problems and attempting to do something about them rather than just being reactionaries.

It seems to me that Terry Waite, the Anglican Envoy of the Archbishop of Canterbury, is in fact fulfilling an Ombudsman function in trying to negotiate for the

release of hostages - mostly Americans, who are being held in the Middle East countries. There is room, I believe, for more people of his calibre, to put forward this kind of moral weight on the world scene.

I have long felt that an Ombudsman function in the United Nations, in the World Health Organization, in the European Common Market is an absolute necessity. There are some who agree with me.

The Third World has taught us many things. It is once again teaching us that Ombudsmanship can be very effective and that it can be held up as an example to those who would see, of an office that it is not only concerned with helping citizens, but an office which also will take initiatives and set examples for standards of justice in the public arena.

Dr. Bruno Kreisky, former Federal Chancellor of the Republic of Austria, was the Opening Speaker at the Third International Conference of Ombudsmen, meeting in Stockholm in 1984. Dr. Kreisky, paraphrasing Sir Winston Churchill, stated:

"Die Demokratie ist offenbar die beste aller denkbaren Regierungsformen, nur bedarf sie einer ununterbrochenen rigiösen Kontrolle und die Qualität an wirksamer Krontrolle ist es, die erst die Qualität der jeweiligen Demokratie gewarheleistet."

"Democracy is obviously the best of all conceivable forms of government, provided that it is subjected to continuous, rigorous control which safeguards the quality of democracy."

There can be no doubt but democracy in the latter part of this century is going through a historically interesting phase.

New parties are sprouting up all over Europe adding to the established ones. These are parties to the right as well as to the left. There are parties which have affiliation with former Neo-nazi organizations. There are so-called "peace-movements" and economic parites. To their credit some of these parties have made the major political entities operate with an increased awareness that economic and ecological issues must be recognized and dealt with.

Thus it has become very difficult now for any party to form majorities in many democracies. It implies a certain destabilization of our political life, which need not necessarily mean, that this phenomenon must be perceived as negative. At our last Federal election in Canada the Progressive Conservative Party elected an over-whelming majority of members in the House of Commons. Two years later, if an election were to

be held today, they would lose, or at best receive a minority government. That is how badly they have governed.

This kind of destabilization of political life need not be equated with a destabilization of democracy. But it implies, as perhaps never before, a difficulty in undertaking to build bridges between the various blocs, and that is the reason there is so much made of the arms race, and the talk of war. I believe that despite all the polarization of the systems, there are means at our disposal for bridging the gap between the blocs. One of these means, if taken seriously, could be the Ombudsman.

I believe that the Ombudsman Institution must be continuously upgraded, because it provides a real antidote to the dangers threatening democracy from within through what is often perceived as an undoubtedly necessary, but exaggerated bureaucracy.

I am of the firm belief that governments do not want Ombudsmen institutions at all ... least of all do they want them to grow or to be upgraded. There are instances in North America where governments now have their own people in place as Ombudsmen. That is a very dangerous situation, and one in which the public is not well served. But should we really expect less? I think not! Not many government officials enjoy being subject to criticism, and the fact that all Ombudsmen support the public servant and protect them, when they have acted properly, seems to be of small comfort. If the trend that is beginning to surface in some jurisdictions, continues, then the whole Institution will ultimately be destroyed. It is a warning which ought not to go unheeded.

I stated early in this thesis that I thought the time had come for a critical analysis of the Ombudsman movement. Let me say again that if we who are involved in the work don't do it, others will, and we may not like the results.

Rarely do we progress or improve in any area without some kind of evaluation. Ideally this will include constructive criticism from others as well as self-evaluation. In order to do better we must become aware of our mistakes so that we can avoid them in the future.

We also need to know what we are doing that is right so that we can reinforce these areas of strength and build upon them.

Our ethical performance, too, requires evaluation. After we have made a decision and acted upon it, we should review what has happened, and reflect upon it.

Was it wise, honest and effective? Where were our reasoning, and interpretation faulty? Where were they sound? Where were we misinformed? Where were we accurately informed? At what points, if any, were we rationalizing? What aided or interfered with the implementation of the decision? What did we do that was valid and responsible? What were the consequences? How accurately did we anticipate them?

The purpose of evaluation is not to grieve over our mistakes or gloat over our successes, but rather to learn from experience.

Then, I think we need evaluation in order to carefully examine, correct, and strengthen our motives, and establish suitable goals. Goals will change from time to time, as they should. Once we arrive at a goal, we must devise a way to reach it.

A good question for any Ombudsman is "does the end justify the means?" This raises the issue of what is sometimes called "the principle of the lesser evil". In this rather corrupt and complicated world we do not always have a choice between good and evil alternatives. An Ombudsman has to be on guard all the time. I well remember my predecessor, Dr. George McClellan saying to me "Always remember the post-mortum!"

Motives can make or break an ethical decision. They profoundly affect the quality of a moral action. We pride ourselves on being good investigators. But how often do we investigate and evaluate ourselves by being absolutely candid and even sometimes downright suspicious

My country and yours have so much in common and we depend upon each other for many things. I have always felt very much at home in the United States. I have had the joy of visiting here many times, I have studied here and worked here and we have many friends in all parts of this great nation. We have more in common than separates us, and hopefully our relationships will continue to be amicable, and we shall positively build upon the foundations that have been set in place by those who have gone before us.

So we need each other in the pursuit of that ideal which is precious to both of us alike. We know our task is not merely to preserve freedom, but to win it; not merely to protect justice in the earth, but to establish it; not merely to demonstrate true brotherhood but to aspire to its fulfillment in all nations; not just to preach the true society, but to achieve it for ourselves and others -- in short, not to suppose that we

are yet very near to the Kingdom of God on earth, but still to pray and work for it.

Sloth and pride and incapacity to control what we have fashioned by our hands and brains are our dangers. Our strength before God and our service to the world is in the solemn and sacred knowledge that however imperfect our actions may be we believe in the same true things and should fear nothing but to fail them and to fail one another.