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Book Review: The Ombudsman Plan: Essays on the Worldwide Spread of an Idea, by Donald C. Rowat

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The Ombudsman Plan: Essays on the Worldwide Spread of an Idea. By DONALD C. ROWAT. Toronto: McLelland and Stewart Limited. 1973. Pp. x, 315. (Paper: \$3.95)

Rowat's contribution as the editor of an outstanding work on the ombudsman in 1965¹ gives rise to comparable expectations for his latest endeavour on the subject. As he is careful to explain in the preface to this companion volume, however, its thrust is substantially different in character. The text of the earlier work could not be updated satisfactorily because of the difficulties of multiple authorship, although a second edition did cover new developments for the intervening years in its preface and appendix.²

What the author has chosen to do, therefore, is to present revised and updated selections from his own writings on the ombudsman. In an appendix which comprises slightly more than one half of the volume, he has added brief reviews of noteworthy publications from the ombudsman literature, a bibliography of important materials published in English on the subject, the texts of significant new provisions and proposals for ombudsmen or similar institutions, and some statistics on the operation in 1971 of the Nordic plans.

The result is a rather mixed bag which departs from the customary format and substance of a scholarly work. Rowat acknowledges this departure by stating in his preface that the new volume is intended as a short, up-to-date review of the subject for both layman and scholars, but that more serious scholars looking for an extended treatment and variety of views should also consult the earlier book.

Part one of the text describes the first ombudsman systems. The Swedish origins, the Finnish version and the West German Parliamentary Commissioner for Military Affairs receive separate treatment, while the Norwegian, Danish and New Zealand adoptions of the concept are considered together in less detail. Fuller coverage of the Swedish institution is merited in view of its developmental role, but why the Finnish and West German examples take precedence over the Danish ombudsman which served as the chief model for the common law world is a little difficult to comprehend. Likewise the New Zealand prototype would seem to have deserved more extensive review as the first common law experience.

For serious observers of the ombudsman scene, the second part of the book may make the most stimulating reading. Three of its four portions are drawn from an article written in 1962,³ but

¹ *The Ombudsman: Citizen's Defender* (1965).

² (1968)

³ *An Ombudsman Scheme for Canada* (1962), 28 *Can. J. Econ. & Pol. Sci.* 543.

the essential issues raised therein continue to be of prime relevance to-day. The inadequacy of existing grievance machinery, the transferability of the ombudsman plan, its applicability to differing legal systems, and some controversial questions relating to its transplantation, are explored in a concise and direct manner. Although these subject matters occupy slightly less than twenty pages, the depth of analysis substantially surpasses that in other parts of the text.

With this background, Rowat turns to ombudsman developments in North America. It is here that his missionary objectives show through most clearly. After canvassing the relevance of the ombudsman concept to the United States and Canada, he briefly discusses recent developments south of the border before directing specific attention to the Canadian situation. A persuasive case is first made for its general application in this country.

Introduction of ombudsmen on the provincial level in Canada has already received considerable public attention elsewhere, and Rowat slides over these developments in rather cursory fashion. A more thorough analysis of their work and effectiveness might have been illuminating. He does, however, offer some critical comments. Stronger legislative provisions are proposed to ensure their independence, which may be a valid assertion in the abstract but the experience to date would not yet seem to support the need.⁴ A suggestion is made that provincial ombudsmen should have jurisdiction over the decisions of municipal officials. Such an increase in workload might well diminish the ombudsman's capacity to respond expeditiously and effectively, on the other hand, in view of the volume of local government decisions, the distant geographical location of many municipalities from provincial capitals, and the particular circumstances peculiar to individual localities. A better approach would seem to be local government ombudsmen situated on the spot, and Rowat acknowledges this possibility for large cities.

Of particular interest to the legal profession is Rowat's proposal that the ombudsmen's supervision should extend to those lower courts which are completely within provincial control. His argument rests on the ground that disciplining of these lower court judges must be initiated by provincial governments, raising the danger of executive interference with judicial independence for

⁴The first Nova Scotia ombudsman encountered some difficulty shortly after assuming office when he endeavoured to investigate a complaint arising out of the discharge of certain government employees and their replacement by others as a matter of political patronage. On the other hand, the Alberta and Quebec ombudsman have both dealt with several highly contentious issues having potential political implications, and without apparent challenge to their independence.

political reasons, and thus provincial governments do not often undertake such proceedings despite the need for them. This ignores the recent development of judicial councils in a number of provinces whose jurisdiction, composition and procedures meet most of the suggested difficulties. Whether an ombudsman would be better qualified in the light of his broader responsibilities than the members of a judicial council with experience and expertise related to the matters in issue, is highly debatable.

On the federal level in Canada, the failure of any ombudsman scheme to materialize is chronicled in moderate detail. Response to the criticism that the idea is unsuitable for a relatively populous and geographically large federation takes the form of a number of alternatives to the Danish and New Zealand models followed by the provinces. One is the establishment of several ombudsmen, each responsible for a different area of government activity. A second proposes a collegial commission whereby all important complaints would be handled by at least one of the commissioners personally, and the most consequential grievances could be considered by the whole commission. Relatively minor cases would be directed to senior officers with delegated authority, and regional offices might be opened. Unqualified assurances that the implementation of the ombudsman concept on the federal level will be successful obviously cannot be given, but Rowat is surely justified in asserting that the successes of the provincial schemes and of those elsewhere in the world merit a comparable endeavour on the national scene in Canada.

The book's subtitle reflects its concluding part. What might have been an interesting exploration of why and how the ombudsman idea spread becomes a random treatment of examples. Separate consideration is then given to developed and developing countries where the concept has been received in some form or is being considered. In the developed group, the statutory shortcomings of the United Kingdom Parliamentary Commissioner are justifiably criticized, the Australian proposals and Western Australia's adoption of a Parliamentary Commissioner in 1971 are surveyed, and the various proposals in Continental European nations are briefly described. The section on developing countries includes specific coverage of the State Comptroller in Israel and proposals in India, while acknowledging that special problems may be present where the form of government and its administration differ from the developed countries. Similar institutions are dealt with in the final portion—executive complaint agencies, administrative appeal courts, legislative auditors, and private organizations—an area of ombudsman-like endeavour which cannot be adequately considered in a few pages.

Rowat concludes that the ombudsman concept will continue to spread throughout the democratic world, hardly a startling prediction, but expresses concern that its effectiveness will be diluted by creations which bear the nomenclature and depart from its essential features. Most important of the essentials in his view is an independence from the executive side of government, achieved by constitutional or special legislative provision establishing the ombudsman as an agency of the legislature. One can accept the conclusion as fairly obvious without denying its importance, while the concern expressed for the preservation of essential features is timely and significant.

An appendix which comprises over half the pages of a book is highly unusual. It begins with reviews of widely recognized publications on the ombudsman. What is accomplished here is questionable. The reviewed works are listed and minimally described in the extensive and very useful bibliography which immediately follows. They might better have been left for the reader to pursue on his own. Ombudsman provisions and proposals occupy the next 128 pages. They do not make for light reading, but undoubtedly will be of value to scholars, legislators and others seriously interested in adaptation of the concept to particular situations. The concluding part of the appendix setting forth statistics on complaints handled by the Nordic ombudsman in 1971 adds little of consequence.

Those looking for profound analysis and original thought will be disappointed with this book. Its contribution is on a different plane. For the well versed on the ombudsman, significant new developments are noted. For the relatively uninitiated, it provides a readable primer on a remarkably successful approach to protection of the individual citizen from the inadequacies of government administration.

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