

# The Need for an Ombudsman in California

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PROFESSOR GELLHORN's excellent account of the New Zealand experience with the office of Ombudsman stimulates some reassessment among those of us attempting to provide an ombudsman for California.

The need for an ombudsman is greater in California if only because our population is over seven times that of New Zealand. But more important, New Zealand had a well-developed system of administrative procedures and judicial review processes before establishing its office of Ombudsman. Professor Gellhorn states that these processes were inadequate in New Zealand, and I would add that they are even less adequate in California.

Members of the California Legislature react to complaints from constituents in very much the same way as members of the New Zealand Parliament—we refer the complaint to the agency which may have been guilty of the offense. Understandably enough, the agency claims a superior knowledge of the situation, and exonerates itself. The frustrating reality is that these agencies really do have that superior knowledge, and furthermore they have little to fear from the Legislature.

Our state government has been called "a loose confederation of semi-autonomous empires," and these empires are threatened by the Legislature only once every two years when we meet in general session. Much of the money budgeted to these agencies is not even under legislative control. It is quite simple to ignore or bamboozle the legislator acting on behalf of a constituent.

Programs serving great numbers of people require complex organizations and regular procedures. They are administered by agencies which have been delegated quasi-legislative and quasi-judicial, as well as executive, powers, so that in the words of Professor Bernard Schwartz they have "the function of legislator, prosecutor and judge." It is extremely difficult for the citizen client of large agencies to find the way through the maze and to know his rights.

I am concerned that in the dispensing of justice by administrative agencies our progress has been woefully inadequate. And I sense that there is a growing frustration and feeling of alienation on the part of individual citizens which results from their dealings with the very government agencies which are designed to serve the public.

What remedies are open to the ordinary citizen against the action of

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a large public agency? Against arrogance and delay there is no appeal. The great majority of actual administrative decisions carry no formal right of appeal. Where there is provision for appeal to an administrative body, the process is likely to be costly and cumbersome.

Our courts have been the traditional bulwark of individual rights. As a nation, we have rejected the idea of separate system of administrative courts. However, the power of the courts to review administrative decisions is restricted both by procedure and precedent and court action is costly.

Administrative procedures and the process of judicial review of administrative decisions are important elements in the impact of administrative agencies on individuals. However, all these channels seem to me to be inadequate to the task of insuring the citizen fair treatment before a complex bureaucracy. A new approach is sorely needed.

We need to find some bridge between the citizen and his government—some way to clear away the complexities and frustrations. It is for this reason that I have become interested in an office of Ombudsman for California.

The criticism of the bill I introduced in the 1965 session was depressingly similar to the criticism Professor Gellhorn describes. Public officials insisted that they already acted as ombudsmen, and elected representatives said that handling constituents' problems personally got them votes.

And there was new criticism which I gather was not made in New Zealand. I was accused by our more zealous patriots of furthering the cause of creeping socialism by transplanting a Swedish government office to California. The fact that the office of Ombudsman was created in Sweden under a rigid monarchy in 1809 should probably not be stressed. I will then be under attack from the left for assaulting human rights.

Frankly, I do not see the ombudsman proposal as a political issue. It is interesting to note that in New Zealand, the Ombudsman was opposed by the Labour Party, while in England the proposal has been made by the Labour Party. Of course the Labour Party is not precisely the same in the two nations, but I would suggest that substantive issues of political principle are not involved.

During the present interim period, our Assembly Committee on Government Organization, under the chairmanship of Assemblyman Milton Marks of San Francisco, is reviewing the value of the office of Ombudsman in terms of its effect on present legislative and administrative structure.

What is disparagingly called "big government" is going to get bigger, but it can also become more responsive. The alternative is increasing citizen frustration.