

10-1-1973

The Ombudsman Plan. by Donald C. Rowat.

Sheldon Repp

Follow this and additional works at: <https://digitalcommons.law.buffalo.edu/buffalolawreview>



Part of the [Law Commons](#), and the [Public Affairs, Public Policy and Public Administration Commons](#)

Recommended Citation

Sheldon Repp, *The Ombudsman Plan. by Donald C. Rowat.*, 23 Buff. L. Rev. 309 (1973).

Available at: <https://digitalcommons.law.buffalo.edu/buffalolawreview/vol23/iss1/17>

This Book Review is brought to you for free and open access by the Law Journals at Digital Commons @ University at Buffalo School of Law. It has been accepted for inclusion in Buffalo Law Review by an authorized editor of Digital Commons @ University at Buffalo School of Law. For more information, please contact lawscholar@buffalo.edu.

prison system a purpose which is fulfilled no matter how irrational or counter-productive the internal operation of the prison is. The specifics of prison operations are in all probability irrelevant to the prison's social function. How else can the continuance of these otherwise counter-productive antiquities be explained?

The conclusion reached in *Kind and Usual Punishment* reflects the inevitable inconsistency of the author's approach. Mitford finds no acceptable purpose for the existence of prisons and is horrified by their internal operation which she perceives as "inherently unjust and inhumane."³ Yet, she fails to advocate the abolition of the prison, although she does sympathetically cite some authorities who do so. Perhaps, like many of us, she requires the comforting reassurance that the problem of crime is being dealt with. However, it is entirely possible that with a little imagination we can fulfill the prison's symbolic function, and perhaps better achieve those rehabilitative and protective functions it is supposed to effect without continuing the present system and its inevitable quota of human tragedies.

Mitford does give us some valid suggestions for the interim period. She recommends shortening sentences, extending to prisoners those constitutional rights which protect the rest of us from arbitrary governmental action, encouraging the organization of prison groups so that riots will not be the only medium through which prisoners can communicate with officials, and doing away with the indeterminate sentence.

DANIEL NOBEL

THE OMBUDSMAN PLAN. By Donald C. Rowat. Toronto, Ontario: McClelland Ltd. 1973. x+315 pages. \$3.95 (paper).

Donald Rowat has collected in *The Ombudsman Plan* some of his own essays on the subject of the ombudsman and has included the texts of recent acts, book reviews, and an extensive bibliography of recent commentary. As a sequel to his more comprehensive treatise on the subject,¹ this publication reinforces Rowat's case for the adoption of ombudsman plans through analysis of recent develop-

3. P. 297.

1. THE OMBUDSMAN: CITIZEN'S DEFENDER (D. Rowat ed. 1968).

ments. The author believes the ombudsman system to be the appropriate institution to protect against abuse of power and inefficiency associated with the rise of the bureaucratic welfare state.

An ombudsman is defined in the work as an independent, non-partisan officer of the legislature who handles specific public complaints concerning administrative injustice and who has the power to investigate, criticize, and publicize (but not reverse) administrative action.² Thus, the ombudsman functions primarily as a clearing house for complaints.

The author argues that existing methods for redress of administrative injustice are inadequate. Judicial relief is too costly, slow and burdensome. Furthermore, judicial power of review is limited. Therefore, the judicial and ombudsman systems need not conflict, as the latter can provide a relatively speedy means for relief of procedural grievances. Also, unlike those of the judiciary, decisions of an ombudsman are merely advisory; their effectiveness is not based on the force of law but on publicity. Complaint bureaus, civilian review boards, local city halls and newspaper complaint columns serve a somewhat similar function, but generally lack any official investigative powers. This void could be filled to some extent by an ombudsman appointed by either the executive or the legislature.

The branch of government to which an ombudsman is attached would be significant in the United States because of the principle of separation of powers. Traditionally, the ombudsman has been a branch of the legislature. Rowat feels that such a position, if adopted in this country, would provide a new congressional check on the administration, and could therefore serve to limit the aggregation of executive authority.

However, Rowat's hopes for the political effectiveness of an ombudsman appear inflated. The ombudsman deals with procedural grievances, not substantive policy matters. His duties, consisting of responses to public complaints of administrative inefficiency, bear little significance to the broader issue of the structural interrelationships of governmental branches. A good demonstration of how an ombudsman could function in the United States was the operation of the Citizens Administrative Service in Buffalo, New York. Funded by the Office of Economic Opportunity and supervised by the State

2. P. 147.

BOOK REVIEWS

University of New York at Buffalo Law School, this pilot project operated successfully as an unofficial ombudsman for an 18-month period beginning in November 1967.³ The directors concluded in their project report that a municipal ombudsman should not be an arm of the legislature, but rather should operate as a separate office of the executive.⁴ They indicated that this alteration would be necessary before the ombudsman institution could be transferred from a parliamentary to a congressional system.⁵

While Rowat may be unnecessarily doctrinaire in his viewpoint, *The Ombudsman Plan* does contribute significant new material and can function as a sourcebook for future program planning. The need for humanizing administration in this era of bureaucratic government is apparent. The institutions necessary to satisfy this need are still being developed, and Rowat is convincing in his assertions that the implementation of an ombudsman plan would be a significant contribution toward this end.

SHELDON REPP

3. *Citizens Administrative Service, First Report*, in OMBUDSMAN PAPERS 173 (S. Anderson 1969).

4. *Citizens Administrative Service, Second Report*, in OMBUDSMAN PAPERS 188 (S. Anderson 1969).

5. *Id.*