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Book Review. Gelhorn, W. Ombudsmen and Others: Citizen's Protectors in Nine Countries and When Americans Complain: Governmental Grievance Procedures

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OMBUDSMEN AND OTHERS. By Walter Gellhorn. Cambridge: Harvard University Press, 1966. Pp. xvi, 448. \$6.95.

WHEN AMERICANS COMPLAIN. By Walter Gellhorn. Cambridge: Harvard University Press, 1966. Pp. viii, 239. \$3.95.

Reviewed by RALPH F. FUCHS*

These two volumes, relatively small in size though they are when measured by the usual law book proportions, are not mere summaries of information about private grievances against governmental administration and the various methods of handling them in the ten countries of the world which are covered. Neither do they focus narrowly on the institution of the ombudsman, of Scandinavian origin, which, partly because of the lure of its intriguing name, threatens to become almost an obsession with proponents of administrative reform. Instead these books contain a rich commentary on the relations between people and governmental action under a variety of schemes, illuminated by diverse knowledge gained through personal observation and inquiry as well as from published material. The author's research transcended language barriers in eight of the countries covered. The result is a significant addition to the knowledge of political science and public law by a scholar who has made many important previous contributions in these areas.

The two books, which were launched in the same month, are companion volumes, although they differ in format. *Ombudsman and Others*, dealing with nine foreign countries from Denmark and Norway to Japan and New Zealand, logically precedes *When Americans Complain* which sketches the scene in the United States and draws on foreign experience to suggest measures for lessening injustice and hardship and promoting understanding of government operations here. The former book parallels in some degree the slightly earlier collection of essays edited by Rowat, which covers some of the same countries.¹ Gellhorn, in addition to writing in a lively, readable style, supplies many comments and earthy details on top of summaries (often statistical) of numerous aspects of the operation of agencies which perform a critical

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¹ Donald C. Rowat, *The Ombudsman, Citizen's Defender* (London, 1965). The authors of several of the essays in this collection are or have been ombudsmen or persons officially concerned with the operations of the ombudsmen in their countries.

function with respect to governmental action, usually in response to complaints. Official records were generously made available to the author and his wife, in addition to personal interviews, in many of the countries they visited when the book was in preparation. Experience in three communist countries, Russia, Poland, and Yugoslavia, is here reported for the first time in a collected work.

The material drawn upon in *When Americans Complain* relates to federal, state, and local governments. It discloses a surprising range of existing or incipient informal means by which dissatisfied persons may seek consideration of complaints against seemingly harsh or unjust governmental action. Professor Gellhorn's over-all conclusion is that there should be new channels through which adjustment in individual instances and consequent improvement of governmental administration might be sought. These would supplement the less accessible existing processes of intra-agency appeal, judicial review, and agency self-criticism.

The universality of many of the problems that arise between people and government throughout the world is evident in these pages. There is diversity among institutions which have been devised to help meet these problems; but common elements and a limited range of alternatives, which the author discusses, run through them. "Big government" in a big society gives rise to multiplication and impersonality of relations between somewhat remote administrative agencies and ordinary individuals. Appeal and review proceedings, which are traditional and widely available by law, require some degree of sophistication, in addition to trouble and expense, on the part of persons who might use them; and they often do not reach beyond the particular case. Proprietors of small businesses and even lawyers in local practice, as well as individuals in the capacity of taxpayers, householders, or recipients of public benefits, need encouragement and assistance in voicing complaints or stating doubts and questions. They and others similarly situated often need assurances for the future as well. Efforts to meet these needs have given rise to the institutions discussed in these volumes.

Two principal categories of institutions which exist for these purposes in the countries considered are discussed in *Ombudsman and Others*. One provides a highly personalized service under the aegis of a known and respected officer, assisted by a small staff. The other, probably better adapted to large, populous countries, consists of a sizable organization with representatives in numerous localities. Both are made easily accessible without cost, or in New Zealand at slight cost, to

receive oral or written representations that official injustice, error, or neglect have taken place. The official intermediary takes over at this point, either without further participation by the complainant or more often in occasional consultation with him, to ascertain whether a problem exists and, if so, what its dimensions are. An inquiry may also be launched by the scrutinizing agency into situations that have been called to its attention by newspaper publicity or otherwise. Corrective action is then sought, if warranted. Hopefully, under the better schemes that exist, this action will extend beyond the individual instance and result in administrative improvement which will avoid recurrences. Recommendation and persuasion are the principal means of inducing remedial action, often the only authorized ones, under most of the systems that have been established; but prosecution for violation or neglect of official duty, broadly defined, is the actual or threatened sanction in Sweden, Finland, and the communist countries surveyed.

As the author points out, the commonly held image of righteous people victimized by oppressive bureaucracies is not the picture that emerges from experience with the processes here examined. All told, there is a preponderance of unjustified complaints, and the principal product of entertaining them is improved citizen understanding of the operations of government. Officials are for the most part conscientious and dedicated to duty. With exceptions, which of course are significant, the principal difficulties stem from overburdened, unimaginative, and routinized administration which loses sight of human factors and other reasons why flexibility and change are necessary. Often these inadequacies of administration continue without consciousness of their existence on the part of responsible agency heads, who are willing to take remedial action when they are brought to light. From the standpoint of citizen satisfaction with government, a corrective for these deficiencies is at least as important as the resolution of serious conflicts which can be handled through resolute use of administrative appeal and judicial review. These review processes may themselves become more effective if the grievance agency encourages resort to them when they promise results. In most systems, indeed, action by the official intermediary in complaint cases is dependent on prior resort by the complainant to available administrative remedies, and in some systems to judicial review, which may resolve the problem.

Experience in the United States in handling complaints against governmental administration, which is surveyed in *When Americans Complain*, embraces a surprising range of agencies and procedures on the federal, state, and local levels. Professor Gellhorn supplies a wealth

of information about them, including figures based on significant samples of Congressional mail, the experience of a few mayors and the five borough presidents of New York City who have entertained complaints, and the operations of municipal complaint bureaus which have been established in a significant number of cities. Attention is also given to the Department of Agriculture's Office of the Inspector General, the ways of handling prisoners' complaints,² and the special problems related to the handling of Veterans Administration and other welfare payment matters. Included is probably the best, most balanced discussion in print of police review boards, occasionally used and widely advocated in the United States, in light of the methods so far advocated and developed in their operation.

Against the background of this varied experience and of the characteristics of American society and government, Professor Gellhorn concludes in his final chapter that something more is needed in this country. Resort to administrative appeals and judicial review is not sufficiently feasible in fact for a large number of people to meet many social needs. Other forms of intercession are not generally known or accessible and are deficient in other respects. Even intervention by legislators in behalf of constituents, which is a practice known to many, is often unduly partisan, is incapable in any event of developing administrative improvement that goes beyond the particular case, and is wasteful of legislators' time and resources.

In the Federal Government an important means of discharging certain ombudsman functions may well arise in the form of a developed set of activities of the Administrative Conference of the United States,³ resulting both from complaints to the Conference and from Conference initiative in identifying problems. The form which interceding units might take in state and local governments would naturally vary considerably according to the areas and population involved. In no instance, however, should a relatively large organization be required, even though a Scandinavian-type personalized administration by a single official and an extremely small staff may not often be possible; for informal inquiry, mediation, and suggestion, rather than time-consuming adversary proceedings, are the methods which are needed. Professor

² Ombudsmen agencies to handle grievances and review administrative methods affecting both prisoners and members of the armed forces exist in a number of countries and are discussed in *Ombudsmen and Others*.

³ The Conference, established in 1964 by P.L. 88-499, 5 U.S.C. (1966) § 571 et seq., has not yet been appointed or gone into operation.

Gellhorn rightly stresses the supreme importance of wisdom, consideration, and objectivity of the personnel in agencies of this type. One may be permitted considerable skepticism over the likelihood that people of this type would be selected in many of the state and local governments of this country. Ambitious politicians, eager to exploit sensationalism and popular hostility to officialdom, may easily usurp the ombudsman function in these areas. The attempt to secure something better is worth making, however; and there is hope that, through some kind of Gresham's Law in reverse, the better models may in time tend to drive out the poorer.

Japanese methods relating the individual to his government, discussed in *Ombudsmen and Others*, include a feature that seems worthy of emulation in other societies in which government makes an impact on vast numbers of people in numerous ways. There the national Administrative Management Agency, initially an inspection unit, has assumed the function of entertaining grievances and, to aid in this process, appointed between 1961 and 1965 over 3600 unpaid "local administrative counsellors" to receive and screen complaints. These counsellors are mostly mature persons, many of them "senior citizens," who, with a minimum of training, become competent not only to consider complaints but also to explain at least the simpler aspects of government to lesser folk whom they affect. Such utilization of an important human resource calls to mind recent attempts in this country to employ members of disadvantaged groups to aid in the poverty program. Bringing big government down to the levels on which people actually live is not an impossible task if these examples of resourcefulness in devising ways to do so can be multiplied.