Commentary

Grievance Procedures in the Administrative State†

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Perspective

We have witnessed over the past three years and are now witnessing what some pundits refer to as a "crisis" of confidence in government. I am not inclined to be that dramatic. This is not to say that the tensions we are experiencing are not real. The reality of the events with which we are confronted belies our dream. Regretfully, our intuitive reaction to these tensions is emotional rather than one of critical analysis and constructive thought. Our basic problem is our way of life. Meditation, careful analysis and meticulous planning are but preludes to action. R.G.H. Siu suggests our normative role: "Even when you don't know what to do, do something."¹

The tensions we experience resulted from the confluence of several significant currents having their source in headwaters at least one, if not two, generations removed, and affected, without exception, every significant institution of contemporary society: education,² the judiciary,³ the church,⁴ politics,⁵ and, certainly, administrative organizations.⁶

† This article generally is based upon the text of Mr. Farley's remarks to the Northern New England Assembly, at Montpelier, Vermont, on November 19, 1968. The Assembly was sponsored by the state universities of Maine, New Hampshire and Vermont in conjunction with the American Assembly of Columbia University.

Mr. Farley was a participant in the American Assembly Arden House conference on "Ombudsmen for American Government?" and, with Mrs. Farley, authored "An American Ombudsman: Due Process in the Administrative State," 16 Admin. L. Rev. 212 (1964).

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4. Farley, A Layman's Viewpoint: Crisis in the Church, V Topic: RELIGION IN A CHANGING WORLD 60 (1965).
One of these currents has been the evolving irritation of our youth with some of the values of the Protestant ethic. A second flows from the sudden realization that the challenge of the technological age is upon us, seriously affecting our lives, at a time when we are ill-prepared at the administrative level to accept the challenge. The third current of our discontent has been an acute and embarrassing awareness of gross inequity, perpetrated without reason upon members of our society, white and, predominantly, black.

These tensions, in and of themselves matters crucial in the extreme, were further inflamed by both the archaic prolificness of administrative organizations and our failure to develop meaningful capabilities for managing change. The Report of the National Advisory Commission on Civil Disorders emphasizes this point:

The . . . ghetto resident feels deeply that he is not represented fairly and adequately under the arrangements that prevail in most cities;

In the . . . face of the bewildering proliferation of both community demands and local, state and federal programs . . . [there is a] need to create new mechanisms to aid in decision making, program planning and coordination; (Brackets supplied.) . . . professional representation can provide substantial benefits in terms of overcoming . . . alienation from the institutions [and, I would add, the processes!] of government. . . . ; (Brackets supplied.)

The lack of communication and the absence of regular contacts . . . prevents community leaders from learning about problems and grievances. . . .

5. Paper by Adam Walinsky, FOUR ILLUSIONS, presented October 5, 1968, at the organizational meeting of the New Democratic Coalition.
11. Report, supra note 9, at 296.
12. Id. at 293.
13. Id.
14. Id. at 285.
The same points are equally applicable to members of the middle economic class who are

\[\text{subject to many of the same frustrations and resentments in dealing with the public bureaucracy as ghetto residents, [but] find it relatively easy to locate the appropriate agency, for help and redress. If they fail to get satisfaction, they can call on a variety of remedies—assistance of elected representatives, friends in government, a lawyer. . . .}^{15}\] (Emphasis and brackets supplied.)

Viewed from a slightly different vantage point, a hallmark of this quarter of a century has been the unparalleled extension of government services yielding a steady proliferation of administrative agencies. While this concern with extending government responsibilities in the provision of social services and the management of the economy seems most pervasive at the federal level, in fact, agency growth has occurred with greater frequency within the jurisdictions of state and local governments. For example, in the five year interval between the 1961 and 1967 Census of Governments, the number of governmental units increased by thirteen in Maine, by five in New Hampshire, and by fifteen in Vermont. Furthermore, each of the New England states, contrary to the national experience, increased the number of its autonomous school districts.\(^{16}\) By comparison, the number of local

\[\text{Max Ways, writing in FORTUNE, describes the fragmentation of one citizen's contacts with that nebulous entity, "government." The young Negro, half-literate product of a rural southern school, found through bitter experience that each fragment of the governmental apparatus assumed it knew better than Jeff did about the corresponding fragment of his life. The school system was concerned with one factor; the health services with another; the police with a third; and the social worker, yet another. No one was concerned with Jeff as a whole man. Author Ways concluded that:—}^{\text{\ldots The Deeper Shame of the Cities, FORTUNE 132, 206 (Jan. 1968).}}\]

\[\text{\ldots there was nothing in the structure of the city to which the whole Jeff could attach himself, no point at which he could experience the reciprocal awareness, the mutual trust, of citizen and city . . . [a]sk Negroes what and whom they hate most. High on their hate list are social workers, teachers, hospital staff—all the people who have been trying to help this fragment and that fragment of a Negro's life. This attitude is, of course, unfair . . . the Negro hates them because they are his points of contact with a system that insists that he travel all the way to meet its terms, a system that has lost its unity, its heart, that will not reach out with warmth toward where he is. . . .} \]

\[\text{\ldots The Deeper Shame of the Cities, FORTUNE 132, 206 (Jan. 1968).}\]

\[\text{15. Id. The Commission specifically noted that . . . the typical ghetto resident has complicated social and economic problems which often require the services of a whole variety of government and private agencies. At the same time, he may be unable to break down his problems in ways which fit the complicated structure of government. Moreover, he is often unaware of his rights and opportunities . . . and unable to develop the necessary guidance from either public or private sources.}\]

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government units in Pennsylvania, by taxing power and type, increased by over one thousand units (from 5073 to 6201) in the same period. These figures are conservative, excluding all semi-autonomous agencies through which these states and their local governments provide for certain functions, i.e. "dependent" school systems; state-supported and state-related institutions of higher education; and the quasi-public authorities and special agencies or districts.

Without doubt, this growth was fostered by need as perceived by changing "communities of interest." The basic question—as yet unresolved—is whether in the attempt to administer to felt need, local governmental units are effective units for administration and execution. Certainly the early emphasis on and continuing support of federal programs resulted primarily from our unfortunate experience with the capability, and at times the unwillingness, of state and local government to effectively and efficiently meet such needs. Mal-apportionment of state legislatures, antiquated state constitutions, low compensation for elected and appointed officers, and interim, sporadic convocation of the legislative branch constituted the major impediments to effective and responsive government at state levels. Too, historical stress upon decentralized local government resulted in an inhibition of regional cooperation for meaningful problem-solving; duplication in essential services, including administration; fragmentation of formal lines of authority; and the propensity to establish innovative institutions to avoid the foregoing practical restrictions. Today the same obstacles to effective and responsive state and local government remain. It cannot be challenged that this topsy growth has engendered incongruities, vagaries, trivialities, and rivalries in the administration of individual and communal services.

The peril is obvious: the opportunities to be realized in the resolution of tensions is endangered to the extent the citizenry reacts blindly,

17. Id.
19. Farley, supra note 8. The restrictions upon local government operations were originally intended to insure that local governmental units would remain responsive to the persons within their geographic jurisdictions. However, popular needs required the performance of functions which a single local governmental unit could not undertake—either because of stringent indebtedness restrictions or the necessity for breaching jurisdictional boundaries. To meet the need, the concept of the "authority" was increasingly used. The end result is that, in most instances, debt service paid by this entity (rather than by the state or some other body with the power to tax) is more expensive and its governing board less responsive to the demands of the body politic. See Concurring Opinion of Chief Justice Bell in Basehore v. Hampden Industrial Development Authority, 433 Pa. 40, 63 (1969).
emotionally—out of intense and continuing frustration—to these pervasive accoutrements of bureaucracy.

GRIEVANCE PROCESSING

Our orientation in the face of these tensions must be a re-emphasis of human values. Achieving this emphasis is dependent upon the provision of recourse by the individual citizen from an administrative judgment of the bureaucracy. The need for such a solution arises out of two increasingly commonplace complaints. In the first, the citizen inveighs against discretionary decisions because he disagrees with the manner in which an official has exercised his discretion. The second complaint stems from the citizen's allegation of official misconduct and arbitrary abuse of power. In neither case does the citizen have recourse to a convenient forum in which he might air his grievance or challenge the discretionary act.

How, then, are these grievances to be promptly heard? Consider present-existing procedures by which grievances are heard in the administrative state. To do so, we must have some criteria against which the extant procedures can be judged. With slight modification Professor Gwyn's “desirable consequences of the Ombudsman's activities” provide an acceptable functional measurement. Grievance procedures should:

—Provide the individual with a means of redress which is prompt, responsive and inexpensive.

—Provide societal protection against maladministration in gross.

—Reduce (and, hopefully, reverse) the trend toward citizen alienation with the administrative state, with the net goal of enhancing the public's confidence in the administration of its affairs.

—Promote legislative oversight, reducing the time-consuming function of case work to permit more critical consideration of legislation.


21. It is clear beyond doubt that with the possible exception of California and New York, state legislators are without staff and facilities adequate to undertake case work. Even at the federal level, my associate, Congressman William Steiger (R.-Wisc.), conceding that constituent case work is an “ombudsmanic” function, acknowledges that the number of inquiries is fast consuming too much time, not only of the elected representative, but also of his staff, leaving too little time for the performance of the Congressman's principal function—legislation.
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—Protect the civil servant from unfounded criticism and public calumny.22

Many devices, governmental and private, formal and informal, serve to promote access of the individual to the administrative agency in situations where he believes he has been aggrieved. For example, there are internal avenues of appeal within the administrative agency itself, and external avenues through judicial institutions.

The former may involve two distinct concepts. In the first case the agency formalizes its "grievance hearing" function by establishing its own investigative unit. Ready examples are the inspectors general of the military services and the investigatory division of the Maine State Police. A second concept involved in such internal appeals is that brought to mind by the phrase "up the chain of command" and usually acknowledged by the external agency, the judiciary, by the jurisdictional requirement that, normally, all remedies before the agency must have been invoked or exhausted before the court will hear the case.

As to either alternative of internal redress, one generalization is pertinent: with the sole exception of New York,23 historically less attention has been given to the functioning of state administrative agencies, including their procedural and substantive rules, than has been devoted to the study and improvement of the federal bureaucracy. The Model State Administrative Procedure Act, adopted in one form or another in some twenty-five jurisdictions (excluding Pennsylvania24), and the occasional studies which mark the long-delayed progress of

22. See Address by Andrew N. Farley, The Ombudsman, delivered to the Pittsburgh Chapter of the Federal Bar Association, January 12, 1968:

I do not propose the institution of the ombudsman at any level of government as a penalty or yoke upon the administrator. There are few people who have worked closely with persons in responsible positions at all levels of government who do not appreciate that those who labor in the public's service, for the most part, give as much attention to the needs and concerns of the individual as to the broader societal and national goals. But we have all felt the constraints of rules and regulations which failed adequately to discriminate, and likewise know persons who fail to appreciate or acknowledge the humanity of the individuals whom we serve. Even more crucial—we have felt inadequate and helpless in attempting to reverse these pressures. 116 PITTSBURGH L.J. (Oct. 1968).

23. R. BENJAMIN, ADMINISTRATIVE ADJUDICATION IN THE STATE OF NEW YORK (1942).

24. A detailed comparison between the Model Act and the Pennsylvania Administrative Agency Law, Act of June 4, 1945, P.L. 1388 as amended, PA. STAT. ANN. tit. 71, §§1710.1 et seq. (1962), was beyond the scope of the author's address to the Northern New England Assembly. It is, however, difficult to understand why the Pennsylvania General Assembly has failed adequately to consider adoption of either the Model Act of 1946 or the Revised Act of 1961. For the student, a good starting point in comparison of the Model Act and the Pennsylvania statute is the reference Table of Statutes in F. COOPER, II STATE ADMINISTRATIVE LAW 903ff. (American Bar Foundation, 1965).
this limited review of state administrative agency operations, emphasize this limitation. Indeed, the announced goal of the drafters of the Model Act was:

... to encourage [state administrative] agencies to give reasoned explanations of their own decisions, to specify clearly avenues of appeal.\(^{25}\) (Brackets added.)

The internal agency review, either through a special department or senior administrators, does not seem best calculated to insure against maladministration, to guard against citizen alienation and distrust, to promote legislative oversight, or to protect the civil servant from unfounded criticism. At this echelon of government one is more likely to find the civil servant inclined to protect the reputation of his agency or department.

The option of internal agency review, particularly at the local and state levels of government, is less viable. At this level of government the citizen too frequently encounters a greater proportion of political appointees whose judgment and exercise of discretion respond to influences extraneous to the merits \textit{per se} of the issues at hand. A further disability of effective grievance processing at this level of government is the relatively smaller size of staff. This invites an avoidance of confrontations with influential representative clientele and promotes the tendency to gloss over individual cases in an effort to keep abreast of the case load.\(^{26}\)

With few exceptions, the regulatory and administrative agencies of the several states, including Pennsylvania, seldom maintain uniform

\(^{25}\) \textit{Id.} at 24. The major principles embraced in the Act as adopted by the Conference are:

1. Requirement that each agency shall adopt essential procedural rules, and, except in emergencies, that all rule making, both procedural and substantive, shall be accompanied by notice to interested persons, and opportunity to submit views or information;
2. Assurance of proper publicity for all administrative rules;
3. Provision for advance determination of the validity of administrative rules, and for "declaratory rulings," affording advance determination of the applicability of administrative rules to particular cases;
4. Assurance of fundamental fairness in administrative adjudicative hearings, particularly in regard to such matters as notice, rules of evidence, the taking of official notice, the exclusion of factual material not properly presented and made a part of the record, the proper separation of functions;
5. Assurance of personal familiarity with the evidence on the part of the responsible deciding officers and agency heads in quasi-judicial cases;

\(^{26}\) \textit{Id.} at 3-5.
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rules of procedure, and the substantive guidelines are most frequently wrought in the crucible of litigation—from the agency to the trial de novo to appellate review.

Tested against our criteria, external procedures, e.g. judicial review, frequently are an unacceptable means of securing redress of grievances by the individual citizen. Assuming jurisdiction and the exhaustion of administrative remedies, courts, in frequent instances, consider themselves bound by the expertise of the administrative agency as to all questions of fact. In addition, and notwithstanding public disclaimers to the contrary, there is little reason to believe that state courts in major metropolitan counties are current and, therefore, that redress will be "prompt." Nor is recourse to a judicial determination inexpensive.

Because justiciable issues are heard on a case by case basis—and theoretically a decision in one case is not binding upon a different party although the facts are identical—litigation frequently fails to protect society against maladministration in gross. Neither does the delimited function of a court—at least in the adversary system of justice—permit the court effectively to counter citizen alienation, promote legislative review of significant concerns or recommend corrective legislation, let alone promote the esprit of the civil servant. And finally, in comparison with the federal tribunals, politics per se plays a much more important and, regretfully, successful role in the functions of the state judiciary—especially at the justice of the peace or magisterial and trial levels.

Legal aid has often been favorably compared to the ombudsman concept when discussing recourse of an individual from a judgment of the bureaucracy, but the difference is greater than the similarity. The legal aid institutions—public and private and including the neighborhood legal services agency—are often restricted in their clientele, by law, by resolution of the agencies' board of directors, or by agreement with the local bar association (whose intention is protection of the individual practitioner within its jurisdiction). To the extent that such agencies must turn to the courts when seeking redress for their clients, my comments earlier respecting the crucial inability of the judiciary to respond in conformance with our criteria for measurement are equally applicable. It must be admitted in favor of this concept, however, that the executive of a legal aid organization has a unique opportunity to generalize his agency's experience, and by so doing can provide a modicum of societal protection against official
misconduct and abuse of discretion, as well as propose and actively support corrective legislation.

An individual may choose to seek redress by referring his grievance to his legislator. But, at the state level, the individual legislator has neither staff, research assistance, time, nor inclination to act as an ombudsman—even if one assumes this is properly a legislator's responsibility! Here too, the conceptual framework of government has broken down. In almost every one of the fifty jurisdictions, the legislative branch endures a part-time existence, with acutely limited interim resources, and depends upon the executive department and upon organized special interest groups in the performance of two historic legislative responsibilities: (a) the proposal of new legislation and (b) the continuing surveillance of governmental operations.27

In the more flagrant situation, the news media or private organizations, such as the American Civil Liberties Union, may promote an individual's cause in the interest of "justice." Such methods are sporadic at best—and more often than not only the "high visibility" causes are stressed.

I find the above grievance processing procedures wanting. However, notwithstanding their limitations, the existence of a variety of means of access for the redress of citizen grievances is salutary. The means just discussed are useful, and should be improved, but must be supplemented.

THE OMBUDSMAN

The American approaches, interests and objectives with respect to resolving citizen grievances—at both federal and state levels—differ markedly from those embodied in the Scandinavian ombudsman concept. The mutual intention is toward more uniform, responsive, and democratically oriented administrative practices and procedures. The emphasis in the United States and the several states, however, has been upon internal executive control and legislative (and politically oriented) investigations of the bureaucracy, subject always to severely restricted jurisdictional parametres, rather than upon responsiveness to direct, individualized, citizen complaint. Notwithstanding our intention, however admirable, the fact unfortunately remains that in actual practice the established processes for resolution of grievances at the local and

27. Cf. G. GALLOWAY, HISTORY OF THE HOUSE OF REPRESENTATIVES 185, 188 (1961) as to the "legislative oversight" functions performed by the United States Congress.
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state government levels is either non-existent or, what is more tragic, inaccessible to the person who most needs the guidance and the service.28

This situation—the convergence of maximum contact (and, thus, enhanced opportunity for the wrongful or foolish exercise of administrative discretion) with minimum internal or external and objective safeguards (and, consequently, a paucity of effective recourse by the aggrieved citizen)—seems ripe for the introduction of a modified version of the ombudsman.29

Approximately three years ago, the question of the desirability of the institution in Pennsylvania of the concept of the ombudsman was considered.30 In evaluating the ramifications of adoption of this institution, it became apparent that at the state level it was preferable to have

28. The Institute for Local Self-Government, Berkeley, California, began pilot research on local government procedures for dealing with citizen grievances. The Institute’s results indicate “... a potentially serious weakness in local government caused by a general absence of accessible and inexpensive procedures for objecting to decisions or non-decisions.” See: Preliminary Inventory of Selected Administrative Procedures for the Redress of Citizen Grievances in California’s Urban Areas (Sept. 1966), and The Mexican Amparo as a Supplemental Remedy for the Redress of Citizen Grievances in California (Jan. 1967).

29. The Northern New England Assembly in Plenary Session at Montpelier, Vermont, November 20, 1968, concluded that

... [the] creation of state Ombudsmen for Maine, New Hampshire, and Vermont would be helpful to both the citizens and the government of those states.

Ombudsman legislation had previously been introduced in these three states and in the remaining 47 state jurisdictions. SUBCOMM. ON ADMINISTRATIVE PRACTICE AND PROCEDURE, SENATE COMM. ON THE JUDICIARY, 90TH CONG., 1ST SESS., OMBUDSMEN—1967: COMPILATION OF STATE PROPOSALS (1967). Only Hawai’i has enacted ombudsmanic legislation, the text of which is set forth in the Appendix at 368 ff. in ROWAT, infra note 31.

There is presently pending in the Pennsylvania General Assembly legislation to establish

... an office of Grievance Commissioner with the authority to investigate, either on a complaint by a citizen or on his own motion, decisions, acts and other matters of agencies of the Comonwealth ... so as to promote higher standards of competence, efficiency and justice in the administration of State laws. ... House Bill 530 (Printers No. 618), Sess. of 1969 [hereinafter the Bill].

This legislation, previously introduced in the 1967 and 1968 Sessions of the General Assembly, but never reported out of Committee, sparked an immediate and generally unfavorable reaction from the Executive Offices. The Pittsburgh Press, Mar. 30, 1969, at 9, col. 1. The point argued was that the Governor’s “branch offices” throughout the State “... are equipped to do anything that an ombudsman would be able to do.” Id. While it is no doubt true these offices, and particularly those in ghetto areas, have served the citizen well, I doubt that such offices are empowered “... to investigate any decision, recommendation, or any act done or omitted relating to a matter of administration. ...”, Bill § 11(a), or “... to compel the attendance and testimony, by subpoena and capias, and [to] examine on oath any person ... who is able to give any such information. ...”, Bill § 15(b), as is required by an ombudsman to complete a matter under investigation, or to report annually to the Governor and the General Assembly, Bill § 16. (Emphasis and brackets added).

30. Privately circulated Memorandum, Ombudsman for Pennsylvania, August 10, 1966, with accompanying legislative proposal. This study was undertaken by the author and his wife, Marta P. Farley, at the request of the honorable Genevieve Blatt, then Secretary of Internal Affairs, an elective constitutional office since abolished and, to Miss Blatt’s credit, largely upon her insistence.
the ombudsman as an executive officer rather than an agent of the General Assembly.\textsuperscript{31} This procedure seems mandatory, given the fact that legislatures in Pennsylvania and in other states have been losing ground to the initiative of the executive and the innovation of the bureaucracy. As the concept of the ombudsman aims at preventing abuse in the administrative sphere without impeding either independence or efficiency, opting for an ombudsman as an officer within the executive department but independent of the Governor would enhance his effectiveness. Ineffectiveness and even failure are not remote possibilities if the \textit{raison d'être} for the institution is to be as a makeweight in the system of separation of powers. In fact, one of the earliest proposals in the United States analogous to the ombudsman conceived of an executive officer empowered to receive public complaints and grievances and to tender suggestions regarding procedures deemed objectionable or requiring improvement.\textsuperscript{32}

Similarly, the most well-known institution charged with administrative oversight, the French \textit{Conseil d'Etat}, is an agency of the executive department, exercising quasi-judicial functions \textit{[e.g. cassation and recours de pleine jurisdiction]}. The \textit{Conseil} is primarily charged, however, with "general and exclusive supervisory jurisdiction over administrative decisions . . . [and is] a general adviser of the Government on administrative matters and of the drafts of legislation submitted by Government Departments."\textsuperscript{33} One of the unique parallels to the \textit{Conseil} is the ombudsman: he is a \textit{judicial} officer in the sense that he is expected to make public his evidence and the rationale for his decisions; he is an \textit{executive} officer and administrative agent inasmuch as his primary concern is with the enforcement of existing laws. The om-

\begin{footnotesize}
\textsuperscript{31} Cf. D. \textsc{Rowat}, ed., \textsc{The Ombudsman: Citizen's Defender} (2d ed., 1968):—It is becoming all too easy to lose sight of the three essential features of the original Ombudsman systems. These are:
\begin{enumerate}
\item The Ombudsman is an independent and non-partisan officer of the legislature, usually provided for in the constitution, who supervises the administration;
\item He deals with specific complaints from the public against administrative injustice and maladministration; and
\item He has the power to investigate, criticize and publicize, but not to reverse, administrative action. \textit{Id. at xxiv.}
\end{enumerate}
\textit{But see Gwyn, supra note 20, at 46:—"Must we then conclude that any Ombudsman who is not selected by the legislature is a faculty specimen? Our analysis of the structure and consequences of the Ombudsman suggests that we need not."}

\textsuperscript{32} Benjamin, \textit{supra} note 23, at 18.

\textsuperscript{33} H. \textsc{Luethy}, \textsc{France Against Herself} 19-20 (1957); \textsc{Sir John Whyatt}, ed., \textsc{The Citizen and the Administration} §§ 13-14 (1961); Memorandum from Howard Richards, \textit{Adaptation of the Ombudsman Idea to the United States}, privately circulated to the Staff of the \textit{Center for the Study of Democratic Institutions}, March 16, 1965.
\end{footnotesize}
budsman, however, has a third functional attribute which the *Conseil* does not: He is a *legislative* officer to the extent his experiences suggest the need for refinements or revisions in existing laws and to the extent he accepts, evaluates, and acts upon complaints referred to him by individuals, whether directly or through their legislators.

Several other factors are persuasive in the case for making the ombudsman an executive officer. Gubernatorial appointment, without major exception, has been the traditional method for naming state officials. Legislative appointment has been relatively rare, being limited in Pennsylvania to the naming of members of the governing boards of state-related educational institutions. Also, the Governor, elected at large, is somewhat more immune to varying political pressures, a tendency that would enable the ombudsman to avoid becoming involved in the controversy which necessarily accompanies the process of compromise in predominantly two-party legislatures. Furthermore, a qualified candidate could be persuaded to undertake the responsibilities of ombudsman by a Governor who could virtually assure his appointment. Finally, the Governor, entrusted with the obligation of nominating the ombudsman, would be aware that his personal and official prestige would be inextricably interwoven with the qualifications and, ultimately, the performance of his nominee in the conduct of the ombudsman’s duties. Contrariwise, the most serious failure in legislative appointment is the inability to fix with certitude ultimate responsibility for the appointment.34

The ombudsman’s independence from the executive would be enhanced by requiring the consent of the legislature to the appointment. Once appointed, the ombudsman’s continued independence would be promoted by establishing his term of office as slightly longer than that of the Governor’s and permitting the ombudsman to succeed himself in office for a number of terms, subject only to removal for

34. The Bill, *supra* note 29, provides for creation of an Appointment Board consisting of

... the President of the Pennsylvania State University, the Chancellor of the University of Pittsburgh, the President of Temple University, the President of the Pennsylvania State Chamber of Commerce, the President of the Pennsylvania AFL-CIO, and the President of the Pennsylvania League of Women Voters, all ex-officio, and three additional members; one to be appointed by the Governor, one to be appointed by the President Pro Tempore of the State Senate and one to be appointed by the Speaker of the House of Representatives. Bill, § 3(b).

Of the one or more candidates nominated by the Appointment Board, the Governor selects one as the Grievance Commissioner. There is no provision for the advice and consent of the General Assembly.
defined causes by action of two-thirds of both houses of the legislative branch.\(^{35}\)

Obviously any proposal for establishing the ombudsman at the level of State government with broad supervisory powers at the local or municipal echelons must consider the comparability of environment, one facet of which is publicity. In a civilized community public opinion is a powerful means to secure the proper functioning of government administration and to afford the possibility of remedy to an aggrieved citizen. Thus there should be a requirement that the ombudsman's annual report be released simultaneously to the Governor, the legislative branch, and the public media.

In all countries where the ombudsman is extant, a characteristic feature of the office is its lack of bureaucratic image. The ombudsman—even following the appointment of a deputy ombudsman in Sweden—is a highly personal institution. Proponents as well as critics of transferability claim this factor constitutes one of the major axioms of success. All of the state proposals reviewed to date conceive of limited staffs and rely heavily upon the personal factor.\(^{36}\)

By our earlier established scale of values, one of the criteria important to redress of grievances is popular identification with the personal efforts and being of the officer in charge. These characteristics are easily maintained, as the Swedish experience amply demonstrates, even when deputies are named. Thus, in Pennsylvania, it was suggested that the ombudsman's office be established on a geographic basis, with the ombudsman situated at the capital (Harrisburg) and his two deputies at either end of the state, one in the east (at Philadelphia) and one in the west (at Pittsburgh).\(^{37}\)

This organization of the office would also permit realization of a second goal—supervision of the administrative sphere at the local gov-

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35. The Bill, supra note 29, establishes the Grievance Commissioner's term of office as six years and he may be removed from office "... for neglect of duty, misconduct, or disability upon the recommendation of the Governor and upon a two-thirds vote of each house of the General Assembly in affirmation thereof." Bill, § 5.

36. The Grievance Commissioner "... shall be learned in the processes of law and government and have a distinguished intellectual standing in his profession. ..." Bill, § 4(1). In addition the Grievance Commissioner shall not have been a member of the State legislature for two years prior to his appointment and shall not "... hold any office for reward or profit under the State during his tenure or for two years thereafter." Bill, § 4(3).

37. The pending Pennsylvania legislation authorizes appointment, by the ombudsman, of a first assistant and "... such other officers and employees as may be necessary for the efficient performance of his functions." (Emphasis added). Bill, § 8(a). Geographic dispersion thus remains a possibility.
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ernment level. Geographic distribution enhances access by the public and, while opinions and recommendations would issue only from the ombudsman himself, the continuation of deputies in defined locations would facilitate the development of a familiarity with and expertise in the organization and patterns of administration within the area assigned.

CONCLUSION

The advantages to be gained from the institution of Ombudsman benefit the government's administrator and the citizen:—

* The Ombudsman provides an effective means for examining alleged maladministration.

* The governmental administration benefits from the recommendations of the Ombudsman based upon his over-all view of the system and his specialized experience.

* Assemblymen are assured that their constituent's complaint is handled on a professional and impartial basis, but with personal concern and attention to detail not presently possible.

* Complaints are examined on their merits and not on the basis of the amount of pressure which can be brought to bear by the complainant.

* The experiences of the Ombudsman would permit him to make incisive recommendations for clarification, amendment, or initiation of administrative rules and regulations as well as of legislation.

* The Ombudsman provides continuity and informal procedures for dealing with administrative malfunctions at minimum cost to the government and at no direct cost to the citizen.

Indeed, considering the homogeneity of the population of the several states; the vital public concern for more democratic and responsive government; as well as the identity of social and political environment, one would suggest that we now face the best opportunity for transferring the concept of the ombudsman successfully.

38. Unfortunately, excluded from the purview of the Pennsylvania Grievance Commissioner is "any political subdivision of the State or entity thereof." Bill, § 2(5).