

**THE INTRODUCTION OF THE INSTITUTION
OF THE OMBUDSMAN IN LATIN AMERICA**

by

**Dr. Mario Fernando Ganora, Officer
Office of Controlador General Communal
Municipality of Buenos Aires, Argentina**

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To introduce an institution such as the ombudsman in Latin America is not an easy task. There is strong opposition from those who think that it is something exotic which has nothing to do with our local traditions. For them it means more bureaucracy and expenditure without any improvement in the control of the administrative operations of government or in the protection of civil rights. They also believe that its functions are performed better by other agencies and that the ombudsman will endanger the constitutional principle of the separation of powers.

We may consider all these views to be the typical reaction of a conservative opposition to the introduction of a new social institution. In fact, it is easy to answer these objections. First, tradition often includes many things that are not acceptable to modern moral standards and which need to be changed. In the past, a lot of terrible things, such as slavery, torture and the imposition of the death penalty, were legitimated in the name of tradition. Thus, tradition, justice and fairness are not identical.

Second, institutions always need adjustments. Our constitutional and legal systems were not born fully developed. Over the course of centuries they have developed in the conflict of competing institutions, adopting what has proved useful to the new circumstances. The creation of the institution of the ombudsman is part of that process of adjustment and growth in order to protect certain interests.

Besides, only a minority of social institutions are consciously designed while the vast majority have just developed as the unplanned result of human actions. It is easy to generalize about the boundaries of legislative, executive and judicial power, but indicating the precise point where one begins and the other leaves off is a different matter. The line of demarcation is a historical product that may be changed according to the new times. To be blind to all that which does form part of tradition is not only silly but dangerous.

There are two kinds of conservatism involved in the opposition to the institution of the ombudsman. One is related to the mental habits of our lawyers, judges and the law teaching profession in general. Many of these individuals belong to the upper classes for whom old fashioned ideas and conservative views are a sign of respectability. They do not need to change their minds because their way of life does not suffer the pressure of changing social and

economic conditions.

But this conservatism is not actually dangerous. Lawyers and judges are, in general, rational people who at bottom believe in justice, so they may be convinced by rational means that the institution of the ombudsman is necessary to strengthen democracy.

But there is another kind of conservatism that is really dangerous because it is related to the corruption of the political machine. Throughout history, rulers have imposed duties and obligations on the ruled. Despite what theorists say about representative and responsible government, the political machine uses power for its own benefit. The political machine builds up its power, creating personal bonds among certain kinds of people. The poor may obtain lodging, jobs, loans, medical treatment, etc. from the political boss. Businessmen may be granted licenses, permits, authorizations, and exemptions because of their good relations with the members of the political machine. And, of course, a large number of criminal activities such as gambling, organized prostitution, drug trafficking and racketeering are possible on account of certain political protection.

The party machine does not do all this free of charge. In fact, it does not do anything free of charge. The people who are favoured by the machine are expected in turn to show their appreciation when so required. They are supposed to contribute funds for the party's candidates, influence people to vote in a certain way, be nice to party hacks, etc.

The political machine is in the influence-peddling business. Its racket is trading favours. Their motto is: "I'll do something for you, you do something for me". In political terms, this means corruption because as a councillor, a food inspector or a judge, I can really do for you only what the law tells me to do. Legally, there is nothing that I may do for you. We all know this, of course, but this is the way things were until the ombudsman appeared on the scene. For the ombudsman is the big spoiler of the influence-peddling business. Once the people learn what their rights are, they need no favours from anybody and, by the same token, they do not have to return any favour either.

In short, if the ombudsman institution prevails, the political machine has no basis for its existence. The citizen will not need anybody "to help things along" or "to speed up the decision" or "to do something for him". This is why getting the ombudsman institution firmly established will not be easy. Those who are in charge prefer not to have anybody looking over their shoulders. But the mood of the times is against them. More and more people are learning about their rights. Above all, they know that they have the right to know what is going on, they are slowly but surely learning that all public officials should be held accountable.

Still, it is not easy and will not be easier for some time. Ombudsmen may not have an easy time in obtaining cooperation from the authorities. They will be blamed by the public when expectations are too high; sometimes the bureaucrats will undercut ombudsmen, making it appear as if it is something that they were forced to do or that it was their idea, because of the public pressure generated by an ombudsman's report or investigation.

The ombudsman's power, as you know, is based on the support he may get from the people.

But the people are tired of bad government and they want quick results. Yet, it is difficult for someone who is regarded by government as an intruder to achieve quick results. He will be encouraged or assisted in the attainment of his aims. Failure to solve problems will make the people believe that the ombudsman and his staff may be good guys, but useless.

Proclaiming political neutrality does not help to put an end to the machine's hostility. For the political machine, the ombudsman, no matter what his ideology, will be a source of trouble. But, if proclaiming political neutrality will not appease the party machine, why are we so preoccupied by the ombudsman commitment? Do we believe, perhaps, that this commitment would destroy his objectivity and fairness?

We may acknowledge that zealots cannot be good ombudsmen, but the same is true of those who are afraid of involvement. Lack of commitment, opportunism and moral weakness are birds of the same feather. Under the pretext of being neutral, some people, indifferent to injustice, prefer to avoid any trouble with the authorities and with social prejudice. Besides, the ombudsman's labour is related to issues in which social prejudices, class bias and personal interests are involved, so that neutrality is impossible.

Neutrality and objectivity are not identical concepts. The naïve idea that objectivity rests on the mental or psychological attitude of the individual official, on his training, care, lack of political commitment and detachment, is false. First, we are all products of our education, class bias, religion, expectations, theories, past experiences and language. We are inclined to the erroneous belief that the uses and customs which we observe in our locale are universal laws of social life, holding true for all societies. Indeed, we sometimes only notice that we are cherishing such beliefs when, in foreign countries, we find that our habits are by no means as acceptable as we assumed. Our values determine not only the selection of the issues we consider worthy, but also the choice of the tools to resolve them. We may labour under the illusion of being objective while in fact acting as unconscious followers of an ancient and cruel superstition or theory.

There are two sides to objectivity. One involves the pursuit of truth, no matter where it may lead. This is true objectivity, to be intellectually honest. The other side of objectivity is related to the public character of the ombudsman institution, the pressure of public opinion, relations with the press and the parliamentary debate over the annual report. These are the safeguards that preserve objectivity and impose mental discipline upon the ombudsman.