

CORRESPONDENCE

*To the Editor,
Journal of African Law.*

Dear Sir,

THE OMBUDSMAN IN AFRICA

Mr. Tom Sargant, Secretary of JUSTICE, the British Section of the International Commission of Jurists, has made, in the Autumn 1964 issue of the *Journal of African Law*, an intriguing suggestion that the institution of the "ombudsman" be introduced into one-party states of Africa.

As ably explained by Mr. Sargant, the ombudsman is an official responsible to a parliamentary body, who has the authority, upon complaint of an aggrieved citizen, to check on abuses of administrative power. He is now a part of the governmental machinery of Norway, Sweden, Finland, Denmark, and New Zealand, and study is being made of the possible establishment of this office in India, Canada, the Netherlands, Australia, and Great Britain.

With all due respect, I must dissent from the optimistic position of Mr. Sargant, that the ombudsman "could provide at least a transitional answer to Africa's problems of how to reconcile dynamic and purposeful government with respect for administrative justice and the rights of the individual". I fear that he is trying to engraft an instrumentality of a highly sophisticated western political culture onto a system which had its origin in an entirely different milieu.

The success of the institution of the ombudsman rests principally on the fact that he is responsible to, and relies upon the backing of, a popularly elected parliamentary body which reflects the real locus of power. He is not an arm of the executive, whether king, president, or prime minister. Nor is he a member of the cabinet. He has no ministerial status. He enjoys high prestige because everyone knows that his ultimate sanction is the same force which parliament employs. Continued disregard of the ombudsman's recommendations and suggestions will lead to a clash between the administration and the ombudsman's superior, parliament.

In every one of the countries where the ombudsman has been successful there is an alert, intelligent, independent, well-informed and vocal electorate. It is this electorate which, in the final analysis, supports the ombudsman through parliament, and it is this electorate which can cause monarchs to abdicate, compel members of the royal household to abjure rights to the throne, overthrow governments, call ministers to account, and have prime ministers dismissed. It is this same electorate which, in the case of Sweden, has even been considering whether the monarchy should give way to a republic.

Such a situation does not exist in any one-party African state. The locus of power is not in the parliament, which all too often is not a genuine law-making body—much less a body to which the executive

feels a responsibility. In truth, the real power is often not in the formal agencies of government at all, but in the party; to use an outstanding example, according to the prevailing political philosophy of Guinea the party is the representative of the nation, and the governmental structure its instrument. The essence of such a system is not the separation of powers, but their fusion; and where the fusion has reached such a point as in Ghana, where the president may even discharge members of the judiciary, talk of an ombudsman seems strangely out of place.

It is true that the ombudsman appeared in Sweden before that country became a modern parliamentary democracy, but not during a period of absolute monarchy and not during a stage of Swedish constitutional development even remotely similar to that of a present African one-party state. The first ombudsman was appointed in the 18th century in a time of reaction against the absolutism typified by the reign of Charles XII, and the institution was revived in 1809, during another such reaction—at the same time, incidentally, as the adoption of the Instrument of Government, which even today forms a part of the Swedish constitution. At the first appearance, Sweden was going through a stage somewhat similar to that of England under the first two Hanoverians, and in 1809 the Swedish parliament was strong enough to tighten its control over the purse.

But even if Sweden had been, at the time the ombudsman came on the scene, an absolute monarchy of the traditional European style, it is difficult to see the analogy with modern 20th-century Africa.

In an African one-party state there is simply no group of sufficient political potency to back up an ombudsman in an extremity. Julius Nyerere, President of Tanzania, has declared, understandably enough, that his country needs not a brake but an accelerator, and this attitude is typical of modern African statecraft in its vigorous drive for national development. How could an ombudsman fit into that frame of reference?

Yours faithfully,

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