

# Book Review: The Control of Police Discretion: The Danish Experience: By Thomas J. Aaron, Published by Charles C. Thomas, Springfield, Illinois

Robert E. Dineen

Follow this and additional works at: <http://scholarship.law.marquette.edu/mulr>



Part of the [Law Commons](#)

---

### Repository Citation

Robert E. Dineen, *Book Review: The Control of Police Discretion: The Danish Experience: By Thomas J. Aaron, Published by Charles C. Thomas, Springfield, Illinois*, 50 Marq. L. Rev. 411 (1966).

Available at: <http://scholarship.law.marquette.edu/mulr/vol50/iss2/7>

This Article is brought to you for free and open access by the Journals at Marquette Law Scholarly Commons. It has been accepted for inclusion in Marquette Law Review by an authorized administrator of Marquette Law Scholarly Commons. For more information, please contact [megan.obrien@marquette.edu](mailto:megan.obrien@marquette.edu).

## BOOK REVIEW

**THE CONTROL OF POLICE DISCRETION: THE DANISH EXPERIENCE:** By Thomas J. Aaron, Published by Charles C. Thomas, Springfield, Illinois

In these days of strong arguments for and against the use of civilian review boards in police cases, it was to be expected that many books and articles would appear advocating or criticizing the concept. The reader will be agreeably surprised to find that Mr. Aaron has avoided the two extremes. He has written a factual, informative and objective description of the Ombudsman system employed in Denmark. The reader is left to make up his own mind whether this system could be adopted in the United States to advantage as a substitute for the contentious civilian review board concept.

The Danish Ombudsman is a creature of Parliament, appointed by it and answerable to it. Denmark has a national police force, so it was to be expected that police operations would be a subject of legitimate interest by Parliament.

The success of the Danish system rests upon public acceptance of the character and impartiality of the Ombudsman who administers it. By law, he is required to have a legal background. Though he operates a quasi-administrative agency, the approach is judicial. Operated on the theory that there must be an end to all controversy, the Danish law provides that there is no appeal from his determination. Incidentally, in dealing with complaints against the activities of regulatory agencies, he has no authority to change the decisions of the agency himself. He can report his findings and even suggest needed changes in the law but he cannot substitute his decision for that of the agency.

In police cases, the complaints in Denmark bear a remarkable similarity to those in this country. They involve favoritism, the issuance of improper regulations, the neglect of the police to follow prescribed procedures, *i.e.*, failure to inform the accused of his right to remain silent, the failure of the police to make a complete investigation of charges against their own members, discourtesy, "talking out of turn," failure to pay their bills, excessive use of force, etc. The reports of the Ombudsman on individual complaints are quite complete—thorough enough to convince the complainant that his complaint was taken seriously and was carefully and fairly investigated.

Of particular interest is the number of complaints processed by the Danish Ombudsman. In the period between 1955 and 1959, he and his staff processed 4,500 complaints. Of this number, one-third turned out to be within the proper scope of the Ombudsman.

The Center for the Study of Democratic Institutions at Santa Barbara, California conducted an exploration of this subject in 1966. They point out that the desirability of an office of "public protector," "citizens defender," or Ombudsman is being increasingly explored in this country. It is said that our citizens require protection against "inefficiency, maladministration, arrogance, and abuse on the part of the government." Governmental bureaucracy at all levels, federal, state and local, has allegedly reached the point that the need for an office of this kind is imperative. Like Mr. Aaron, Stanley V. Anderson, a political scientist at the University of California, has been studying the history and current operations of the Ombudsman in other countries and the feasibility of the office for the United States. Professor Walter Gellhorn of Columbia University wrote a scholarly article on this subject for the summer, 1966 edition of the Columbia University Forum. The views expressed in these two works are typical of the discussion now in progress.

In November, the voters of New York City by a significant margin rejected the concept of the civilian review board of police activities set up by Mayor Lindsay. The resulting discussion has veered away from the need for civilian review boards and has switched to the need for an Ombudsman. The question is: Why? Much of the criticism against New York's civilian review board was due to a belief on the part of the public that the board was "stacked" with people so deeply committed to the civil rights cause as to be lacking in objectivity in appraising racial complaints involving policemen. (Many of the complaints, of course, were completely unrelated to racial problems). Apparently, a large segment of the public believed these men were lacking in judicial impartiality.

True impartiality, of course, is the stock in trade of the Danish Ombudsman. He is selected because his reputation for complete objectivity is unquestioned.

In America, we go to great lengths to provide impartial arbiters in our judicial function. The litigant can challenge a juror for bias. He can ask the judge to disqualify himself for interest in the matter and, if necessary, can seek a change of venue to try the case in some community in which there is no prior knowledge of the facts. Looking back at the New York experiment, it now seems understandable that the public would not long accept a system in which the judges, though honest and sincere in their convictions, were nevertheless identified in a sizeable sector of the public mind with one side of the controversy. On the other hand, the civil rights people complained that the former police review board was "stacked" the other way—with people with a bias in favor of the police and against the complainant; it is now suggested that both groups, as a compromise, would be willing to accept

a review by some impartial arbiter like an Ombudsman. It is said that even some members of the police force, mindful of their own internal difficulties, also lean to this concept.

What is the stumbling block? Once again public distrust enters the picture. Many people looked upon the creation of the civilian review board in New York by Mayor Lindsay as a political device designed to attract votes from racial and liberal groups. Professor Walton Hamilton of the Yale Law School in his 1957 book, "The Politics of Industry," pointed out that there is a quaint custom in this country of stacking regulatory agencies with commissioners either from or with a bias toward the industry they are supposed to regulate. The presence on the National Labor Relations Board of men with alleged labor or employer bias, all appointed by the President, is cited as an illustration of the difficulties of keeping these agencies impartial.

What worries many of the proponents of the Ombudsman concept is that in a country the size of America the Ombudsmen would have to operate with large staffs, bureaucracies in themselves. It would be a case of one bureaucracy reviewing the actions of another. And if the bureaucracy of the Ombudsman was staffed by the usual American political process, it is conceivable that in a few years this new form of review agency—like New York's departed civilian review board—would soon lose its reputation for impartiality and be no different or better than the agencies it was appointed to review. All that would have been accomplished, in this view, is that one more level of overhead had been added to the government to be paid for by the taxpayers.

On these overshadowing issues, Mr. Aaron's work sheds no light and of course, was not intended to. He does prove that in a small country like Denmark where a citizenry honors and expects impartiality from those in government appointed to review the actions of others, good can result. We are left to wonder whether if such a system were set up in the United States, it might conceivably function better if it was operated and staffed along the lines of our courts, even though, as in Denmark, it was an adjunct of our legislative bodies. Mr. Aaron is to be complimented for providing a dispassionate, factual review and thereby enable us to have a better understanding of this development.

ROBERT E. DINEEN\*

---

\*Member of the New York and Wisconsin bars.