

VARIATION ON A CLASSICAL THEME:
THE ACADEMIC OMBUDSMAN IN THE UNITED STATES

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Although ombudsmen are more numerous in the United States than anywhere else in the world, very few of them even begin to fit the classic definition of ombudsman as that office is known in scores of countries. Accordingly, only a small number qualify for full membership in the International Ombudsmen Institute.⁽¹⁾

Was the concept, Swedish in origin, fundamentally changed in its American translation, or are the distinctions between "classical" and "specialized" (sometimes called "quasi") ombudsmen more apparent than real? Are there similarities which transcend substantive differences? This article considers these questions, with a focus on university ombudsmen as an example of specialized ombudsmen in the United States.

Having studied a variety of ombudsmen offices over a dozen years I would argue that the specialized ombudsman, at least in academe, is not very different from classical counterparts.⁽²⁾ The differences which do exist are often exaggerated. This assessment extends as well to other forms of specialized ombudsmen.

A high degree of similarity exists between classical and specialized ombudsmen on virtually every aspect of their role. University of Oklahoma Professor Larry Hill's familiar typology divides ombudsman models into two major

categories: non-directive and directive. The non-directive model is further broken down into detached investigator, enabler/facilitator, broker/negotiator. Directive models encompass arbitrator, advocate, political activist.⁽³⁾

The Michigan State University ombudsman office which serves some 40,000 students is a reasonable guide to the way in which many other academic ombudsman offices function. This office, established in 1967, was the first in the United States at a major educational institution and has been used as a model for countless others. As the Michigan State ombudsman since 1974 I have corresponded and met with ombudsmen in many countries. The scores of conferences I have attended and the experience of dealing with more than 12,000 individuals--a modest-sized army--naturally shape my point of view, but I believe my observations are applicable to academic ombudsmen throughout the United States and Canada.

Hill's Ombudsman Models

Professor Hill's non-directive and directive models were formulated to describe classical ombudsmen, those individuals whose independence is assured by virtue of linkage to legislative bodies who appoint them and to whom they direct their reports. A classical ombudsman, once appointed for what is typically a long term, cannot be removed except by vote of an extraordinary majority.

The classical ombudsman was established in three Scandinavian countries long before a Carnegie Commission Report on Higher Education recommended that this

concept be borrowed as one way to cope with some of the problems bedevilling American higher education in the turbulent decade of the 1960's.^(4,5)

Although the academic lineage is thus less ancient, the great growth of classical ombudsmen also occurred at this time.⁽⁶⁾ Nor did the concept change much, if at all, as it took root in a different environmental context.

Hill's non-directive model takes three forms:

1. Detached investigator--Investigation is the bedrock of an ombudsman's work, in academe as elsewhere. Unless investigation is perceived to be impartial, the findings will convince no one. As an ombudsman for students I will begin to investigate only if a student's complaint puts the process in motion, but once I start I am as free as any classical ombudsman to decide whether or not the complaint has merit. Thus I may focus initially through a student lens but I wear my own glasses.

Investigation at Michigan State is facilitated by the fact that a fundamental piece of campus legislation assures the ombudsman access to everyone on campus and to all records except a few that are private by law, such as medical or police records. Unlike the classical ombudsman, a campus ombudsman does not possess subpoena power, but no requested record or other necessary information has ever been denied me. My counterparts at other universities report the same experience.

2. Enabler/facilitator--All ombudsmen perform this role. Hill includes under

this model careful explanation, which is an important part of every ombudsman's job. Often that may be all that is sought. He also includes referral which, again, is a function both classical and academic ombudsmen regularly perform. Such referral gains much more usefulness in a bureaucratic hierarchy when the ombudsman "paves the way" with some notice that he or she is doing the referring. Absent that linkage, referral may prove to be a waste of time. Many classical ombudsmen emphasize this point in discussing their offices; the same observation is particularly salient on a campus where, contrary to what one might expect, students are often considered to be a necessary nuisance.

3. Broker/negotiator--All ombudsmen, from the most specialized to the most broadly based, constantly are called upon to fulfill this role. Depending on the circumstances ombudsmen bargain, negotiate, mediate. In my job I sometimes serve as a form of labor relations negotiator for student workers who are not organized, work under no contract, have mostly minimum wage jobs, and, as they are often reminded by their supervisors, are very expendable.

As indicated above, Hill's non-directive models fit university ombudsmen very well. On the other hand, his directive models, in my view, seldom fit either classical or campus ombudsmen:

1. Arbitrator--While I agree with Professor Hill that it is "not uncommon for clients (or others) to believe the ombudsman has powers of arbitration",⁽⁷⁾ I have not found a single ombudsman, in a government

office or a university, who considers a "final and binding" decision appropriate to make. Such decisions, however, invariably are made by arbitrators. Most ombudsmen deny they have such power, appropriate or not, and the more experienced are careful to avoid being weighted down with responsibility for decisions which properly are made by others.

Arbitration is invaluable in the resolution of countless disputes, but there is general consensus that it is not the proper province of an ombudsman.

2. Advocate--Here Hill's model seems rather broad for most ombudsmen, although it may be applicable to a degree in some situations. A true advocate will not be selective in weighing the legitimacy of complaints and grievances, but all ombudsmen I have studied claim to do exactly that. They may be less strictly neutral than an arbitrator or mediator, free to champion only one side in a dispute--the protesting citizen, the student, the prisoner--but action will be taken only after the claim in question is judged by the ombudsman to have at least some degree of merit.

As a faculty member I think I understand the pressures and anxieties of faculty, and as a member of a university community I am aware of traditional values to be upheld, such as academic integrity and academic freedom. Still, like all specialized ombudsmen, I do share some limited advocacy role in common with classical ombudsmen. Annual reports are often a vehicle for raising critical questions of process and targeting procedures or policies which disadvantage one's clients. Such reports are a distinguishing feature of any ombudsman's office. Their distribution to

those in positions of authority and the seriousness with which they are read can make the reports a powerful influence for change. To that extent an ombudsman may be an advocate.

3. Hill's third directive model is the political activist. It is unlikely that any ombudsman would publicly admit to this role even if subterranean activity occasionally occurs, depending on the politics of the country, the state, or the campus.

I agree with Hill that an ombudsman's orientation shifts, depending on the situation. He says that the fact that "no one of the models by itself succeeds in defining the (ombudsman) orientation surely helps to account for the ability of such a strange-sounding term to be accepted into the English language."⁽⁸⁾

He might have added that, in addition to shifting, an ombudsman often performs several roles simultaneously; real life is not divided into neat categories.

Other Roles

Ombudsmen, classical and others, share several additional roles not listed in Professor Hill's broad generic typology. For example:

1. There is a hint of the evangelist in more than one ombudsman's annual report. The power to persuade, orally and in cogent correspondence, is

a prerequisite for holding the office. After listening to ombudsmen on three continents explain their responsibilities, and after studying their reports, year after year, I am convinced that almost all have a strong individual role conception and share a desire to see counterpart offices established and flourishing elsewhere. The creation of a new office usually receives a public welcome in newsletters or similar publications. There is, as yet, no sense of being in a crowded profession and thus no effort to protect against newcomers.

2. Although some classical ombudsmen are trained in the law and may have served previously as judges, many others lack this background. This is particularly true in Australia but there all ombudsmen have legal advice readily available, if not actually on staff. Very few academic ombudsmen are lawyers, yet they too inevitably interpret legal matters and must have easy access to legal advice.
3. Intermittently any ombudsman, even if lacking the credentials, needs the skills of a psychologist in order to size up clients and reach at least a preliminary judgment on their credibility.
4. The patience of an educator is necessary in order to interact with those offices where response to complaints is not considered a high priority. A related ability to interpret "due process" for those unfamiliar with its meaning is also essential.
5. Maintaining a high degree of confidentiality characterizes every

ombudsman's office; this includes personal confidences. The opportunity to "ventilate" before a practiced listener is highly prized, by citizen and student alike; many clients want nothing further from the ombudsman.

6. Almost every ombudsman, whether the domain is a small island, a campus, prison system, or a continent, has been asked at some time to be an archivist, an almanac--if not an encyclopedia--on "past practice" and current procedures. Oracle, King Solomon, poker player--keeping silent or going for broke when the cards are right--watchdog, maybe a bulldog and, with due restraint and wisdom, even a benevolent dictator are all skills an ombudsman is expected to exhibit on different occasions.

Despite similarities in method of operation between classical and specialized ombudsmen, differences remain, some of them vast. Most classical ombudsmen envelop a wider scope and deal with problems of greater depth. Some specialized ombudsmen, although much more narrow in focus, share portions of these wider responsibilities. Examples are New Jersey's Long-term Care Ombudsman, Toronto's Public Complaints Commissioner, or ombudsmen who serve institutionalized populations--in prisons, mental hospitals, or the like. No one would argue that a decision to continue or turn off a life-support system, as New Jersey's ombudsman is entrusted to do, compares with a student's dissatisfaction over a grade. Nor is the New South Wales ombudsman's investigation into possible police corruption on a par with charges that a student's financial aid has been unfairly denied. Nonetheless, the terrain is sufficiently familiar that, local lore aside, almost any experienced ombudsman

would probably be able to function in specialized or classical offices with minimal adjustment.

Whatever the role, each ombudsman has to assess how it will be played. The weapon of choice and mode of action will be influenced by the client, the circumstances, the bureaucratic imperative--which office and what people in that office need to be pushed.

Each ombudsman listens as well as acts, chooses the stage, early or late, at which direct intervention will be considered, and decides the means of communication, written or oral, that will be most effective. Each must decide whether to come on strong or gentle, persuading with humor or indignation, determining, case by case, to work at the lowest or the highest level. Some matters need monitoring over a period of time; others are resolved in a single encounter. At issue may be policies and procedures, going well beyond the instant case, which either need administrative attention or repetitively reflect administrative inattention. In order to emphasize the importance of a matter, both classical and specialized ombudsmen may supplement regular annual reports with periodic memoranda targeted to a particular audience.

Wise choice of weapons builds an ombudsman's credibility. As respect increases for how the ombudsman operates, the clout, which is subtle, mysterious, even ephemeral--divorced from any power to give orders--nonetheless becomes real clout. Clout means that ease of access is assured. There is no need for constant insistence on right of access, and thus seldom, if ever, a necessity to use subpoena power even if it is possessed.

The effective ombudsman is regarded as credible not only by those who seek service or redress but also by those from whom that service or redress is sought. Independence is assured not because a statute guarantees it, but because interference would be considered by others to be not only unacceptable but unthinkable.

Alternative Forms of Ombudsmen

There is no simple answer to the question why the United States has gone in the "specialized" direction fairly extensively, yet refrained, with few exceptions, from establishing classical ombudsmen. In Australia and New Zealand, in Canada and the United Kingdom, and certainly in all of Scandinavia the ombudsman is stitched into the fabric of ordinary life. This is especially true of Australia, where ombudsmen offices have prominent telephone directory listings and some are advertised on buses; ombudsmen in several of the states are often familiar figures on radio and television.

One can search for explanations but the variables are inconsistent from one country to the next. New Zealand's interest in an independent ombudsman has sometimes been attributed to its unitary government, with long periods of one-party domination, powerful prime ministers, a one-house legislature, and lack of a written constitution, Yet Canada, with a totally different political organization, has established classical ombudsmen in every province except Prince Edward Island, with a number of specialized offices at the provincial and federal level--ombudsmen for corrections, privacy, language among others.

A dense network of college and university ombudsmen also exists; in this group even PEI is represented.

Australia, although federal like Canada, resembles New Zealand in that typically there is not much countervailing force there either. Political opposition at both federal and state levels is often weak. One-third of the Australian work force is employed by government, resulting in a large bureaucracy and heavy layers of administration. Attendant buck-passing and confused accountability are common. The appointment of ombudsmen was part of a much wider effort to institute multiple channels of administrative review in that country.

Reasons vary for establishment of ombudsmen in Scandinavia, the United Kingdom, West Germany, France, and elsewhere. The fact remains that diverse countries around the world have classical (and some specialized) ombudsmen while examples of the former remain scarce in the United States. Citizens of the United States surely encounter the same frustrations and range of problems that citizens of other nations experience. Instances of scorn and bureaucratic indifference are not hard to come by, yet an absence of classical ombudsmen in all but four states--none of them a major population center--is striking.⁽⁹⁾ What has developed is a patchwork quilt of ombudsmen, at all levels of government and in many private organizations as well, with geographic or subject-matter specialization.

The most common explanation is that members of Congress and state legislators have a major linkage to constituents in performance of services, from trivial

information requests to correction of major injustices. It is a time-honored role which neither legislator nor citizen has much interest in changing. Nonetheless, most of the numerous ombudsmen who do function in the United States, while falling short of the classical model in range of responsibility or method of appointment, do possess independence and are regarded as independent by those they serve.

My own case is illustrative: I have no fixed term of office and no tenure as ombudsman. My tenure derives solely from faculty status in a discipline (political science), yet it is possession of tenure which qualifies me as "senior faculty", one of the prerequisites for selection as ombudsman at Michigan State University.

Despite this seeming lack of job protection I have outlasted three presidents although I served at their pleasure, not they at mine. A basic piece of campus legislation, adopted by our Board of Trustees, established an ombudsman. When that legislation was modernized and revised recently, the only unchanged article was the one dealing with the ombudsman's office. No one, including no president and no trustee, has ever told me how to do my job or what I must not do.

Even classical ombudsmen, whose independence literally defines them, can be reined in. Legislatures control budgets; if they have no confidence in the ombudsman they can cut funds, disregard reports, change rules, trim jurisdiction, make the office "hot" for its incumbents. This has been known to happen, albeit infrequently.

All ombudsmen, classical and specialized, report that many matters brought to their attention have a kernel of legitimacy even when the exact complaint may not be justified or there is no remedy.

An increasing number of faculty consult my office on student matters, suggesting that they feel protected, not threatened, by having the just allegation separated from the unjust one. Most members of parliament in those nations with classical ombudsmen reportedly feel the same way and use the office as a place to refer a constituent.

Whether a prisoner complaining of maltreatment, a taxpayer alleging unfairness, or a student charging caprice in grading, the very office of ombudsman is a means of saying "you count" to those who often do not feel they count or are uncertain about their rights.

All ombudsmen are pragmatists, seeking whatever is needed, from apologies to explanations to modified or reversed decisions. This approach to monitoring "service delivery" is also a quick and informal alternative to litigation in many instances. Good government depends on good criticism. It is not different with a university, a corporation, or a hospital. This does not mean that the presence of an ombudsman can strengthen a weak economy, counter endemic corruption, or turn a mediocre university into a stellar one, but more care is taken with decisions because of knowledge that someone may be watching whose mission it is to watch. This watchdog role, whether classical or limited, counters some of the rigidity, impersonality, and complexity which

characterize large bureaucracies, public and private, all over the world.

Mutations from the original conception of an ombudsman will probably continue, even if the classical model continues to be the standard by which variant forms are measured. Some purists may be discomfited, but the occupation as a whole gains vigor, support, and wider understanding from growth. It is an occupation which is certain to survive in the 21st century.

(1) Full International Ombudsman Institute membership is referenced to an International Bar Association resolution which recommends ". . . an office provided for by the constitution or by action of the legislature or parliament and headed by an independent, high-level public official who is responsible to the legislature or parliament, who receives complaints from aggrieved persons against government agencies, officials, and employees or who acts on his own motion, and who has the power to investigate, recommend corrective action, and issue reports."

Adopted 1974 Biennial Conference, Vancouver, Canada and revised 1980 Biennial Conference, West Berlin, Federal Republic of Germany.
Reprinted in Ombudsman and Other Complaint-Handling Systems Survey, June 1986, International Ombudsman Institute.

- (2) This study is based on a sample of ombudsman offices, both classical and specialized. Included were the state of Hawaii, provinces of Ontario and British Columbia in Canada; United Kingdom as well as London's separate structure; Australia at federal and state levels in addition to New South Wales Privacy Committee; New Zealand; Fiji; college and university offices throughout the United States and Canada, Michigan's business ombudsman, corrections ombudsmen in Michigan and Minnesota, and the city of Detroit ombudsman office. A debt of gratitude is acknowledged to all those who generously and patiently cooperated in making annual reports and other information available in addition to personal interviews.
- (3) Hill's typology appears in many of his publications. See, for example, "The Citizen Participation-Representation Roles of American Ombudsmen", Administration and Society, Vol. 13 No. 4, February 1982.
- (4) Sweden's ombudsman dates from its constitution of 1809. Finland followed in 1919, Denmark in 1955.
- (5) Dissent and Disruption: Proposals for Consideration by the Campus, A Report and Recommendations by the Carnegie Commission on Higher Education (New York: McGraw-Hill, 1971). Adoption of a campus ombudsman pre-dated publication of this report at a few universities, Michigan State among them.

- (6) Ombudsmen, some with different titles but similar functions, were established in New Zealand (1962); Norway (1963); United Kingdom (1967); Australia (1972-78 in 6 states), Commonwealth (1976), and Northern Territory (1978). Almost all classical enactments occurred during the period 1960 to 1980. Source: Ombudsman Office Profile/Survey 1986, International Ombudsman Institute.
- (7) Larry B. Hill, "The Ombudsman as Citizens' Advocate", draft chapter in forthcoming book Ombudsmen, Bureaucracy, and Democracy, New York, Oxford University Press.
- (8) Ibid.
- (9) The four states are Hawaii, Alaska, Iowa, Nebraska. There are also classical ombudsmen who report to county boards, school boards, or city councils but the vast majority are executive appointees with broad or specialized responsibility, or legislative appointees who are involved with specific functions such as corrections, licensed nursing homes, etc.