The Ombudsman: An Institution for the Resolution of Conflict

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The Ombudsman
An Institution for the Resolution of Conflict

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The ombudsman is an independent, non-partisan third party who assists in grievance resolution. Ombudsmen have traditionally been found in government, but in the 1970s they spread to formal organizations in higher education, health and business. During the 1980s, the principal role of ombudsman, namely mediator, emerged; and apart from ombudsmanship, mediation appears to be playing a more prominent role in conflict resolution now than it did in the seventies.

Mediators have become increasingly important in dealing with neighborhood disputes, and divorce mediation has taken the intimate concerns of the family out of the public arena, assigning responsibility to the disputants to work through their own problems. A few states have laws providing for mediation as an alternative to the court system, in child custody disputes, for example.

As mediation becomes more widely accepted, professional associations are staking their claim to the role of mediator. The Family Mediation Association draws on members from a variety of disciplines, such as social work. The American Bar Association considers lawyers appropriate mediators in court-related programs. In an effort to train professionals in skills of mediation and negotiation, Harvard Law School instituted a workshop on mediation into its curriculum in 1983, and now has a Program on Negotiation.

Government Ombudsmen

The idea of an Ombudsman or “watchman” originated in Sweden when that country became a constitutional monarchy in 1809. The Swedish constitution created the office of “Justitieombudsman,” calling for a person of known legal ability and outstanding personal integrity.

In 1967 the suggestion that such an office could also be useful in the United States was made by the Thirty-Second American Assembly (a non-partisan organization). The Assembly described the ombudsman as follows:

an independent, high-level officer who receives complaints, who pursues inquiries into the matters involved, and who makes recommendations for suitable action. He may also investigate on his own motion. He makes periodic reports. His remedial weapons are persuasion, criticism and publicity. He cannot as a matter of law reverse administrative action.

Many citizens’ frustrations stem from their inability to communicate with government bureaucrats about everyday problems. The old-time politicians used to perform this function and their passage gave rise to municipal ombudsmen who bridged the gap—mediated—between city government and the people, who fought for conventional services, who helped people to find jobs or to have snow removed and responded in cases of crisis. Sometimes the ombudsman was a single individual, as those in Peabody and Newton, Massachusetts; sometimes it was an office. The office of ombudsman also took the form of Little City Halls which, through decentralized government, helped citizens to gain a measure of community control.

Ombudsman bills were filed in more than half of the states in the late 1960s. By 1976 four states had ombudsmen with statewide powers. They were executive (i.e., partisan) as well as legislative appointees. Although the latter preserved the essential ombudsman features of independence and non-partisanship, legislative appointees lacked clout. They tended to become incorporated into an administrative function, whereas the executive type did not. In Massachusetts, a hotline was adopted rather than a state ombudsman to deal with citizen complaints.

The State Nursing Home Ombudsman Program, federally funded and mandated within the Massachusetts Department of Elder Affairs, began in 1973 as one of six original Nursing Home Ombudsman Projects of the Federal Administration on Aging. The Program receives complaints from any source; their policy is to resolve the problems within the facility before they become crises. Legislation was passed last year providing ombudsmen access to nursing homes in the state; regulations are currently being drafted.

University Ombudsmen

Campus ombudsmen developed as a national phenomenon in the late 1960s as a response to campus unrest caused by the war in Vietnam. Student protest was precipitated by the Cambodian invasion, which in turn triggered events leading to tragedies at Kent State University and Jackson State College. Other social movements—labor, civil rights for minorities, women’s liberation—led to confrontation between mostly disenfranchised youth and massive educational and governmental bureaucracies. National commissions in 1970 and 1971 recommended that...
Popular views of the ombudsman tend to focus on impartiality, asking how can they be neutral since they represent the organization. However, examining the experiences of campus ombudsmen during the 1970s, it becomes clear that they were called upon to employ a variety of techniques in resolving grievances. Four distinct roles adopted by ombudsmen can be identified on the basis of how actively or passively the ombudsman chooses to intervene and whether his/her focus is on the individual or on the system within which the grievance arose.

In the adjacent table are examples of these four grievance resolution styles (or roles) as drawn from the experiences of campus ombudsmen in the 1970s.

Ombudsmen in colleges and universities were generally at the top level and had direct access to anyone in the college community. In public institutions they were funded by the state; in California, for example, provision for their support was made by the state Board of Regents. Ombudsmen generally had professional backgrounds and were formally appointed by the president of the university or the chancellor, to whom they were usually responsible. They were required to make annual reports that were published in the campus community. Students sometimes acted as ombudsmen.

**Hospital Ombudsmen**

The idea that there be an advocate to protect the rights of patients was suggested by Professor George J. Annas, Executive Director of the Joint Center for the Study of Law, Medicine and Life Sciences, at a symposium at Boston College in 1973. Annas argued that the patients' rights advocate was necessary as a balancing mechanism, since there were so many advantages from the doctor's point of view to maintain the traditional doctor-patient relationship. Yet, changing technology had drastically altered the traditional relationship between the doctor and patient, and technical skill had advanced at the cost of personal warmth. Annas explained that the advocate is not necessarily an adversary but can function as an ombudsman.

Although many patients' grievance mechanisms (PGMs) developed in the seventies, ombudsmen had no clear mandate in the health field. Confusion over the meaning of the term and resistance to the innovation by professional groups (doctors and nurses) inhibited their development except collateral, i.e. advocate as ombudsman, administrator as ombudsman. Medical professionals maintained that they knew what was best for the patient and — like some faculty members, deans and other administrators who resisted the idea of ombudsmen in education, and legislators and congressmen who resisted it in government — many in the health field considered the adoption of the idea not only an encroachment on their professional territory, but a relinquishing of their claim of expertise. Patient advocates, facilitators and crisis-managers — who were usually called Patient Advocates or Patient Representatives — were evident in the hospitals; but mediators were notably absent.

Perhaps one reason ombudsmanship failed to take hold in hospitals is that crisis-management is such an integral part of the day-to-day business of taking care of sick people that medical practitioners must necessarily distance themselves in order not to be too involved emotionally with suffering: they routinely act as "ombudsmen" in the sense of being detached in dealing with patients' complaints. The people who actually mediate between the patients and the medical team are the nurses, who carry out the doctors' orders, and social workers, who bridge the gap between the patients, their families and the hospital staff. Social workers act as facilitators, promoting better communication between the various parties; as mediators they have major responsibilities such as making arrangements for re-entry into the community, or for nursing home placement. They facilitate decision making involving patients, their families and the medical staff; and they "cool out" the family in the process, by coordinating the exchange of information, focusing the interaction in family meetings and setting limits on emotional expression.

Advancing medical technology has created profound moral questions. Presumably the patient has the freedom (i.e. right) to choose whether or not he wishes to utilize this technology, but in some disputes between practitioners or hospitals and patients, courts are called upon to adjudicate. Some of these issues could undoubtedly be resolved.

### TABLE I

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<th>Grievance Resolution Styles of The College Ombudsman</th>
<th>Orientation</th>
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<td><strong>Individual</strong></td>
<td><strong>System</strong></td>
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<td>1) Advocate role - In this approach, the ombudsman actively played the role of advocate for the individual student. For example, a student might have complained about an arbitrary or unfair college rule that had harmed his or her standing. The ombudsman might decide to act as an advocate and directly confront the official college personnel to achieve a resolution.</td>
<td>2) Mediator role - This is an active approach in which the ombudsman serves to bring together elements within a community for the settlement of a grievance. For example, a student and some sector of the college (e.g. faculty member or administrator) or community (e.g. landlord) may settle a dispute when the ombudsman bridges a communication gap between the parties or negotiates some other type of resolution between them.</td>
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<td>3) Facilitator role - Here the ombudsman focuses on the needs of the individual student, but decides direct action is not necessary. For example, the problem the student has might only require some help in finding his or her way through the bureaucratic maze. This is a common complaint in problems with course registration, filling out forms for financial aid and so on.</td>
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<td>4) Tension-Manager role - In this case the ombudsman is compelled to deal with the perception by one or more elements of some system that a crisis is present or approaching. In this more passive role the management of a system crisis takes precedence over the substantive resolution of grievances.</td>
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in advance by educating the patient and the family and through negotiation and mediation, in which all parties take a responsible role.

... the extent to which mediation is adopted as an integral process in our daily lives depends upon whether society emphasizes collaboration and compromise in the future, or competition and rivalry.

Corporate Ombudsmen

The corporate ombudsman was introduced in 1967 when Isidore Silver proposed that the "impartial grievance outlet" already in existence in the political world be adapted to the corporate realm. The Information Technology Group of Xerox Corporation, for example, created the job of "employee relations manager," outside of the corporate chain of command, reporting directly to the president of the company. He handled complaints concerning management-employee relations such as transfers, promotions, performance appraisals, inequalities, and discharges. General Motors established an ombudsman for scientists to consult if they perceived a danger in product design. Standard Oil Company of California, however, rejected the idea, because they thought it implied they were not handling stockholders' inquiries fairly or directly and that there was a continuing controversy between management and stockholders.

The business sector has adopted practices of negotiation and mediation to improve the quality of work life. Roger Fisher and William Ury of the Harvard Negotiation Project have helped to "turn adversarial battling into hard-headed problem solving" in their popular book on mediation, Getting to Yes. Mary A. Rowe, labor-economist and ombudsman at MIT, and Michael Baker suggest companies adopt better complaint-handling procedures, especially for nonunion employees.

Ombudsmen For The Press

Ben Bagdikian, writing in Esquire magazine, introduced the idea of a journalist's ombudsman in 1967. Bagdikian served as ombudsman for the Washington Post for almost a year under Executive Editor Ben Bradlee. In 1981, The Washington Post Ombudsman, Bill Green was "invited" (due to the autonomous nature of his position) by Ben Bradlee to investigate how "Jimmy's World," the Pulitzer Prize winning story of an eight-year-old heroin addict which was based on interviews that had never taken place had been published in the Post. The detailed Ombudsman Report covered three-and-a-half pages in the Sunday edition. It stated that the technique of composite writing was legitimate, but fabricated interviews were not. The Ombudsman attributed the hoax to "systems failure," stating that the Post did not work hard enough checking sources, for example; and he stated the paper's single most important asset -- its credibility -- had been exposed to ridicule. The Post referred to the ombudsman then as the readers' representative. The current ombudsman, Charles Whipple, in 1975. Whipple described his role as a recipient of readers' complaints about what they feel is unfair in the news. The syndicated column of Charles Seib occasionally appeared in the Globe until the 1980 appointment of Whipple's successor, attorney S.J Micciche. Micciche said he represented the public to the paper and the paper to the public. He too considered maintaining credibility a major task confronting the newspaper.

The present ombudsman for the Boston Globe, Robert L. Kierstead, was appointed in 1982. Like his predecessor, he interprets the role of the newspaper to the public along with helping them to seek redress; in other words, he mediates between the paper and the public. A former managing editor, he clarifies the paper's policy on matters such as printing a name or address in cases involving victims and witnesses of a crime, as well as problems that arise due to time or space limitations including choices made as to what to include in the limited space, and other technical aspects of publishing a large newspaper. In cases of complaints about biased reporting -- racist remarks, ethnic stereotypes or reporting of disabilities insensitively -- he assures readers that such stereotypes have no place in a newspaper. On the other hand, he warns against censorship. He keeps in touch with the changing needs of readers through the Organization of Newspaper Ombudsmen. Acting as a critic of one's co-workers, he says, can be a very lonesome job.

Conclusion

There are many formal and informal mechanisms for the resolution of disputes in society. Professor of Law, Frank E. A. Sanders, who teaches courses in Alternative Methods of Dispute Resolution, Mediation, and Negotiation Workshop, has explored alternatives to litigation and has proposed the "multidoor courthouse." The "doors" he suggests might be labeled "arbitration," "mediation," and "ombudsman." The key feature, he states, is the initial screening procedure, and whether or not the intake officer's referral is voluntary or compulsory.

Mark Gerzon, author of A Choice of Heroes, sees the Mediator as an emerging masculine role, and agrees with Fisher and Ury (authors of Getting to Yes) that negotiation techniques and cooperation must be adopted to resolve conflicts, and that the attributes of patience, empathy and sensitivity are the keys to such conflict resolution. It may be difficult to dislodge the masculine archetype of the "Soldier" who imposes a resolution by force; but it will be necessary if we are to arrive at peaceful solutions. The role of mediator is emerging as a significant one; and the extent to which mediation is adopted as an integral process in our daily lives depends upon whether society emphasizes collaboration and compromise in the future, or competition and rivalry. Thus the ombudsman, who knows an organization intimately, and yet can view that organization with detachment, has become an increasingly valued asset in modern institutions.

Nancy Meymand teaches sociology at Bridgewater State College. She was an officer in the United States Navy for nine years after graduating from Boston University, where she later earned a M.A. in Sociology. Her doctoral dissertation at Boston College examined the role of the ombudsman.