

A TYPOLOGY OF OMBUDSMAN INSTITUTIONS

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A TYPOLOGY OF OMBUDSMAN INSTITUTIONS

Popularity and ease of adaptability of an institution can, while encouraging its widespread adoption, also easily give rise to its indiscriminate use and a consequent loss of its identity. The Scandinavian Ombudsman is one institution about which this aphorism is true. Since Finland adopted the ombudsman plan some one hundred years after Sweden created it in 1809, it has spread to every corner of the world.¹ What is astonishing, but also disturbing, about this spread is that it has caused a proliferation of various complaint-handling offices in almost every form of human organization. Incidentally, all these offices held claim to being "ombudsmen".

Taken alone, the proliferation of complaint-handling institutions is a good thing as it indicates the increased determination of modern man to contain bureaucratic aggrandisement. However, to students of the ombudsman institution the sweeping claim to the title 'ombudsman' is a source of confusion. There is something unique and cardinal to the success of the ombudsman which is lost in this confusion. This situation is not a healthy one. It is neither useful for the study of the institution, nor for the effective use of the institution to control bureaucratic power. Indeed, it is conceivable that the attraction of the ombudsman will cease once its peculiar advantages is no more appreciated.

In effect, as some of the early scholars of the institution warned², its development and study will greatly depend on whether or not a carefully conceived and suitable definition is arrived at. To some extent this challenge has been taken up by scholars.³ But a successful

¹ A good introduction to the spread of the Ombudsman idea is L.B. Hill, "International Transfer of the Ombudsman" in R.L. Merritt (ed), Communication in International Politics (Urbana, University of Illinois Press, 1972).

² See for example, W.H. Angus and Milton Kaplan, "The Ombudsman and Local Government" in S.V. Anderson (ed.) Ombudsmen For American Government? (N.J., Prentice-Hall, Inc., 1968) p.135.

³ In fact this seems to one important area of interest of the International Ombudsman Institute at Edmonton, Alberta, Canada (IOI). See for instance, its Annual Survey of Ombudsman and Other Complaint-handling Systems.

accomplishment has been retarded by an undue conservatism. Various attempts to define the ombudsman institution, which have produced what has been referred to as the 'classical' conception of the institution, have too strictly adhered to the scandinavian notion.⁴ Consequently, the ombudsman tends to be seen as culture-bound, and the changes which even the scandinavian institutions have since undergone are little appreciated. In short, because the exact cultural traits associated with the ombudsman are not clear, there is no systematic approach to the issue of how the ombudsman plan is to be adapted and made to retain its distinctiveness.

Against this background, this paper explores a way of defining and classifying the ombudsman institution and the implication of this definition for the entire ombudsman movement. One basic consideration in this search is the fact that any realistic conception of the institution will need to adapt the original scandinavian idea to accommodate the different versions that have since emerged. At the same time, such a definition must be specific enough to retain and convey the distinctiveness of the institution.

Any meaningful attempt to define and classify ombudsman institutions cannot ignore the developments in the ombudsman movement in the last two centuries or so. Although as we shall argue in this paper, ombudsmen and ombudsman-like institutions existed in pre-modern times, both the concept of 'ombudsman' and the popularity of the institution today dates to the Swedish creation of it in the early nineteenth century⁵. It is from this initial Swedish creation that the different modern versions have developed, and it is therefore from it that any attempt to classify these existing versions of the institution needs to begin.

Consequently, the typology proposed in this paper is one which begins from an exploration of the basic features of the classical-scandinavian version, and therefore builds on the different patterns of variation which exist between this version and other ombudsman

⁴This is true of IOI's Annual Survey and other works which share the same philosophy with the Institute, for instance B. Frank, "The Ombudsman Revisited" International Bar Journal(May, 1975). Also see, L. Adamolekun's comment in his "The Nigeria Ombudsman Experience" International Review of Administrative Sciences(3,1984)

⁵Hills, op.cit

around the world. We shall also advance the argument that the basic features of any ombudsman institution can be categorized into four, namely: mission and objective; mode of operation; power and jurisdiction; and structure and organization. It is the extent of consistency and variation which exist amongst ombudsmen in these four areas that justify their use of the title and the mode of classification proposed for them.

Features of the Classical Ombudsman Version

The ombudsman is essentially a 'citizens' defender' who gets citizen's complaints and works on them. It goes about this mission in a manner different from any other complaint-handling institution. The ombudsman avails the citizens of a cheap and easy means of complain-handling which carefully avoids the temptation of bureaucratic abuse. Thus, the classical ombudsman office is described as an office or institution established by constitution or statute, headed by an independent, high-level public official who is responsible to the legislature. He receives complaints about injustice and maladministration from aggrieved persons against government agencies, officials and employees or acts on his own initiative. He has powers to investigate, criticize, recommend corrective actions and generally to publicise administrative actions. In addition, the ombudsman is a person of prestige and influence. He operates with objectivity, competence, efficiency and fairness. He uses fast, inexpensive and informal procedures and is easily accessible. His main weapon to secure action is the use of reasoned persuasion and publicity.⁶

The definition represents the International Ombudsman's Institute's (IOI) description of the institution, and the one which has come to be accepted as the benchmark for ascertaining whether or not an institution qualifies to be called an ombudsman. But it is a definition which is not comprehensive enough.

To some extent, the IOI's definition of the ombudsman modifies early Swedish and Finnish conception by excluding the power to enforce decisions. The experience of early

⁶ See B. Frank, op.cit

ombudsman institutions provided the rationale for this exclusion. It has been demonstrated in countries where the enforcement is provided that this power is not necessary for the ombudsman to perform effectively. According to Walter Gellhorn:⁷

...the giver of advice and suggestion presupposes the possibility of their being rejected... They rely on recommendation, not compulsion. Some critics do keep a club behind the door, nevertheless.. The Swedish and Finnish ombudsmen are as a matter of history, prosecutors who can hale officials into court on charges of negligence, laziness, or incompetence as well as on more conventional accusations of criminality in office. The Danish ombudsman may order a prosecution or disciplinary action. These powers, little used in any circumstances at present, are almost never exercised to make officials acquiesce in recommendations they honestly believe unsound. The Danish, New Zealand and the Norwegian have entirely avoided recourse to enforcement devices or threats and none has seemed to suffer any lowering of prestige.

Moreover, such power would be at variance with the essence of the institution especially in situations where democratic culture and the tradition of complaint-handling is weak.⁸ Since the intention of creating the ombudsman is not to create a super-bureaucrat, the weakness or inexistence of democratic culture will turn an ombudsman with executive powers into a "bureaucratic bully" who is completely unfettered and free to abuse his powers. In the bid to control this bully, it will be necessary to create ombudsmen to check one another, causing a hopeless interactive process which Anthony Downs has characterized as the problem of 'guarding the guardian'.⁹

If one, therefore, goes by the foregoing characterization, ombudsmen could be said to generally share similar attributes with regard to their mission and mode of operation. Ferrel and others¹⁰ have explained this point succinctly. "While the role of an ombudsman in the

⁷W. Gellhorn, Ombudsmen and Others (Cambridge, Harvard University Press, 1966) p.436

⁸Karl Friedman, has demonstrated this point with the Swedish experience. See his "Legal and Political Redress of Grievances: Criteria for Public Policy Decisions" in International Ombudsman Institute, Report of the Ombudsman Committee, International Bar Association, Seventeenth Conference. The point is that in a situation where there is a rich democratic culture the weight of public opinion should be strong enough to restrain any ombudsman, no matter how powerful. Alternatively, as in some totalitarian societies, the ombudsman may be given executive powers but is in the exercise of these powers constrained by a prevailing strong attachment to a political ideology.

⁹A. Downs, Inside Bureaucracy (Boston, Little Brown, 1977) p.153.

¹⁰C. Ferris, B. Goodman, G. Mayer, "Brief of the Office of the Ombudsman" International Bar Association, Ombudsman Committee, op.cit., p.8

traditions, history and civilization of any particular country are curiously endemic, they all share a common objective: ultimately to serve the public, to hear complaints related to the operation of the public service; and where appropriate, to take such steps as are available to them to remedy the consequences of a particular act or omission of that public service". In short, the ombudsman is distinct from any other complaint-handling institution in two significant ways. It is not merely a 'complaint-depot', and it does not have executive authority.

In addition to its mission and mode of operation, an ombudsman is also characterized by a pattern of structure, organization and jurisdiction. It is with regard to this latter set of attributes that ombudsmen differ from one situation to another. The differences demonstrated determine whether an ombudsman is 'classical' or 'non-classical'.

Another level of differentiation is within the classical ombudsman-type itself. Here a distinction can be drawn according to the home-base of the versions identified to produce two broad versions of the classical type: the scandinavian and the non-scandinavian.

The Scandinavian version obviously, includes the parliamentary ombudsmen in Sweden, Finland, Norway and Denmark. These ombudsmen and particularly the latter two, best illustrate the conception discussed so far in this paper.¹¹ The non-scandinavian classical ombudsman version refers to these ombudsmen with features identical to the four examples above but which operate outside scandinavia. The Annual Survey of the International Ombudsman Institute includes a list of this category of Ombudsmen,¹² examples of which are the Ombudsmen in the Australian State of New South Wales; Canadian Province of Alberta; the French Mediateur and the British Parliamentary Commissioner for Administration. The latter two are unique examples as they vividly illustrate the fact that all classical ombudsman types are not total replica of the scandinavian examples. As it has been well put, they demonstrate that " what an ombudsman does and what an ombudsman is, depends on what the

¹¹For an insight into the structure and working of these ombudsmen see W. Gellhorn, op.cit., and F. Stacey, Ombudsmen Compared (Oxford, Clarendon Press, 1978).

¹²See for instance, Annual Survey, July 1981 - June 1982.pp. 3-21.

particular country, culture and system of government want and need the institution to do".¹³

A discussion of the British Parliamentary Commissioner is not necessary here.¹⁴ But suffice it to say that the 'filtering device'¹⁵ for which it is well known, and which it shares with the French Mediateur, although for somewhat different reasons,¹⁶ was introduced in order to reconcile the ombudsman idea with British parliamentary system. However, the sensitivity of the ombudsman institution to its socio-cultural environment is most marked with the nonclassical type.

Non-Classical Ombudsman Versions

Non-classical ombudsman offices can be described as those which possess varying structural, organizational and jurisdictional features from those of the classical type discussed above. Thus whereas classical ombudsmen can be easily distinguished by the fact that they report to the legislature and primarily receive complaints from the public against government agencies and employees, the features of their non-classical counterparts cannot be so clearly specified.

Non-classical ombudsmen can be categorized into two types-modern and traditional. The main distinction between these two is chronological. The modern non-classical ombudsman type is defined to include all ombudsmen created after 1809, the date of the birth of the Swedish Justitie - Ombudsman, and which exhibit the features discussed below. There are four main sub-types of this group. There are the executive governmental ombudsmen; the non-government institutions' ombudsmen; the unauthorized ombudsmen; and the international ombudsmen. On the other hand, the traditional non-classical ombudsman type include those ombudsmen who have their origin in historic times, dating back to early social

¹³C.Ferris, et.al.,op.cit., p.8

¹⁴For a fine discussion see R.Gregory and P. Hutchesson,The Parliamentary Ombudsman -A Study in the Control of Administrative Action(London, Allen & Unwin,1975).

¹⁵See,L.H. Cohen, "The Parliamentary Commissioner and the M.P. Filter" Public Law(Autumn 1972)

¹⁶D.C. Rowat,"The Spread of the Ombudsman Plan in Western Europe"Occasional Paper#21 International Ombudsman Institute, February 1983, p.2.

organisations. Unlike their modern counterparts they are not directly associated with the modern concern with bureaucratic power, even though they increasingly deal with this problem.

Executive governmental ombudsmen are closely akin to classical ombudsmen. In fact to most ombudsman scholars, they represent the rival version of the classical type. This is due largely to the popularity of executive ombudsmen especially in the United States and developing countries.¹⁷ In the United States this ombudsman sub-type has become predominant mainly because the initiative to create the ombudsman office has been greatly influenced by the executive branch.¹⁸ In the developing countries, on the other hand, the situation appears closely related to the dominance of the executive in government,¹⁹ and the emphasis of the executive branch on the defence of collective rather than individual rights.²⁰ Typical illustrations of the non-classical executive governmental ombudsman type are: the Nigerian Public Complaints Commission; the Tanzanian Permanent Commission of Enquiry and the ombudsmen in the states of New Jersey, Florida and Missouri in the United States of America.

All these institutions are easily distinguished by the fact that they are organs of the executive. This, of course, implies some operational differences between them and their counterparts that are organs of the legislature.²¹ It is generally believed that because of their link with the executive they tend to be less independent than legislative ombudmen.²² We shall return to this issue shortly.

¹⁷ See, IOI, Annual Survey

¹⁸ See Ibid, D.C. Rowat, "The Spread of the Ombudsman Idea In The United States" Occasional Paper Number 26, International Ombudsman Institute, April 1984; and S.V. Anderson, Ombudsman Papers: American Experience and Proposals (Berkeley Institute of Governmental Studies, University of California, 1969)

¹⁹ For example see, B.H. Selassie, The Executive in African Government (London, Heinemann, 1974). Also see, D.C. Rowat, "The Need for an Ombudsman in Developing Democracies" International Review of Administrative Sciences (3, 1984) for a similar impression.

²⁰ I. Scott, "The Ombudsman, the Executive and Collective Rights in Underdeveloped Countries" Quarterly Journal of Administration (XIII, 2, January 1979).

²¹ For elaboration see, A.J. Wyner (ed.) Executive Ombudsmen in the United States (Berkeley, Institute of Governmental Studies, University of California, 1973).

²² See S.V. Anderson, "Comparing Classical and Executive Ombudmen" in Ibid and D.C. Rowat, "A Critique of The Japanese Study Group's Report on the Ombudsman" Occasional Paper Number 22 International Ombudsman Institute April 1983.

Non-government institutional ombudsmen constitute the second sub-type of the modern non-classical version. As the name suggests, a complaint-handling institution which possesses the essential features of an ombudsman specified earlier but which is set up by a non-government institution qualifies to be included in this sub-type. Campus, media and corporate ombudsmen are typical illustrations of this.²³ The jurisdiction of a non-government institutional ombudsman is obviously limited by the scope of the institution to which it is responsible.

All the ombudsman types discussed so far have one thing in common. They derive their authority either directly from a legal statute or indirectly by being an organ of a legal entity. Unauthorized ombudsmen do not have this quality. They have no legal basis either directly or indirectly. Rather, they represent an individual or a group of individuals' philanthropic effort to draw upon their influence resource to solicit help for less influential people. ²⁴ Naturally, the scope and mode of operation of this ombudsman is a function of the amount of influence he is able to wield.

Finally, there are international ombudsmen. These, unlike other ombudsmen, operate across national boundaries. Quite a number of them exist today. Their large number seems to have coincided with the increase in international organizations and the growing concern, since the end of the second world war, with the problem of human rights in the international community. Examples of the international ombudsmen are: the United Nations Trusteeship Council; the Amnesty International, and the International Press Institute. There are also a number of resolutions of the United Nations General Assembly which make provisions for some form of global ombudsman, such as the International Covenant and Optional Protocol on Civil and Political Rights approved in December 1966 and the International Convention on the Elimination of All forms of Racial Discrimination adopted in

²³For a discussion of some examples of this ombudsman-type see, I. Silver, "The Corporate Ombudsman" Harvard Business Review (May-June, 1967) and W.T. Keating and J.A. Holden, "The Campus Ombudsman: A Vehicle For Change?" Journal of Research Development in Education (Fall 1972).

²⁴ Reference to this type of ombudsman is made in I. Okonjo, British Administration in Nigeria, 1900-1950 (Lagos, Nok Publishers, 1974) pp.257-260.

December 1965.²⁵

It can be seen that besides operating across national boundaries, three additional features are revealed in these institutions. First, they serve as some kind of monitoring guage for the preservation of human rights around the world. Second, they generally do not exist exclusively for performing ombudsman functions, unlike most national ombudsmen. And thirdly, and this derives from the second feature, they are either informal or formal.

As already mentioned, the second broad type of the non- classical version is the traitional ombudsman. Three different sub-types of this are distinguishable: natural(or traditional) rulers; specialized ombudsmen; and oral traditional artists.

It is difficult to precisely state who a natural or traditional ruler is. However an illustrative definition is one which describes a traditional ruler as "the traditional head of an ethnic community whose stool conferred the highest traditional authority on the incumbent since time immemorial".²⁶ In Africa, a traditional authority is one which has existed long before the period of colonialism. Natural rulers are revered and they use to enjoy enormous powers. With the tide of modern governmental system the authority of traditional rulers has waned greatly. But some rulers still excercise some power including the power of complaint-handling.

Complaints arise in any social context. Men as members of social organizations naturally become dissatisfied with one situation or the other and thus they complain. In traditional political systems, the natural ruler was conferred with the over-all authority to resolve citizens' complaints. This was usually combined with powers of adjudication. Strictly speaking, then, it is difficult to clearly identify any form of ombudsman function in this situation. The traditional ruler had enormous executive authority, contrary to what is expected of an ombudsman today. However, in reality, his mode of operation varied with

²⁵For details see, "Global Ombudsmen" in S.V. Anderson,Ombudsman Papers..., op.cit., Also United Nations,The United Nations and Human Rights(New York, United Nations Publications, 1978).

²⁶Addressof the Oba of Benin to the National Conference on the Roles of Traditional Rulers in Local Government, Faculty of Administration, University of Ife, Nigeria, April 1983 p.10.

circumstances, thus making it necessary for him to occasionally utilize informal and persuasive methods akin to that of a modern ombudsman. It would be correct to assert that a traditional ruler's resort to informal and persuasive methods was a function of the overall authority and respect he enjoyed amongst his subjects.²⁷

Although, as we have said, the executive authority of traditional rulers has been reduced or withdrawn entirely, the social confusion arising from the conflict between traditionalism and modernity has largely sustained the complaint-handling function of traditional rulers. In fact this is increasingly the most important role of traditional rulers. In line with the prevailing situation, they have to depend more and more on their ability to operate as true ombudsmen in order to perform their complaint-handling role effectively.

Traditional rulers continue to have a fairly wide discretion over matters they can handle, however, they are fairly independent of the executive and generally well respected. Except in such communities, and these are few, where there are social restrictions, traditional rulers are freely accessible to members of their communities. Indeed as the 'father-figure' of his community a traditional ruler is supposedly preoccupied with the welfare of his subjects. These features provide the basis for the current ombudsman role of traditional rulers.²⁸

The second sub-type of traditional ombudsman institution is the specialised grievance-redress office. By this, we have in mind a person or group of persons assigned or designated by a traditional governmental authority to perform specialized ombudsman role. Traditional ombudsmen are thus structurally similar to most modern ombudsmen, especially the nonclassical executive governmental ombudsmen. But operationally this is not so because like traditional rulers, they enjoy some executive authority. This feature is most pronounced when the traditional ombudsman is closely associated with adjudicative functions.

However, one must not fail to appreciate that this institution has also been greatly transformed with modernity, and with its executive authority has been gradually removed or

²⁷See, V. Ayeni, "Traditional Rulers As Ombudsmen -In Search of A Role For Natural Rulers in Contemporary Nigeria" in O. Aborisade (ed.) The Roles of Traditional Rulers in Local Government (Ile-Ife, University of Ife Press, forthcoming).

²⁸Refer to Ibid for more elaboration.

rendered superfluous. As a matter of fact, the morality rate here has been higher than with other forms of traditional ombudsmen. A typical example of a specialized ombudsman in pre-modern time is the 'Wali' who was the incumbent of the office of 'Walayatil Wazalim' (Public Complaints Office) in the Sokoto Caliphate. The constitution of the Hausa states written by Sheikh el Maghili also provided for the establishment of public complaints offices.²⁹ Traditional specialized ombudsmen that have survived till today include the Chinese Control Yan and the Russian Procurator-General.³⁰

Traditional oral artists constitute the last sub-type of traditional ombudsman institutions. Like other traditional institutions, this has survived the tide of time. It continues to exist in many African societies, particularly the rural ones.

The ombudsman function of traditional oral artists is woven into their artistic feet. Oral art is an exercise in verbal confection. An oral artist is a performer who seeks to entertain by means of intellect and the exercise of imagination. He is involved in artistic verbal expression of his thought, feeling and perception of an event or a series of events or a series of experiences. Ceremonies such as festive or funeral occasions usually provide the opportunity for the performance of oral art in African societies.

However, oral art does not only serve social-entertainment functions. It is also an instrument for mobilizing public consciousness towards the accepted ideals of life. An oral artist is thus in many ways the mouth piece of the community. It is within this role-context that the ombudsman function of traditional oral artists can be identified. Ombudsman function is one aspect of the social control and opinion moulding role of oral artists.

A leading Nigerian scholar on the subject of oral art, Afolabi Olabimtan, has written of the Efe/Gelede artists in Yorubaland in Nigeria as follows:

The Gelede cult can be described as a movement which has developed a traditionally recognized organization (in the Efe performance that is) through which complaints

²⁹Quoted by Alhaji Maitama Sule, first Nigeria's Chief Public Complaints Commissioner in his Address to the 1977 Conference of Public Complaints Commissioners in Sokoto, Nigeria.

³⁰For further information see for example, C. Ferris, et.al.,op.cit and W. Gellhorn, op.cit.

and grievances of those within the society are expressed and their objectives formulated and publicized. During the performance, the Efe as a spokesman of the society can stir up emotions against the behavior or attitude of an individual and consequently influence the opinion of the members of the community about that individual. The Efe can also take up the cause of any member of the community with a view to influencing any decisions that might be pending on an issue affecting that individual.³¹

In the past, oral artists served a very potent control role, especially in situations where counter checks on existing social control instruments was necessary. This advantage as we have mentioned, is what the modern ombudsman movement has tried to institutionalise by avoiding the need for ombudsmen to exercise executive powers.

Unlike the classical ombudsman, the scope of traditional oral ombudsman role is not restricted to any specific issues. It also tends to be more ephemeral than the former. But besides these differences, traditional oral artists, and classical ombudsmen employ similar operational methods, combining satire and persuasion with public enlightenment. It must, however, be emphasised that oral artists in Africa do not all perform in the same way. The style of performance varies according to culture, community and medium used.

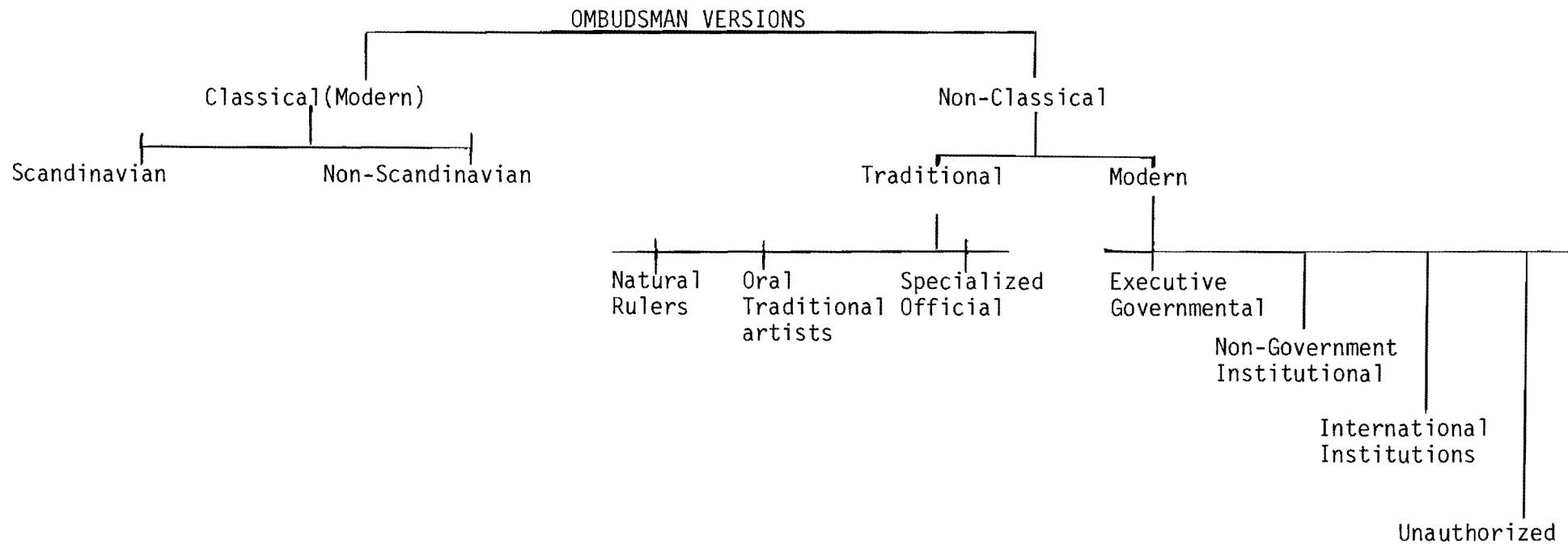
In figure I, the various versions and subtypes of the ombudsman institution are presented in a tree diagram. In addition to attempting a comprehensive classification of the institution, the foregoing discussions point to a more fundamental implication - the inevitability of the ombudsman.

Inevitability of the Ombudsman

It seems obvious from the above that ombudsman and ombudsman-like institutions pre-dates the Swedish creation of 1809. In other words, even-though the name 'ombudsman' is Swedish, forms of the institution it describes can be found in almost any large - scale human organization. As D.C. Rowat has so cogently demonstrated "the Nordic democracies are not the only countries that have entertained or experimented with the idea of a 'tribune of the

³¹A. Olabimtan, "The Efe/Gelede Poet of Egbado Ketu-Yoruba" in U.N. Abalogu, G. Ashiwaju and R. AmadiTshiwala(eds.)Oral Poetry in Nigeria (Lagos, Nigeria Magazine, 1981) p.158.

FIGURE I



A DIAGRAMATIC REPRESENTATION OF OMBUDSMAN VERSIONS

people' ".³²

But the question is; what gives rise to the ombudsman institution as against any other form of complaint-handling institution? An account of the origin of traditional ombudsmanlike functions is created by the existence of two somewhat contradictory factors- extensiveness of social organization and a rather inflexible judicial system :

Satire must...be seen as playing a role within the overall judicial system. Traditional societies among which satire originated and found most violent and pervasive expression had, for example, no prisons. Major crimes of course were punished with judicial or ritual execution or being sold into slavery or being ostracized but minor conflicts and crimes did not appear to attract established reprisals in physical terms. It is this gap that satire appears to have filled in traditional societies.³³

There is no doubt that modern societies fulfil the first condition of extensiveness. But the second is a bit tricky to determine. The reason is that most modern societies are blessed with much more formalized judicial systems than traditional societies. Nevertheless, there is evidence of lapses that are akin to those of the latter in the former. Existing evidence confirms that in most cases adoption of the ombudsman plan has been largely because the normal judicial process could not, among other things, provide effective and satisfactory solution to minor cases of maladministration and administrative injustice.³⁴

There is obviously a feeling of inevitability in this situation; a feeling that some unique complement to the normal judicial process is desirable if justice for all is really to be achieved. It is conceivable that this factor of inevitability has been responsible for the world-wide attraction to the modern spread of the Swedish ombudsman and the ease with which different complaint - handling institutions have either collaborated with modern ombudsmen or become transformed to look like them. Not even traditional institutions, as we have indicated, have been completely left out of this influence. Today, traditional rulers in Nigeria sometimes operate in collaboration with the Public Complaints Commission, helping it to attract and or to

³²"Introduction " in D.C. Rowat(ed) The Ombudsman Citizen's Defender(London, Allen & Unwin,1965)p.9.

³³D.I. Nwoga, "The Igbo Poet and Satire" in U.N. Abalogu, et.al.,op.cit.p.230.

³⁴ B. Frank, "The Ombudsman and Human Rights Revisited" Israel Year Book on Human Rights(Volume 6, 1976),pp.134-137, elaborates this point quite well.

process complaints.³⁵

It is necessary to point out that a unilinear evolutionary explanation of the development of the ombudsman institution is not being suggested here. There is nothing to suggest that such a theory is applicable in view of the fact that the interaction amongst nations has been considerably influential in the adoption of the modern version. It does not follow from the thesis of inevitability that modern ombudsman institutions are transformations of their earlier traditional counterparts.

This conclusion is equally true of international ombudsmen whose prospects Stanley Anderson has rightly contended depends on the progress of the ombudsman movement at national levels.³⁶ Anderson's point does not suggest that international ombudsmen will evolve from national ombudsmen, but that a greater awareness of the essence of the institution as an instrument to foster world-wide respect for human rights is paramount.³⁷ If, in any case, anything evolutionary is conceivable in the history of the ombudsman institution, it is perhaps in the fact that as Man develops to accord greater regard to the preservation of the rights of his fellow men so will the popularity and success of the ombudsman increase.

In essence, a loose conceptualization of the ombudsman institution has been presented in this essay. Critics would certainly wonder how modern and traditional ombudsmen can co-exist and yet retain the essential operational attributes of independence, wide discretion and easy accessibility enunciated by D.C.Rowat:

...there are five key requirements for the office to be fully successful. The first is that complaints must be allowed to go direct to the ombudsman's office rather than being filtered ... The second requirement is that the office must be widely known and easily accessible... Third, the scope of an ombudsman plan must be broad. It ought to include all types of administrative agencies and all levels of government... Fourth, an ombudsman must be given strong powers, short of having the power to make binding decisions. ... The fifth... and probably most important- requirement is that the office of ombudsman must be absolutely independent from the executive (branch of) government and from partisan influence. This must be ensured through the provisions for appointment, tenure, salary, staffing and budgeting.³⁸

³⁵See, V. Ayeni, "Traditional Rulers As Ombudsmen ...", op.cit.

³⁶"Global Ombudsmen", op.cit., p.10.

³⁷Ibid pp.1-10.

³⁸ D.C. Rowat, "The New Ombudsman Plans in Western Europe" International

Eventhough these features are more closely associated with ombudsmen of the scandiavian versions, there is no gainsaying about their relevance to the success of the institution anywhere. But the argument that only a particular ombudsman-type exhibits them is contestable. There is nothing which logically or empirically, determines a priori whether or not an institutional structure will guarantee independence, wide discretion and accessibility. The problem is that scholars tend to over-emphasise formal structures to the neglect of the operations of ombudsmen and thus jump to the conclusion that classical (legislative) ombudsmantypes are superior to others because of their structural forms. The wide gap which often exists between formal prescriptions and real operations are consequently neglected.

Except an office exhibits these essential qualities in practise, it cannot hold claim to them. And this depends on how well the office manages the various forces contending and supportive, which interact with it. The success of an ombudsman depends on how formal prescriptions fit and are operated to suit the prevailing environmental circumstances.³⁹

Available studies indicate that once this yardstick is used the line drawn between classical ombudsmen and other disappears. Hence as B. Frank concluded in his study of the Tanzanian Permanent Commission of Inquiry, "the ultimate question that must be answered is not whether (the ombudsman's) characteristics match the classical definition, but rather whether ot works successfully in handling public complaints against the abuses(of administration)" ⁴⁰

Put simply, the attachment of the ombudsman to the legislature which has provided the most basic ground for the so-called superiority of the classical over the non-classical ombudsmen is overstated.⁴¹ There is no doubt that the argument possess weight in the fact that

³⁸(cont'd) Review of Administrative Sciences (XLVI,2,1980)p.145.

³⁹ C. Ferris, et.al.,op.cit,pp.7ff.

⁴⁰ B.Frank, "The Tanzanian Permanent Commission of Inquiry-the Ombudsman" Denver Journal of International law and Policy (2,2,Fall 1972) p.279.

⁴¹See for instance, D.C. Rowat, "A Critique of the Japanese Study Group's Report..."op. cit. "The Need For an Ombudsman in Developing Countries", op. cit., and most of his works.

a legislative ombudsman tends to have freer hand to review the activities of the executive.⁴² All the same, the experiences of the French Mediateur and even such established institution as the Danish Parliamentary Commissioner indicate that this alone provides no immunity for the ombudsman against allegations of political partisanship.⁴³ Similarly, the jurisdiction of the British Parliamentary Commissioner for Administration and even the French Mediateur is quite circumscribed mainly because of their legislative link.⁴⁴ On the other hand, the experience of Nigeria's PCC reveals that an office can manage to operate quite independently and maintain a broad scope of activity irrespective of its link with the executive.⁴⁵ In the same vein impressions from one of Nigeria's non-government institutional ombudsmen - the Nigerian Television Authority, Ibadan's Agborandun 'the one who brings words of solace' suggests that non-governmental ombudsmen may be very potent without any legislative support but through effective publicity methods.

Perhaps the most illustrative evidence of the argument that legislative ombudsmen are not ineluctable is the Swedish ombudsman experience. Sweden, the home of the ombudsman, has since the early 1970's also seen the emergence of a number of specialized ombudsmen which are clearly not of the legislative ombudsman-type. The consumer Ombudsman, the Antitrust Ombudsman and the Press Ombudsman are the notable cases. None of these Ombudsmen are agents of the legislature. The first two are appointed by the King-in Council and they do not report to the Parliament. The Press Ombudsman bears semblance to what we have characterized earlier as non-government institutional ombudsmen. He is not a government official, nor is he elected by Parliament. The Press Ombudsman is part of the

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⁴² Ibid. Anderson made this point too in his "Comparing Classical and Executive Ombudsmen" op.cit.

⁴³ See, D.C. Rowat, "The Spread of the Ombudsman Plan in Western Europe", op.cit., and L.N. Neilson, "The Danish Ombudsman" The Ombudsman Journal (3, September, 1983).

⁴⁴ Discussions of the Jurisdiction of the British and French Ombudsmen can be found in G. Gregory and P.G. Hutchesson, op.cit., and P. Lavirotte, "The Mediateur: A French Ombudsman" Law Quarterly Review(90, April, 1974).

⁴⁵for a detailed discussion of Nigeria's PCC see, V. Ayeni, "The Public Complaints Commission and Nigerian Bureaucracy" Ph.D. Thesis, University of Ife, Nigeria, 1984

self-disciplinary system of the Swedish Press. He is appointed by a representative body of three Press organizations, who also pay his emolument..

With these three ombudsmen operating side-by-side with the Parliament Ombudsman and the Chancellor of Justice, the Swedish experience provides a rich comparison of the works of different ombudsmen. Going by the available information on the different ombudsmen in Sweden, nothing supports the so-called superiority of legislative over executive ombudsmen. The indication is that the post-1970 ombudsmen have worked just as effectively in their specialized areas as the older ones have been in covering their broad jurisdiction. ⁴⁶ This conclusion is equally valid for other scandinavian countries, notably Norway and Finland, where various ombudsman and ombudsmanlike institutions also co-exist.

The recent trends in Scandinavia no doubt underscore our point that the issue of the structure, organization and jurisdiction of the ombudsman institution must be approached with a great deal of flexibility and improvisation. In particular, the increasing popularity of executive ombudsmen in the scandinavian countries points to the possibility that such ombudsman -type may be more suitable for certain specialized complaint- handling functions than other types.

Lastly, it may be useful if ombudsman scholars could further examine the possibility of integrating the different ombudsmen identified in this article wherever a rich collection of them exist. As it is likely that some ombudsman-types may be more effective in certain areas than others, the overall purpose of complaint-handling may be better served if the activities of different ombudsmen are coordinated and related to one another in order to maximize the benefits of each. A notable area that deserves attention here is the possibility of integrating traditional with modern ombudsmen in developing societies.⁴⁷ It appears that traditional

⁴⁶For a discussion of these recent scandinavian ombudsmen see, Federal Republic of Nigeria, *Bureaucracy* "Ph.D Thesis, University of Ife, Nigeria, 1984

⁴⁷ This issue is examined in the author's Memorandum to a recent National Committee established to review the local government system in Nigeria. See V. Ayeni, "On Traditional Rulers and their Role in Local Government Administration" (Mimeo, Department of Public Administration, University of Ife, June 1984).

ombudsmen, especially those associated with traditional rulership,⁴⁸ have a lot of potential advantages in situations where the bureaucracy is known to be powerful and distant from the people and, yet, as a result of the slow and confused progress of social and political modernization, among other things, the effectiveness of various modern bureaucratic control instruments may be quite limited.⁴⁹ All said, an ombudsman institution need not be attached to the legislature or indeed to any particular institution in order to be effective. The really critical factor for determining the worth of an ombudsman is how well it projects the image of a 'citizen's defender'. A true citizen's defender develops out of the determination of a society to create a complaint-handling institution that will operate without any power of enforcement. This calls for subtle social engineering capability, a careful attempt to design the institution to suit the context in which it is to operate as well as effort to educate key factors of the institution on how to ensure that its fundamental attributes are assured. Different ombudsman types are bound to emerge in different societies in this way. At the same time, it is expected that a number of jurisdictional and structural-organizational similarities will exist amongst them even-though not uniformly. As rightly concluded elsewhere this rich collection of institutional designs is "reflective of a certain flexibility and adaptability of the office. In addition, it represents a certain conventionality, control mechanism rooted in history and encompassing universal organism control characteristics".⁵⁰

⁴⁸The argument is that rulers still wield veritable influence in rural societies and to that extent can strengthen any institution associated with them. See for instance, N.N. Miller, The Journal of Modern African Studies (6,2,ar 1968). However, one must be careful so as not to over-stretch this argument. It is also true that traditional rulers today face very stiff challenge from the modern elites as a result of which some of the former have been brought into public disrepute. It is, therefore important that any attempt to integrate modern with traditional ombudsmen should be carefully reconcile the two sides of the issue; see V.Ayeni, "On Traditional Rulers and Their Role..."Op.cit. for elaboration and suggestions.

⁴⁹See for instance, D. Olowu, "The Nature of Bureaucratic Corruption in Nigeria" International Review of Administrative Sciences(3,1983).

⁵⁰ C. Ferris,et.al.,op.cit.p.6

Conclusion

In this paper an attempt has been made to set out a typology of ombudsman institutions which improves on previous efforts to classify and identify the basic attributes of these institutions. There is no doubt that this suggestion will elicit a lot of controversy - indeed this is what it should be given the variety of ombudsman offices that exist today. The popularity and prevalence of ombudsmen and ombudsman-like offices around the world makes the conclusion that some form of these institutions is inevitable in any social organization inescapable. It is for this reason that we have proposed here a typology which incorporates not just ombudsmen of the classical type, but a number of the different types of non-classical ombudsmen as well. Ombudsmen are not culture-bound, they cannot be found in the Scandinavian or liberal democratic countries alone. On the contrary, ombudsmen can be found in any socio-cultural situation, and the quality of their performance is not necessarily related to the situation in which they operate. The critical indicator of performance is how well the ombudsman serves as a citizen's defender, one of which is cheap, fast, easily accessible, and above all free of bureaucratic pathologies.