1. The ombudsman and administrative justice: from promise to performance

Marc Hertogh and Richard Kirkham

I. INTRODUCTION

Background

The ombudsman institution is defined by the International Ombudsman Institute as a body which ‘offers independent and objective consideration of complaints, aimed at correcting injustices caused to an individual as a result of maladministration’ (2012, Preamble).¹ Over the course of the last 60 years, globally this model of dispute resolution has become ever more significant in both civil and administrative justice systems. Given this prominent role, the central goal of this *Research Handbook* is to encourage the development of an inter-connected body of research capable of capturing the evolving design of the ombudsman model, the internal dynamics of the institution and its influence on public life.

The substantive focus of this *Research Handbook* is on those ombudsman schemes that operate in the traditional heartland of the ombudsman: the public sector. Within the public sector today the ombudsman has a deeply embedded role, with grievance handling made available on a scale that places it at the centre of the administrative justice system. In some parts of the world, such as South America, the ombudsman has additionally provided an institutional beacon around which human rights have been promoted (Alza Barco, Chapter 11). Elsewhere, amongst multiple roles, ombudsman schemes have also been deployed to tackle fraud and corruption,² promote transparency in government,³ and operate as a filter for constitutional questions.⁴ This expansion in the adoption and use of the ombudsman model reveals a common acceptance of its role as a necessary problem-solving technique in the overall toolkit of systems of justice and accountability. More recently, this acceptance has transferred across to the consumer sector, as for instance, under the EU’s Directive on Consumer ADR (2013/11/EU) and ODR Regulation. Such is the emphasis placed upon the ombudsman model of dispute resolution in some countries, it is plausible that judicial input into the development of some fields of consumer law could become virtually obsolete (Hodges, Chapter 4).

But notwithstanding the extensive work it performs in both public and private sectors, there remains an immaturity in research on the ombudsman when contrasted with

¹ Thus this book does not cover non-independent industry ombudsman schemes, such as those in the International Ombudsman Association, see <http://www.ombudsassociation.org/home.aspx>.

² For example, the public sector ombudsman schemes in the Republic of Korea, Macao, China, the Philippines, Viet Nam and Yemen.

³ For example, the public sector ombudsman schemes in New Zealand and Ireland.

⁴ For example, the public sector ombudsman scheme in Thailand.

academic literature on other institutions charged with promoting the rule of law and good administration. In response, this *Research Handbook* fills a void in ombudsman studies, by offering in one collection a wide-ranging overview of state-of-the-art ombudsman scholarship. In doing so it makes three claims about the current status of ombudsman research:

- The first claim is that there has to date been a lack of sustained and interconnected academic attention to ombudsman research, a situation which is becoming increasingly difficult to explain away given the institution's influence on modern systems of justice. As the lengthy bibliographies to the various chapters in this book evidence, the shortfall is not so much one of numbers of publications, it is instead the relative intellectual incoherence to the overall body of ombudsman research. It remains an ill-defined and under-coordinated discipline, too top-heavy with prescriptive and descriptive literature. There exists occasional innovative research but such work is too infrequently developed further by future researchers or connected with other branches of ombudsman study. In a bid to provide coherence to the study of the ombudsman and to aid understanding of how the discipline has most commonly been studied, in this introductory chapter a map of ombudsman research to date is provided. Many of the methodological approaches identified are then showcased in the chapters of this book, written by a collection of the leading international academics and practitioners currently working in the field exploring key areas of ombudsman research, points of contention and best practice in research technique.
- A second claim of the book is that, although there may have been much writing on the ombudsman, not enough of it has offered robust testing of the theory of the ombudsman through to demonstrable practical impact. In part this is an argument for more frequent empirical testing of the ombudsman's influence, enhanced attention on the vulnerabilities of the ombudsman's design, and greater understanding of the ombudsman's situation within its wider institutional and stakeholder networks. This claim though is additionally an argument for theorising to be regularly challenged and based upon stronger evidence of what the ombudsman can achieve. In this spirit of promoting empirical research, whilst the book recognises the valuable resources provided by country-specific case studies, the aspiration has been to move beyond purely descriptive accounts of different schemes towards papers that re-evaluate and scrutinise the theoretical claims made in favour of the ombudsman model.
- A third claim of the book is that although the ombudsman model now has a rich heritage, it is by no means a static institution and academic research has an important role to play in encouraging the constant redesign of ombudsman schemes towards better outputs. To focus the minds of the academic authors, several leading and former office-holders have contributed to the collection in order to highlight the practical challenges that the office confronts in striving to implement its remit.

To support the publication of the book we are very grateful to the Oñati International Institute for the Sociology of Law (IISL)⁵ for hosting a meeting at which the authors

⁵ <http://www.iisj.net/>

discussed their chapters and the central themes of this volume. The concluding chapter takes forward the themes identified at the Oñati meeting and throughout the *Research Handbook*, and explores the future challenges most likely to shape ombudsman practice and research.

The Context in Which the Ombudsman Operates

The ombudsman's principal rationale for existence is the endemic need that all societies face to humanise the bureaucratic systems that implement both public and private power. As outlined by one of the finest voices in ombudsman study, Larry Hill, four dominant accounts explain the threats posed by bureaucracy.

[B]ureaucracy's gargantuan growth dwarfs the individual; bureaucracies are politically unresponsive or inefficient; bureaucratic relationships are inherently dehumanizing; and bureaucracy enjoys strategic power advantages over the traditional government control devices (Hill 1976, 8).

In reaction to these threats, beyond the Nordic countries, the ombudsman came to the fore in the second half of the twentieth century and, as *ombudsmania* took hold, was sold globally as an institutional solution capable of delivering a multitude of different accountability functions.⁶ The ombudsman has been described as the 'jurisprudential development' of the twentieth century' (Lewis 1993, 676), and by 2017 the Ombudsman International Institute identified 170 schemes in 90 separate countries.⁷ The scale of its operations is often significant in terms of turnover. To take as one example of the scale of the enterprise the UK, with a population of approximately 65 million people. In the last reported year within the 16 largest UK-based ombudsman schemes just under 500,000 complaints were processed.⁸

Despite its roots as a complaint-handler, the institutional design has morphed considerably in its transplantation from country to country, being deployed variously as a *firefighter* (complaint-handling), *fire watcher* (dissemination of lessons learned) and *fire prevention officer* (proactively promoting improvements) (Harlow 1978; Snell 2007). The sheer variety of contexts in which the ombudsman operates has led it to be heralded variously as a defender of administrative justice (Gill 2014), human rights (Ayeni 2001) and the rule of law (McMillan 2005). Its writ has covered virtually all branches of the public sector and has been successfully adopted across the private sector (Hodges 2016). Additionally, the ombudsman is often advocated as a collator of rich empirical data of user experience, with the capacity to translate investigatory findings into lessons for the service provider. So extensive, flexible and pioneering is its problem-solving capacity that one team of writers dubbed this institutional solution as the 'ombudsman enterprise' (Buck et al. 2011).

Yet not all are convinced of the ombudsman's value. As this book is written, some parts of the world are experiencing profound shifts in their perspectives on liberal constitutionalism (Posner and Vermeule 2010). Legislative and executive-focused prescriptions for

⁶ For a more complete account, see Carl, Chapter 2

⁷ <http://www.theioi.org/ioi-members> [last accessed 25 July 2018].

⁸ Figures taken from the relevant annual reports.

accountability reform are openly advocated and unelected accountability mechanisms, including the judiciary, subject to critique. More particularly, instances of users organising themselves to campaign against the ombudsman have started to occur (Creutzfeldt and Gill 2017). In developing countries, it has long been alleged that the ombudsman operates as an ineffective shield, largely in place to appease international sponsors and to provide a veneer of respectability to public administration (Abedin 2010). In this environment, it is unlikely that the next 50 years of the ombudsman will see a period of growth equivalent to the previous 50, there may even be a reversal in fortunes.

For scholarship on the ombudsman this context raises a number of challenges, and the academic community has an important part to play in informing ongoing debates as to the optimum role of the institution.

Scholarship on the Ombudsman

One of the first major works on the ombudsman was the edited collection collated by Douglas Rowat way back in the 1960s (Rowat 1965). This work, and successor editions, charted the rise of the ombudsman during a period when the modern foundation of the model, the *justitieombudsman* in Sweden, was latched upon by a generation of reformers searching for ways to bring enhanced legitimacy and justice to the twentieth century growth of the administrative state. This period also saw some powerful empirical research produced, with Larry Hill's anthropological study of the New Zealand Ombudsman probably the stand-out example (1976). However, there is a sense that from these strong beginnings, ombudsman scholarship has not bedded down as firmly as it could.

Amongst other objectives, this book seeks to highlight the challenges that the ombudsman sector faces and in so doing provide a springboard for future academic research. We suggest that the mission statement for this project was set by Brenda Danet almost 40 years ago (Danet 1978). She noted that up to that point in time scholarship on the sector had been dominated by an understandable period of *prescription*, and argued that the time had come to move on from persuading the converted of the merits of the ombudsman. Danet also observed in the sector a tendency to follow prescription with a *descriptive* phase, within which the design details of individual schemes were interrogated. Whilst recognising the importance of prescriptive and descriptive scholarship, she strongly hinted that not enough had been achieved in terms of scrutinising the output of ombudsman schemes, with empirical research particularly under-developed. Danet stressed the need for a 'serious commitment to evaluation' of the sector, an observation that Aufrecht and Hertogh repeated in 2000 whilst observing that little had changed in the fashions of ombudsman scholarship since Danet had offered her provocative critique (Aufrecht and Hertogh 2000, 389).

In bringing this book together, we suggest that the field of scholarship has broadened somewhat from Danet's day and below offer a schema through which to understand the work that is typically conducted in the sector. Further, we recognise that evaluation has become a strong feature of the work of both practitioners and academics. But it remains the case that much more needs to be done to understand how, and if, the ombudsman institution influences users and administrators alike.

Given the vast body of work undertaken by the ombudsman community, there is an argument that in academic scholarship the institution has somehow fallen in

between the cracks between various disciplines. If it has found a consistent home it has probably been in legal studies, but law's traditional analytical methodologies may have inadvertently reduced the potential for innovative empirical research. Further, administrative law textbooks may include a chapter on the institution but will always devote considerably more time to matters of judicial authority. The fields of political science and public administration house some excellent studies on the ombudsman within its broader focus on the instruments of accountability that operate in the public domain, but it remains a sporadically researched institution. By comparison, around other institutional innovations of the same period, such as the human rights agenda or the growth of international law, whole journals have sprung up across the law and the political sciences, edited collections abound, and specialised graduate and postgraduate courses are widespread.

Reasons for this relative lack of curiosity within the academic community as to the potential and delivery of the ombudsman enterprise are several. For instance, perhaps other fields of study simply have more practical bite on citizens and greater political impact on administrations. Another explanation may be that the ombudsman is a less interesting institution to study because so much of its work is opaque and discrete, and hence more difficult to research. Nor does the work of the ombudsman easily connect into the mainframe of either the legal or constitutional structure. Although efforts have been made to systematise its decision-making output (Langbroek and Rijpkema 2006), its equitable roots make it resistant to structured analysis. Many have dealt with this flexibility in operation by regarding the institution as just another player in the political branch (Varuhas 2016), subservient to the democratic flows of the day and only autonomous to the extent that it performs a minor dispute resolution function.

Such reasoning may contribute to the limited range of work on the ombudsman, but it is possible that the field has also attracted a fair amount of complacency in the academy. It has been widely accepted that the ombudsman institution is an essential feature of modern accountability structures. It is capable of promoting a range of values and individualised justice. It is a standout example of modern liberal constitutionalism, and there has perhaps been an in-built incentive in the academy to support the endeavour, notwithstanding the occasional evidence of under-performance and government resistance to its work. An alternative explanation is that this mismatch between expectation and performance is just too hard to capture and analyse, other than through sophisticated empirical research techniques that not all academics possess the time, resources or skill to deploy.

Whatever the explanation, the contention of this chapter is that the time has come for ombudsman scholarship to move beyond its adolescent phase to something more robust and systematic, and more aware of the diversity of uncoordinated study that already exists. This book represents a starting point for boosting that bolder initiative by bringing together the work of some of the leading researchers on the ombudsman institution in recent times within one integrated body of work. In this chapter we propose a schema by which to understand the scholarship that is carried out in the sector, in the concluding chapter we propose an outline of the ombudsman-related areas that require ongoing scrutiny and research. An overriding objective therefore is to make the argument for a more integrated approach to the study of the ombudsman.

II. MAPPING OMBUDSMAN SCHOLARSHIP

Table 1.1 below provides a schema for understanding the different forms of scholarship that have been produced to date. Invariably, individual works will exhibit two or more of these forms but the schema is useful for mapping the sheer variety of scholarship available.

Within each category of scholarship, the quality and ambition will vary. Some studies will be largely descriptive, reemphasise past theoretical messages or aspire only to build knowledge incrementally. Other work though may be genuinely innovative in identifying gaps in understanding or disrupting intellectual traditions. These attempts to shift set positions may come in response to the new cultural, geographic and economic contexts into which the ombudsman is transplanted, or to the changing demands of governance (Snell 2007). Such work may challenge us to examine a new research agenda (Danet 1978), mine an untapped information source (Langbroek and Rijkema 2006) or propose a fresh theoretical perspective (Abraham 2008; Marin 2009). Likewise, within each category some of the most challenging work may come from ‘outsiders’ to the ombudsman field bringing fresh insights from other disciplines and comparisons of the ombudsman sector with other branches of public and private administration (National Audit Office 2005; Dunleavy et al. 2010).

Institutional

The first category of scholarship on the ombudsman institution, and probably the most frequently produced, is institution-focused research, which interrogates various aspects of the detail and output surrounding one example of ombudsmanry. A major producer of this type of scholarship has been the ombudsman office-holders themselves, examples of which can be found in the archives of various ombudsman associations and schemes often in the form of public lectures. Additionally, there have been a number of edited collections which have brought together some of the more reflective pieces on ombudsman offices (Rowat 1965; Lewis and Singh 1995), and detailed research on the schemes within individual countries (Seniveratne 2002; Ranjan Jha 1990). The former journal of the Ombudsman International Institute, *The International Ombudsman Yearbook*, was a regular home to this form of detailed scholarship.

Sometimes, perhaps uncharitably, referred to as descriptive in nature, institutional scholarship is based largely on primary resources and tends to target the legislative form and function of the institution under enquiry. Institutional scholarship is also generally based upon top-down perspectives of the institution. In other words, not only do such studies ordinarily rely upon formal sources of information, such as legislation, established guidance, published reports and parliamentary debates, but they approach the topic mainly from the perspective of the ombudsman sector itself.

Institutional scholarship has value in charting the evolution of the ombudsman office and disseminating knowledge, particularly in the early days of an office when raising awareness is one of its primary functions. But such scholarship is not the main focus of this edited collection for, as per the Danet critique referred to above, the long-term strength of such snapshots of ombudsman practice is relatively limited other than for providing a clear historical trail of the evolution of an office.

Table 1.1 The different types of ombudsman scholarship

	Focus	Methodology	Practitioner focus	Academic focus	Examples
Institutional	Legal framework Institutional design Performance	Analysis of primary sources	Exchange of ideas Profile raising	Knowledge driven Awareness raising	International Ombudsman Yearbook Seniveratne (2002)
Historical	Historical narrative Range of accounts/ sources	Discover archival sources	Profile raising	Comprehension	Robertson (1995) O'Brien and Seniveratne (2017)
Modelling	Comparative Functional	Collation of multiple data Typology building	Benchmarking Association forming Exchange of ideas	Optimum design, Taxonomy building	Asian Development Bank (2011) Heede (2000)
Normative	Justificatory, Goal-setting, Theorising (moral and political)	Theory building Gap detection	Defending status, Reputational enhancement	Setting or expanding boundaries, Justice-maximisation Institutional learning	Abraham (2008) McMillan (2005) Snell (2007)
Empirical	Empirical enquiry of ombudsman operation Empirical enquiry of stakeholder perspectives	Analysis of data Elite-interviews Anthropological studies Field studies Surveys Interviews Focus groups Legal research	Commissioned evaluations Reputational enhancement / defence Commission consumer research	Challenging/ testing ombudsman account Identifying weaknesses/ strengths Corroborating shifts in practice Theory building User perspective Scrutiny of accountability	Thomas et al. (2013) Gilad (2008; 2009) Langbroek and Rijkema (2006) Creutzfeldt (2016)

Historical

Alongside, and sometimes integrated into, institutional studies there is a strand of scholarship that has looked back at the history of the ombudsman office. Such work might have a range of motivations, particularly when conducted by current or former office-holders, the most likely being profile raising. By recalling the reasons of great importance that led to the establishment of an ombudsman office, we are reminded of its core purpose and its close connection with perceived fundamental constitutional, justice and rule of law objectives (Robertson 1995).

Additionally, however, historical studies allow the reader to reflect on the changing nature of the institution, so triggering renewed consideration of the core role and purpose of the office (O'Brien and Seniveratne 2017). Historical studies, sometimes complete with a review of previously inaccessible material, also help in reflecting more critically upon the non-legal forces that shape the construction and operation of the office (O'Hara 2010; 2011; Turton 2012).

Modelling

There is a long strand of scholarship that has strived to make sense of and map the developments in the ombudsman sector. A key theme here has been those papers that have attempted to model the differing forms and institutional designs of the ombudsman. In this vein a common narrative has developed around the different waves of ombudsman design, a narrative that in part provides this collection's structure. By this narrative, the varieties of ombudsman can be understood to divide up into rule of law, classical, executive and hybrid models. Further design choices concern the decision whether to construct a specialist or generalist scheme; the degree of independence to confer on a body; and the form of its accountability.

This focus on institutional design is one very practical area upon which the practitioner community has led the way. Across the globe ombudsman associations have been formed, each with guidance on the best practice for the formation of an ombudsman (for instance, Ombudsman Association 2017; ANZOA 2010). Certain safeguards are said to be vital for the long-term effectiveness of an ombudsman and associations require their members to meet those standards. Along the same lines, several academics have attempted to map the various designs of the office available and operated across the globe (Heede 2000; Carl 2012; Kucsko-Stadlmayer 2016).

Although not the primary focus of this collection, this mapping exercise has value in helping us understand the options available for the design of an ombudsman and laying the foundations for useful comparative studies or exercises in benchmarking and evaluation. Above all though, what the modelling strand of ombudsman scholarship highlights is the diversity of the ombudsman institution, a feature which, if success is measured in basic terms of longevity, is probably the main reason for the consistent success of this transplant from one country to another.

Normative

By itself, modelling does not provide many explanations for the choices being made when it comes to institutional design. In the pursuit of answers, there is a large body of

ombudsman scholarship focused on establishing an underlying purpose for the institution, and connecting that analysis to wider normative debates about the constitution (Buck et al. 2011), administrative justice (Gill 2014) and procedural fairness. Much of this literature is produced by office-holders themselves, but although there is sometimes a grey line between advocacy/prescription and theory in this body of work, it has the benefit of being enriched with deep practical experience.⁹

Academics have long taken on the challenge of trying to rationalise the merit of the office, often creating an ongoing challenge to the ombudsman, one which is designed to push them to do more (O'Brien 2015). Here much attention has been placed on identifying the correct balance between reactive (largely complaint-handling activities) and proactive (extra complaint-handling activity and interventions without a complaint) models of the ombudsman.¹⁰ Big claims have regularly been made for a bold approach to ombudsmanry, which actively pursues administrative justice by a variety of means (Marin 2009). But these debates have been accompanied by concerns about mission drift and changes in the methods required to perform expanded roles, matters which might lead to a reduction in the effectiveness of the ombudsman (Stuhmcke 2008). A connected consideration is the need to situate the ombudsman within the broader constitutional network. Here discussions abound about the relationship of the ombudsman with the political, judicial and administrative branches (McMillan 2005; Spigleman 2004; Buck et al. 2011; Gill 2014). A parallel body of work analyses the very different transpositions of the ombudsman institution in different countries and alongside other accountability actors (eg Bedner, Chapter 10).

Empirical

The above four forms of overlapping scholarship (institutional, historical, modelling and normative) have much merit but as the Danet reference above highlights, although a core rationale for the social scientist should be to understand social activity, it should also be to question and to challenge prevailing wisdom and practice against a range of potential expectations of performance. Encouraging empirical scholarship capable of assisting in this project is one of the drivers behind this book.

One form of empirical scholarship is relatively widespread in the ombudsman field already, namely studies which analyse the outputs of an individual scheme as publicly reported by the office itself. Typically, such studies will interrogate the formally recorded output of the office against agreed and widely understood institutional goals set in the main by law or by the ombudsman sector. The objective, therefore, is largely to offer an imminent critique of the ombudsman's operation from an internally generated perspective (Antonio 1981) to verify publicly the accountability of the office. Ombudsman schemes themselves have become purveyors of this form of research, albeit usually as a result of external pressure. The Ombudsman Act in Queensland (2001, ss.82–5), for instance, requires a periodic evaluation of the office's performance, whilst the Local Government Ombudsman in England commissioned a formal independent evaluation of its operation

⁹ For classics of this genre see Oosting (1999), Abraham (2008) and Marin (2009).

¹⁰ The examples are too numerous to mention, by way of a starting point Harlow (1978), Stuhmcke (2012) and Snell (2007).

(Thomas et al. 2013). The identification of flaws in ombudsman practice through such a critical approach can occasionally lead to a reconsideration of some of the fundamental tenets of the institution against a wider set of data, standards or perspectives.

The most common form of academic research on the performance of an ombudsman to internally generated standards is probably desk-based and reliant upon primary and secondary resources. Langbroek and Rijpkema (2006), for instance, generated most of their data from a content analysis study of ombudsman decisions.¹¹ But this form of study can also be supplemented by fresh empirical evidence garnered from ombudsman interviews and speeches. Critical perceptions are also boosted by informal observation of, and networking with, practitioners in the sector (Buck et al. 2011), albeit a technique which also exposes the researcher to the risk of observational capture. One of the most innovative studies conducted to date that has focused on the ombudsman's implementation of its role is that conducted by Sharon Gilad. In her research, Gilad embedded herself in the Financial Ombudsman Service in the UK to interrogate its operations (Gilad 2008; 2009), as did Larry Hill many years before (1976).

Such anthropological research is a prime example of the potential of empirical studies to provide an understanding of social phenomena from the 'inside-out'. By such an approach, observations of operating practice generated from fresh empirical research are used to construct, reconstruct or substantiate theoretical modelling. To secure these observations, a whole range of social science research techniques can be deployed, and in ombudsman research the area that has most commonly seen empirical research is the study of how various ombudsman stakeholders perceive and respond to the ombudsman institution (for example Hertogh 2001). In such studies, the focus is less on what the ombudsman is doing and more on the responses and attitudes of parties that have a close interest in the work of the ombudsman.

An obstacle to empirical research is the funding, resource and time implications of undertaking such work, but in some countries sophisticated empirical research has been regularly commissioned and published by individual schemes (for example Craigforth Consultancy and Research 2009; Gill et al. 2013). The willingness to commission such research might indicate an increase in the pressures on ombudsman schemes, from users, funders and political stakeholders, to demonstrate their influence and their capacity to deliver. That more examples of scholarly empirical research now exist (Creutzfeldt 2016), might also reflect an increase in academic confidence and responsibility in the field.

III. BOOK OUTLINE

The previous section provides an introduction into ombudsman research as it currently stands. This book does not offer a mirror image of that existing body of work, but does include some excellent examples of the different forms of research inquiry that can be pursued. Our aspiration above all is to offer a collection that can be used as a starting point for further research projects.

¹¹ See also in this genre, Remac (2013).

The book is organised through four Parts. In Part I, *Fundamentals of the Ombudsman*, Sabine Carl (Chapter 2) provides an overview of the history of both the intellectual theorising and designing of the ombudsman office. Carl maps different stages in the development of the office and highlights a series of distinct approaches to its institutional design. Part I also includes a chapter on the public sector ombudsman by Nick O'Brien (Chapter 3) which makes a claim for a particular conception of how the office's role should be understood. This claim juxtaposes neatly with a similarly powerful claim by Christopher Hodges (Chapter 4) for the lessons on ombudsmanry which should be taken from the private sector experience.

Part II of the book, *The Evolution of the Ombudsman*, provides a series of studies which interrogate the manner in which different models of ombudsman operate and have evolved. The UK ombudsman sector is commonly understood as being dominated by a classical design, with a distinct attribute of resolving grievances through 'soft law' techniques. This softness in character of the ombudsman model creates a dynamic of flexibility in the shape of the ombudsman, and a permanent set of challenges for the institution to respond to due to the relative weakness of its constitutional status. Carol Harlow (Chapter 5) offers a critical take on the potential that these 'soft law' techniques create, raising a series of weak points in the model that need further addressing. By contrast, the chapter by Johannes Chan and Vivianne Wong (Chapter 6) demonstrates the strength of the fluid dynamics of an ombudsman's soft status, by exploring how the Hong Kong Ombudsman has evolved subtly over the years in response to changes in governance. Today the Hong Kong Ombudsman has begun to use human rights grounds in its reports and has a distinct freedom of information role, but simultaneously it is constantly challenged to secure redress against a strong public administration.

Due to the flexibility in the ombudsman's form and design, the institution has been able to perform a powerful rule of law role. This point is well made in the chapter by Benny Tai (Chapter 7), which provides a theoretical tiered frame through which to comprehend the contributions that institutions such as the ombudsman can make towards upholding the rule of law. The practical implications of this rule of law role is pursued by Milan Remac (Chapter 8) and Alex Brenninkmeijer and Emma van Gelder (Chapter 9), with both chapters using the European Ombudsman as their vehicle to discuss the nature, and challenges, of the relationship between the courts and the ombudsman in terms of their respective capacity to advance the rule of law. The Brenninkmeijer and Gelder chapter makes the further point that the relationships the ombudsman has to manage also include other powerful accountability agents, such as the audit sector.

A regular theme returned to throughout the book is the variable and unpredictable nature of the ombudsman's evolution, and the ombudsman's capacity to provide a viable service, notwithstanding the obstacles that it can face, particularly in developing countries. Adriaan Bedner (Chapter 10) supplies a wide-ranging study of the Indonesian Ombudsman which analyses the importance of context in considering the capacity of the ombudsman to deliver and the form of service that is required. The chapters by Carlos Alza Barco (Chapter 11) and Victor Ayeni (Chapter 12) build on this theme by providing a more wide-ranging review of the growth, utility and effectiveness of hybrid models of the ombudsman as it has been spread respectively to the continents of South America and Africa. The promotion of human rights through the ombudsman is a particular claim of the chapter by Alza-Barco, an argument which is pursued further by Linda Reif

(Chapter 15) who narrows the focus down to one particular human rights consideration that the ombudsman can make an impact on, gender issues. In doing so, Reif charts the growing connection between the work of the ombudsman and international and national legal instruments.

In Part III, *Evaluation of the Ombudsman*, a series of chapters interrogate the claims made in favour of the ombudsman model through an examination of the theoretical literature, an analysis of annual reports and through empirical research. Bernard Hubeau (Chapter 14), as well as the chapter by Naomi Creutzfeldt and Ben Bradford (Chapter 15), examines the ombudsman from the perspective of the user of ombudsman services. Hubeau identifies the ‘Matthew effect’ in much of the ombudsman’s work, whereby it is often the case that the very people that the ombudsman is in part designed to impact and assist, namely the disadvantaged and least well networked sections of our communities, are the least likely to access an ombudsman. Creutzfeldt and Bradford consider the extent to which user perception of an ombudsman can be predicted by the legal culture within which they operate.

The following five chapters, by contrast, all examine the capacity of the ombudsman to influence the behaviour of public administration by using own initiative investigations and other instruments. Chris Gill (Chapter 16) challenges the standard assumption within ombudsman scholarship that an ombudsman can and should focus on improving administrative practice and, through reference to a breadth of theorising on accountability and two case studies, raises a series of bottom-up hurdles that need to be overcome for any endeavours in this area to be successful. Matthew Groves (Chapter 17) explores the way in which the ombudsman can be effective in influencing everyday living conditions in prisons. Yvonne van der Vlugt (Chapter 18) uses an empirical study into the police in the Netherlands to develop a model through which to understand how and why an ombudsman may or may not be successful in influencing the behaviour of organisations. Laura Díez Bueso (Chapter 19) provides an overview of the own-initiative powers of several ombudsman offices and the ways in which these powers are used in practice. Her chapter shows that in many cases, the ombudsman applies these powers to defend the position of vulnerable groups, including minors, the elderly, the disabled, immigrants and refugees. Finally, Maaïke de Langen, Emily Govers and Reinier Van Zutphen (Chapter 20) demonstrate how the ombudsman (in this instance the National Ombudsman of the Netherlands) can also use his own-initiative inquiries effectively to monitor and influence public administration.

In the final Part IV of the collection, *Ombudsman Office and Profession*, five chapters in different ways ask questions about the overall functionality of the sector. Julia Dahlvik and Axel Pohn-Weidinger (Chapter 21) focus on an under-explored feature of the ombudsman’s operation, namely the tendency for its own internal design to drive the decision-making of the organization in ways which may not always be anticipated. Their study interrogates the work of the Austrian Ombudsman Board through a multi-perspective research design that empirically examines the work of front-line staff in the office. Anita Stuhmcke (Chapter 22) explores how the profession ensures the delivery of its own stated standards, using the topic of evaluation as an example. Stuhmcke identifies a highly inconsistent approach within the sector and implies the need for more attention to be given to the need for minimal standards to be applied. The challenges an ombudsman faces in enforcing its will are most evident in the chapter by John McMillan

on his practitioner experience of ombudsmanry in Australia over a period of more than ten years (Chapter 23). Part of his ‘insider’ account is the potential for the ombudsman’s powers to be reduced if the office is viewed as overreaching.

Robert Behrens (Chapter 24) provides an overview of the challenges facing his ombudsman scheme from the perspective of someone new to an office. Here he charts the changes in the environment in which the office works, and the need to think strategically about building and maintaining trust around an ombudsman office. Working through a very different form of ombudsman model, Manuel Lezertua’s chapter (Chapter 25) offers a forthright defence of the institution and identifies the different ways that he can use the ombudsman’s powers to deliver a human rights mandate. Finally, Varda Bondy and Margaret Doyle (Chapter 26) offer a robust critique of the sector’s traditional loyalty to the brand name ‘ombudsman’, as well as challenging the sector to confront the public’s frequent misconceptions of its operation.

IV. CONCLUSION

One area of debate is alluded to within the book specifically by the Bondy and Doyle chapter and implicitly throughout, namely the question of ‘title’. The bulk of the book, and indeed the title, retains the terminology ‘ombudsman’, albeit for many of the authors with some reservation. Around the world associations of practitioners regularly refer to themselves as ‘ombudsman associations’, and the modern heritage of the institution is most widely attached to its Swedish variant, *justitieombudsman*. Until recently, most writing on the topic, referred to the institution as the ‘ombudsman’ and most schemes, albeit by no means all, adopt a variant of the title ‘ombudsman’. But in the English language the term, and even more so its plural ‘ombudsmen’, has an unfortunate, and unhelpful, gender-specific connotation. Our response in this collection has been to dedicate a chapter of this collection to exploring this issue in some detail and to generate further debate (Bondy and Doyle, Chapter 26). Each author, however, has been left free to deploy whichever terminology they feel most comfortable with.

In putting this collection together, the intention has not been to paint a global picture of the practice of the ombudsman, hence multiple schemes and parts of the world and indeed smaller jurisdictions have not been covered.¹² Further, several important topics, such as the challenge of privatisation for public sector ombudsman schemes, are only addressed in brief. Instead, the book’s primary purpose is to bring together a broad collection of some of the more innovative research scholarship in the field at present and to serve as a foundation for future research in the field. In the final chapter of the collection we offer our thoughts on the areas of research that will most need addressing in the coming years.

¹² For an extensive coverage of the global field see the series put together by the IOI on Europe and Asia (Kucsko-Stadlmayer 2008; 2016) and commissioned for Australasia and Africa.

REFERENCES

- Abedin, N. 'The Ombudsman in developing democracies: the Commonwealth Caribbean experience', (2010)23(3) *International Journal of Public Sector Management* 221.
- Abraham, A. 'The ombudsman and "paths to justice": a just alternative or just an alternative?' (2008) *Public Law* 1.
- ANZOA (2010), http://www.anzoa.com.au/assets/anzoa_media-release_essential-criteria-for-use-of-the-term-ombudsman.pdf [14 February 2018].
- Antonio, R. 'Immanent Critique as the Core of Critical Theory: Its Origins and Developments in Hegel, Marx and Contemporary Thought' (1981) 32(3) *The British Journal of Sociology* 330.
- Asian Development Bank (ADB) (2011) *Strengthening the Ombudsman Institution in Asia: Improving Accountability in Public Service Delivery through the Ombudsman* (Asian Development Bank: Manila, Philippines).
- Aufrecht, S. and Hertogh, M. (2000) 'Evaluating Ombudsman Systems' in R. Gregory and P. Giddings (eds) *Righting Wrongs: The Ombudsman in Six Continents* (IOS Press, Amsterdam 2000).
- Ayeni, V. 'The Ombudsman in the Achievement of Administrative Justice and Human Rights in the New Millennium', (2001) 5 *The International Ombudsman Yearbook* 49.
- Buck, T., Kirkham, R. and Thompson, B. (2011), *The Ombudsman Enterprise and Administrative Justice* (Farnham: Ashgate).
- Carl, S. 'Toward a Definition and Taxonomy of Public Sector Ombudsmen' [2012] *Canadian Public Administration* 55(2).
- Craigforth Consultancy and Research (2009), *SPSO Complainant Survey and Analysis 2008–09*, (Edinburgh: Craigforth Consultancy and Research).
- Creutzfeldt, N. 'A Voice for Change? Trust Relationships Between Ombudsmen, Individuals and Public Service Providers', (2016) 38(4) *Journal of Social Welfare and Family Law* 460–79.
- Creutzfeldt, N. and Gill, C. 'The 'Ombuds Watchers': Collective Dissent and Legal Protest Among Users of Public Services Ombuds' (2017) *Social & Legal Studies* 1–22.
- Danet, B. 'Toward a Method to Evaluate Ombudsman Role', (1978) 10 *Administration & Society* 335–70.
- Dunleavy, P., Bastow, S., Tinkler, J., Goldchuck, S. and Towers, E. (2010) 'Joining up Citizen Redress in UK Central Government'. In Adler, M. (ed.) *Administrative Justice in Context* (Hart Publishing, Oxford), 421–56.
- Gilad, S. 'Accountability or Expectations Management? The Role of the Ombudsman in Financial Regulation', (2008) 30(2) *Law & Policy* 227–53.
- Gilad, S. 'Juggling Conflicting Demands: The Case of the UK Financial Ombudsman Service,' (2009) 19(3) *Journal of Public Administration Research and Theory* 661–80.
- Gill, C., Williams, J., Brennan, C., O'Brien, N. (2013). *The Future of Ombudsman Schemes* (Birmingham: Legal Ombudsman).
- Gill, C. 'The Evolving Role of the Ombudsman: A Conceptual and Constitutional Analysis of the "Scottish solution" to Administrative Justice'. (2014) *Public Law* 662.
- Harlow, C. 'Ombudsmen in Search of a Role', (1978) 41 *Modern Law Review* 446–54.
- Heede, K. (2000) *European Ombudsman: Redress and Control at Union Level* (The Hague: Kluwer Law International).
- Hertogh, M. 'Coercion, Cooperation and Control: Understanding the Policy Impact of Administrative Courts and the Ombudsman in the Netherlands', (2001) 23 *Law and Policy* 47.
- Hill, L. (1976) *The Model Ombudsman Institutionalizing New Zealand's Democratic Experiment*, (Princeton University Press).
- Hodges C. (2016), 'Consumer Redress: Implementing the Vision', in P. Cortes, (ed.), *The Transformation of Consumer Dispute Resolution in the European Union: A Renewed Approach to Consumer Protection*, Oxford: Oxford University Press.
- International Ombudsman Institute (2012) *Bylaws*, Adopted by the General Assembly in Wellington, New Zealand, 13 November 2012.
- Langbroek, Philip M. and Rijkema, Peter 'Demands of Proper Administrative Conduct A Research Project into the Ombudsprudence of the Dutch National Ombudsman', (2006) 2 *Utrecht L. Rev.* 81.
- Lewis, N.D. 'World Ombudsman Community: Aspects and Prospects', (1993) 39(4) *Indian Journal of Public Administration* 663.
- Lewis, N. and Singh, S. (eds) (1995) *Ombudsmen: India and the World Community* (Indian Institute of Public Administration, New Delhi).
- Kirkham, R. 'The Constitutional Role of the Ombudsman', (2009) *International Ombudsman Yearbook*, vol.13 (The Hague: Kluwer Law International).
- Kucsko-Stadlmayer, Gabriele (ed.) (2008) *European Ombudsman-Institutions. A comparative legal analysis regarding the multifaceted realisation of an idea* (Springer Wien New York).

- Kucsko-Stadlmayer Gabriele (ed), (2016) *Asian Ombudsman Institutions* (Verlag Österreich GmbH).
- Marin, A. 'Leveraging Moral Suasion through SORT Investigations', (speech) IOI Conference, Stockholm, Sweden, June 10, 2009.
- McMillan, J. 'The Ombudsman and the Rule of Law' (2005) 44 *AIAL Forum* 1.
- National Audit Office (2005) 'Citizen Redress: What Citizens can do if Things go Wrong with Public Services' (London: The Stationery Office).
- O'Brien N, 'What Future for the Ombudsman?' (2015) 86(1) *The Political Quarterly* 72–80.
- O'Brien, N. and Seniviratne, M. (2017) *Ombudsman at the Crossroads* (Palgrave MacMillan, London).
- O'Hara, G. 'The Parliamentary Commissioner for Administration, the Foreign Office, and the Sachsenhausen Case, 1964–1968', (2010) 53 *Historical Journal* 771.
- O'Hara, G. 'Parties, People and Parliament: Britain's "Ombudsman" and the Politics of the 1960s', (2011) 50(3) *Journal of British Studies* 690–714.
- OA (Ombudsman Association) 2017, *Criteria for the Recognition of Ombudsman Offices (Schedule 1 to the Rules)*, May, 2017 <http://www.ombudsmanassociation.org/docs/OA-Rules-Schedule-1.pdf> [21 February 2018].
- Oosting, M. (1999) 'The Concept and Role of the Ombudsman Throughout the World', International Ombudsman Institute, Occasional Paper #70.
- Posner, E. and Vermeule, A. (2010) *The Executive Unbound: After the Madisonian Republic* (OUP: Oxford).
- Ranjan Jha, R. (1990) *Lokayukta: The Indian Ombudsman* (Rishi Publications: Varanasi).
- Remac, M. 'Standards of Ombudsman Assessment: A New Normative Concept?' (2013) 9(3) *Utrecht L Rev.*
- Robertson, Sir J. (1995) 'The Danish Ombudsman: New Zealand's Precedent' in *The Danish Ombudsman* H. Gammeltoft-Hansen (ed.) (Djof Publishing, Copenhagen).
- Rowat, D. (ed.) (1965) *The Ombudsman: Citizen's Defender* (George Allen and Unwin, London).
- Seniviratne, M. (2002) *Ombudsmen. Public Services and Administrative Justice* (Butterworths).
- Snell, R. (2007), 'Australian Ombudsman – A Continual Work in Progress', in Mathew Groves and Hoong Phun Lee (eds), *Australian Administrative Law* (Cambridge University Press, Cambridge).
- Spigleman, J. 'The Integrity Branch of Government,' (2004) 78(11) *Australian Law Journal* 724.
- Stuhmcke, A.G. 'Changing Relations between Government and Citizen: Administrative Law and the Work of the Australian Commonwealth Ombudsman', (2008) 67(3) *Australian Journal of Public Administration* 321–39.
- Stuhmcke, A.G. 'The Evolution of the Classical Ombudsman: A View from the Antipodes' (2012) 2(1) *International Journal of Public Law and Policy* 83–95.
- Thomas R, Martin J and Kirkham R, (2013) 'External Evaluation of the Local Government Ombudsman in England', Report for Local Government Ombudsman.
- Turton, D. A 'Super Bureaucrat' to the Rescue? Push and Pull Factors in the Creation of the Queensland Ombudsman, 1963–74', (2012) 19 *Queensland Review* 247–60.
- Varuhas, J. (2016) *Judicial Capture of Political Accountability* (Policy Exchange, London).