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The Organizational Ombudsman

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[+] Abstract and Keywords

This chapter discusses the OO (organizational ombudsman) in the context of organizational conflict management systems (CMS). The OO is a confidential, neutral, internal resource—formally independent of line and staff management—working informally, without decision-making power. OOs work with all employees and managers, and every workplace issue, as a “zero barrier” office. OOs seek *fair processes* for concerns brought to them. OOs refer to all formal and informal CMS options, identify “new” issues, and recommend systems improvements. The chapter discusses the emergence of the role in the context of social, political, and cultural changes over the past 50 years, especially in North America. It discusses the *alternative* dispute resolution movement—and concurrent emergence of the OO as an *appropriate* dispute resolution role within a CMS. It describes the functions—and competencies required—of ombudsmen, and discusses current challenges faced by those in OO roles.

Keywords: organizational ombudsman, zero barrier office, appropriate dispute resolution, neutrality, confidential resource, independence

This chapter discusses the organizational ombudsman in the context of conflict management systems. The organizational ombudsman is different from other conflict managers, designated in a way that may be unique in modern organizations.

The first section describes the unusual role of the organizational ombudsman (OO), as it is understood in the US and in some other countries around the world. It presents in two ways the rationale why an OO is seen as valuable and effective: 1) by strengthening the conflict management system itself, and 2) by direct contributions to stakeholders. In addition, the first section addresses the question: “Is the OO *part* of a conflict management system (CMS) or does the OO *work with* a system?”

The second section examines the origins of organizational ombudsmen, examines variations in how OOs operate, and presents some of the challenges faced by OOs in working to the code of ethics and standards of practice governing their roles.

The third section looks in more detail at the actual work of ombudsmen and the competencies required to do this work.

The fourth section examines more of the challenges and dilemmas of the OO role and identifies issues to be addressed as the field continues to develop.

Organizational Ombudsmen and Conflict Management Systems

The organizational ombudsman is an odd duck—perhaps the only professional manager within an organization whose role does not include “representing” the organization. The ombudsman is meant to be independent while being a part of the organization. (Indeed, the OO’s effectiveness derives in significant ways from being an insider.) The OO shares with others a commitment to the mission and values of the organization the OO serves, yet the OO’s loyalty to the organization has to be subservient to principles of fairness and impartiality.

An organization that establishes an OO has hired a professional who may critique managerial policies and the actions of managers and employees. The OO may question both leaders and employees if they do not honor the organization’s values or properly implement its policies and procedures. Although in the broadest sense the OO contributes to the management of conflict in an organization, the OO’s focus is not primarily on *containing* conflict, in the manner of most other units that address conflict in an organization. Rather the OO is concerned that most conflict should be productive for the organization. The OO endeavors to foster an organizational climate such that all issues of concern to employees and management can be brought to attention safely.

In most organizations conflict is seen primarily as something that interferes with efficient functioning and therefore has to be “managed.” Some organizations have an intentionally designed “conflict management system” (CMS) that is at least somewhat structured and coordinated (Rowe, 1984; Rowe, 1996; Gosline et al., 2001; Lipsky, Seeber, and Fincher, 2003; Ury, Brett and Goldberg, 1988).

Line management usually plays a central role—working in conjunction with staff offices such as Human Resources, employee assistance programs, compliance offices—and with unions, if any—to manage issues that arise. In many organizations, while there is not a formally designated “CMS” for managing conflicts, some of the same offices may exist and work independently. In this latter case there may be little coordination among offices dealing with conflict, or there may be a kind of “de facto system.” An ombuds office may be included in a CMS by design. It may also participate in a de facto system, but it may have been created with little attempt at coordination.

What is an ombudsman office and how does an ombudsman office fit, in the context of an actual or de facto CMS? The International Ombudsman

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Organization—the largest association of OOs—defines an Organizational Ombudsman as “an individual who serves as a designated neutral within a specific organization and provides conflict resolution and problem-solving services to members of the organization (internal ombudsman) and/or for clients or customers of the organization (external ombudsman).”

The organizational ombudsman (OO) office is configured differently from all other offices. In the US it is designated as independent, neutral, and confidential¹. It is also explicitly designated as informal—that is, without management power or decision-making authority. In Canada it is designated as independent, impartial, confidential and accessible, and also does not make management decisions². Both sets of OOs in North America lay great emphasis on fairness.

The OO works *with* the CMS, but ideally reports directly to the CEO or Board of Directors; the office functions independently from all ordinary line and staff structures. People’s opinions differ as to whether working with a CMS makes an OO office *part* of a CMS. Many OOs in North America work within a framework of professional standards promulgated by the relevant professional association, as noted above. However, there are no standards, beyond the emphasis on independence, that speak directly to the question of how an OO liaises with a CMS.

Figure 1 presents one way of understanding how the OO office fits in by showing the various components of a CMS. In the language of negotiation theory, conflicts can be resolved on the basis of interests, rights, and various sources of power. Many staff offices that address employee issues and concerns are oriented primarily toward legal rights and positional power. This is especially true for compliance offices. Many line and staff managers are oriented first towards the legal rights of the organization as represented by the authority of management. The authority and interests of management may be placed before the rights and interests of employees, students, trainees, and clients or customers. A CMS may also interact directly with entities like unions and staff associations—advocates that focus on the interests and rights of their constituencies. These latter entities may use their power to attempt to counterbalance or check the authority of management.

Thousands of organizations in North America have employee assistance, health care, chaplains, and counseling offices that serve the interests of their clients outside the realm of formal conflict management. Some organizations have sanctioned affinity groups and networks serving their members. (Few organizations have all of these, but many have one or another.) These function as informal entities in the CMS.

The table in Figure 1 is titled "ANALYZING YOUR CONFLICT MANAGEMENT SYSTEM" and "Some Conflict Management Options". It is divided into two main columns: "Interest-based" and "Rights-and power-based". The rows list various conflict management options, such as "Grievance Management", "Ombudsman", "Employee Assistance", "Human Resources", "Legal", "Mediation", "Arbitration", "Restorative Justice", "Peer Support", "Mentoring", "Coaching", "Counseling", "Therapy", "Chaplaincy", "Employee Assistance", "Social Workers", "Domestic Violence", "Sexual Assault", "Stress Management", "Substance Abuse", "EAP", "Employee Wellness", "Life Management", "Meditation", "Mindfulness", "Resilience", "Risk Management", "Security", "Disaster Preparedness", "Employee Assistance", "Peer Support", "Mentoring", "Coaching", "Counseling", "Therapy", "Chaplaincy", "Employee Assistance", "Social Workers", "Domestic Violence", "Sexual Assault", "Stress Management", "Substance Abuse", "EAP", "Employee Wellness", "Life Management", "Meditation", "Mindfulness", "Resilience", "Risk Management", "Security", "Disaster Preparedness". Checkmarks (X) are present in the "Rights-and power-based" column for many of these options, indicating that these options are typically provided by formal entities like HR, Legal, or Compliance. The "Interest-based" column has fewer checkmarks, indicating that interest-based options are less commonly provided by formal entities.

Click to view larger

Figure 1. Components of an Organizational Conflict Management System

Source: Adapted and Revised, from a Chart, “Analyzing your Conflict Management System,” by Mary Rowe and Brian Bloch, Harvard Negotiation Law Review, 239, (Winter, 2009).

Figure 1 shows a way to analyze a specific CMS. All the offices that provide conflict management can be located, together with the functions provided by each. (Of course one would add in any other offices and/or functions provided in a particular CMS.) Analysis of the functions that are provided will illuminate strengths and lacunae in any CMS.

Figure 1 also serves to demonstrate the functions of an OO in the context of a CMS. The check marks for OOs in Figure 1 illustrate the fact that OOs offer all the informal conflict management functions listed there.

OOs differ from all the other entities in Figure 1 in their eclectic orientation towards referrals, support, and service to *all* the entities that are part of the relevant CMS—OOs interact with all the other entities as well as with all members of the organization. OOs are typically focused first on interests, and, as neutral or impartial practitioners, they are mindful of the interests of all stakeholders involved in a specific concern. However, OOs must also be attentive to and express a strong concern about legal and moral rights—again of all stakeholders. OOs regularly offer referrals to the rights- and power-based options in Figure 1, as well as offering interest-based options. Above all they focus on fair process, whether formal or informal.

The OO office must be and appear to be impartial. Many OOs endeavor to use impartial language, for example avoiding words like “client.” Although OOs are committed to impartiality, they are also acutely aware of differences in power and areas of inequality within their organizations, and the impact of these on interactions in the organization.

OOs assert that they do not “represent” people who come to them, nor do they represent the organization. Typically they keep no case records for their organizations—in part because there are limited legal protections for ombudsman confidentiality. (There are no OO case records that can be used for administrative decision-making, or used during formal proceedings, or for reports to government agencies.)

Most OO programs were mandated from the beginning not only to address individual complaints, grievances, and conflicts, but also to bring systemic

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issues to attention. OOs are meant to illuminate aspects of the organization's policies, procedures, structure, and culture that regularly elicit grievances and complaints, exacerbate tensions and conflicts, and undermine the organization's efforts to fulfill its mission and accomplish its goals. (They do this in the traditional manner of ombudsmen, by "reason and persuasion;" as noted earlier, by their terms of reference, OOs have no decision-making power.)

In broadest terms this latter function is sometimes described as offering "upward feedback" to the leadership, but there is variation in how different organizations and different OOs interpret upward feedback. Some OOs compile statistics that give a quick overview of problems reported from within the organization. The data may illuminate divisions or cohorts within which certain categories of issues are most prominent.

For other OOs, identifying systemic problems entails much more than a statistical account of woes and worries. Rather, it requires assertively, but tactfully, working directly with problematic units and with management or, if management is unresponsive, upper leadership, until relevant managers acknowledge and take action to study or address the issues.

Organizations and OOs differ in the extent to which OO reports are made public. Some OOs present a periodic report to the entire organization summarizing, in broad terms, the number and types of OO cases. They may discuss those numbers with respect to the context in which they occur. These reports may offer critical reflections on the state of the organization as a workplace. Other OOs periodically make oral or written reports to all senior officers. In Canada an OO may also issue a public report about a given problem.

In addition to written reports—or instead of such reports—there are other (possibly more effective) ways in which OOs provide systemic feedback within a particular unit of the organization. This feedback includes frequent face-to-face meetings held by the OO with the unit or with the leadership of a unit. For example, a department having serious internal conflicts and tensions about racial differences among staff might ask for the OO's assistance to help understand and address those issues. Worried about how the mere fact of these problems might be seen by upper management, department heads may turn to the OO precisely because the OO is confidential and does not conduct formal investigations, or issue public reports and recommendations. OOs who take on such matters are bumping against the boundaries of organizational development specialists—as with every other sort of intervention, this can be a source of discussion within the OO field.

The Structural Rationale for an OO

The structural rationale for an OO office includes informal and often invisible coordination of the CMS, checks and balances, backup, fail-safe, and support to organizational learning—strengthening the whole CMS. One of the purposes of both OOs and CMSs is to provide a coordinated, strategically oriented context for organizational improvement. Organizational problems, conflicts, and grievances may then be seen as more than annoyances; rather they provide opportunities for organizational learning. However, it is very challenging to maintain a truly coordinated CMS. (Although one of the authors proposed and described the concept of an *integrated* conflict management system, an "ICMS," in a number of papers in the 1980s and 1990s (e.g., Rowe, 1984, 1990, 1993, 1996) we have come to believe that real integration is very difficult.)

The OO can and does help in informal *coordination*, but even this task is never-ending. This is true for at least three reasons: 1) many organizations function with independent divisions, dispersed outposts, and sub-units; 2) there is no common language about conflict, and managers have varied views and also change frequently; and 3) offices within a CMS have different missions. These points are discussed in order below.

In sizable organizations there are very few offices that are aware of the full range and depth of concerns that arise within—and also across—the different units and silos of the organization. Line management in each locale is structured around somewhat different goals. Almost all staff offices are specialized. It is often a struggle for line and staff managers to communicate effectively even about their achievements, let alone about problems and conflict.

Even though budgets provide one common language—the language of money—within an organization, there is no common language for describing or managing people conflicts. Within organizations information is often filtered according to status and expertise within the organization. Top leaders are broadly insulated from learning about conflicts and problems. People with special expertise often assume that only colleagues with the same expertise can understand their concerns.

Ombuds offices can "hear" across the entire organization, across virtually all boundaries. Because of the standards of "confidentiality, neutrality, independence, and informality," successful OO offices are one of the few places where people from anywhere in the organization feel relatively free to come to speak, at any time, about any issue.

Employees (and managers) differ greatly in how they perceive conflict—even before they walk in to work. Once inside, they are typically very much influenced by their work context, and especially by their perceptions of their local superior. Local bosses, in turn, vary greatly. Add all this together and there are many points of view *about* conflict—and no common language.

Therefore, one task for OOs is to help people not just to deal with their conflicts but also with their different views about conflict. As examples, mild conflicts may be formidably presented as "grievances," for example, in organizations with strong grievance procedures where it is known that being the object of a grievance can create difficulties for a disliked manager. On the flip side, conflicts may be ignored because they are embedded in age-old customs—like hazing, and racist jokes and jibes—that are simply taken for granted within the organization. OOs endeavor to help with different views about conflict, for example by offering a range of options for people with different views.

A third reason why it is difficult to keep a CMS coordinated is that the different managers within the CMS are focused on their own missions and their own goals, principles, and methods. For example, general counsel and compliance offices are oriented toward resolving conflicts—and keeping records—in a formal way focused on rights and power. Employee assistance programs, health-care practitioners, counselors, chaplains, and affinity groups, where they exist, work informally and are more focused on the individual interests of those whom they serve.

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It is conceptually and legally uncomfortable for confidential offices to report to a compliance office and an ICMS ought not be configured in this way. (An ombuds office cannot, of course, report to any compliance office and still be “independent.”) It is also obviously not appropriate for an informal practitioner to supervise an ICMS with compliance units. This dilemma is a major issue as one thinks about the concept of an *integrated* CMS. However, it is possible to think about a *coordinated* CMS.

OOs, as neutrals, work daily with all line and staff offices—endeavoring to be knowledgeable and respectful about the roles and values of each. OOs will search for, help to develop, and offer or refer to appropriate dispute resolution options, whether formal or informal, within the conflict management system of the organization (Gadlin, 1987). The concept of “appropriate” usually captures the ideas that the options are appropriate for the values of the persons with concerns, appropriate for the context, and also perceived to be fair.

OOs endeavor to consider the interests of every stakeholder in a concern. In this way they consider and complement the roles of line management and relevant staff offices. In addition, by being mindful of and introducing the perspectives of all parties to a problematic situation, OOs can provide checks and balances. If a manager needs particular support an OO can provide some back-up assistance. If some part of the CMS is failing to respond to a problematic situation, an OO can sometimes step in and alert senior managers, as a fail-safe. OOs can help the organization learn from any problem—and from any innovation—that is brought to them. As impartial and non-aligned parties, they can help keep the organization accountable—and better oriented—to its own mission and rules.

OO offices can offer a degree of consistency and stability to a CMS. OOs offer consistent language, understanding of policies, and ways of thinking about available options. Some OOs have also taken a leading role in forming institutional CMS steering committees. These informal but long-lasting groups bring together representatives from the major CMS offices (including the OO office) for monthly discussions—to communicate about conflict, problem prevention, and options for conflict management.

In this way, on a daily, even hourly basis, OOs serve as informal coordinators for a CMS. There is disagreement within the ombudsman profession about whether OOs compromise their independence in this informal and often invisible role. Some OOs see constant, de facto coordination to be a quasi-managerial function, as part of the CMS. Some see it as the sum of individual acts of support to the CMS and its people, and therefore completely compatible with OO independence. The final section below examines more closely how OOs operate and interact within their organizations.

The Outcomes Rationale for an OO

The direct contributions to stakeholders derive from an OO office being—and being seen to be—safe, accessible, and credible. The usefulness and effectiveness of an OO are methodologically difficult to measure—in part because of near absolute confidentiality and the lack of records—but elements of OO effectiveness can be described.

All organizations need mechanisms whereby mistakes, omissions, problems, conflicts, and wrongdoing can be identified and addressed. Virtually all surveys about violations show that many managers and employees frequently see or hear about serious infractions of policies, rules, and laws—and about acts of omission and commission against the organizational mission. However, in Rowe, Wilcox, and Gadlin (2009) it is noted that many people do not act on the spot or come forward in a timely manner when they perceive unacceptable behavior. They may fear loss of relationships, loss of privacy, retaliation, or just “bad consequences.” People may worry about being seen as a troublemaker. Many do not feel sure of themselves. Many feel they do not have “enough evidence” to act.

OOs try to establish themselves as zero barrier offices (Rowe and Bendersky, 2002). OOs endeavor to be “safe, credible and accessible” for all (Rowe and Baker, 1984). They regularly hear more than employee hotlines about unacceptable behavior. OOs also endeavor to be accessible to all, in person, by phone, email, intranet systems, and letter. Most OOs will accept visits from groups, most will accept anonymous communications, and many will interact with people who remain anonymous, in order to be and appear to be “safe.” OOs try to find acceptable and credible options, to deal with all concerns, while protecting the confidentiality of those with whom they interact.

The credibility of OOs is methodologically difficult to measure. It is useful to think about credibility in terms of trust, and in terms of demonstrable usefulness of the OO office. Trust is perhaps most easily measured by whether people seek out the office and the issues that are presented. At professional gatherings and in surveys most OOs report that they are swamped with work. OOs receive a very wide range of issues—ideally from every demographic and geographic group of employees in the organization. In unionized workplaces if the OO hears issues covered in the bargaining agreement, they have usually been referred through the union; if not, the OO refers the person raising the issue to the union.

“Word of mouth” is a typical mode of referral to an OO office, suggesting that most OO offices are reasonably trusted to be confidential, independent, and impartial. In some organizations with very diverse populations, people from some cultural/ethnic backgrounds may be reluctant to contact an OO. In this case OOs hopefully will review the distribution of those who use their office to understand if specific cohorts and sub-populations are under-represented and take steps to reach those groups. In most ombudsman programs managers frequently call the office for consultations—for their own issues and those of their supervisees. While no systematic data can be cited, OOs appear to the authors to receive by far the widest range of issues, and of cohorts, of any conflict management office.

Because OOs can receive calls from the whole organization, they are often seen to be a good place to start for multi-issue, multi-regulation, multi-cohort problems that have roots and branches across organizational boundaries. Because OOs are relatively senior professionals, they bring high-level skills to each concern, like having the most senior internist serve in the emergency room in a hospital. In addition most OOs acknowledge contacts within a day or so; they are unusually responsive and also expeditious for people in a hurry. OOs frequently help people with “red tape.”

It may be that one reason for the credibility of OOs is that they are constantly “tutoring.” People facing a problematic situation often can only think of one way to address it; OOs typically help people identify and consider a wider variety of options. Another contribution of the OO is to help people who are fixed in their views to be more appreciative of the perspectives of those with whom they disagree or are in conflict. It is, by definition, hard to get

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someone with rigid ideas to hear another point of view. Opposing arguments from opponents often just strengthen the original belief. Experience suggests that respectful questions and facts from a relatively high-level neutral—one who has no stake in the matter at hand—can sometimes help a person to gain perspective.

OOs are not universally successful. Many must work hard to be a significant resource for people in the very top leadership positions in organizations. Current OO programs primarily address the concerns of people below the top leadership. Certainly many organizational leaders rely on upward feedback from OOs and some will ask an OO for further perspectives on particular issues about which the OO is knowledgeable. But when it comes to conflicts between top leaders, or addressing major policy decisions, the OO typically is an underutilized resource.

Measuring the effectiveness of OOs is methodologically very difficult (Rowe, 2010a). Many of the benefits (and costs) are subjective. OOs will not always be able to help each person who calls them either in terms of the outcome desired or even a fair process. By the same token, it is not accurate that every case will be cost-effective for the employer. Many of the matters that come to an OO are not “important” from a narrow cost-effectiveness perspective. However, the high traffic in many OO offices helps constituents to know that a zero barrier office exists when delicate problems do arise. Satisfaction surveys regularly show high levels of gratitude and satisfaction from most stakeholders—although the authors know from their own practice and from colleagues that there are always stakeholders who are disappointed.

It is likely that most OO offices at least cover their costs, in objective terms. Many OOs have put forward metrics that suggest their value (Rowe, 2010a). In particular, an OO that has been in place for any length of time will be able to point to very serious cases of unacceptable behavior that have been forestalled, or identified and dealt with, because of calls to the OO. Usually the most serious cases are known to senior managers, so there is no question about breaching confidentiality. Many OOs can point to having helped effectively with one or several cases each year, each of which would otherwise have entailed costs in excess of the cost of the office. Significant savings—in terms of money, reputation, and image, and savings in human costs—are usually easy to discuss. Dozens or hundreds of cases will show that red tape has been dealt with, and that unfair processes have changed (Rowe, 2012a).

To sum up, the authors believe that the growth of the OO role is attributable in part to the effectiveness of the function. To understand the role more fully, the social and political context that influenced the emergence of OOs is examined.

Genesis and Development of the Organizational Ombudsman Role

Informal mechanisms for addressing dissatisfactions, conflicts, and grievances have existed for centuries in a wide range of cultural and economic contexts. Here and there, some of these mechanisms looked something like the modern organizational ombudsman, albeit with different titles. However, most histories of the modern ombudsman role take special note of the Swedish Parliament’s establishment of the role and use of the word in 1809. Parliament intended to provide a means whereby citizens could pursue complaints and grievances against the administrative and executive branches of the government. It established the classical ombudsman.

Modern intra-organizational roles like those of an OO, but with various titles, appeared spontaneously, on an occasional basis, throughout the 20th century. In addition, beginning in the 1960s in North America, the classical ombudsman concept was explicitly adapted for organizations in many sectors—universities, corporations, non-profit, and government agencies. An intra-organizational version of the role emerged, to allow people to raise issues and concerns in their lives as employees, managers, and students, rather than as citizens.

Although many organizations had various informal means by which internal issues could be addressed, the incorporation of informal functions under a unifying concept—“the ombudsman”—has strongly facilitated a wider use of those informal functions. From the 1960s two contributing influences converged to create conditions in which the OO adaptation was able to develop relatively quickly in the US. At the individual level there was more attention to autonomy, authenticity, dissent, self-expression, self-determination, and personal gratification. At the social/cultural level, attention was paid to issues of justice, civil rights (racial and gender), social equality, anti-authoritarianism, protest, counter-cultural formations, and alternatives to formal, authoritative, bureaucratic processes. Diversity issues became important in the Second World War. Immigration, internal migration, and other developments in the workforce in the post-war years brought unprecedented diversity by race, religion, nationality, gender, age, disability, and class. The post-war years also brought waves of regulation about safety, civil rights, and the use of public money.

As these social currents and legal requirements intersected within organizations they produced change and increased reflection. Organizational leaders and managers were searching for ways to maintain organizational authority and control, to comply with new laws—and to respond to pressures for expanded rights and increased opportunities for disagreement, dissent, and autonomy. This was also a time of extraordinary interest in entrepreneurship. Organizational leaders were seeking ways to foster discussion, creativity, innovation, and “intrapreneurship” within the organization. Not surprisingly, some of the same organizations that were fostering innovation were among the pioneers in developing internal ombudsman-like programs—the Control Data Corporation, Bell Labs, and MIT were notable examples.

Challenges to authority and bureaucracy, and increased oversight by government agencies, led a wide range of organizational leaders to rethink the structure of work groups and authority. Control and orderliness were no longer associated just with the structure and assertion of positional power. Creating conditions in which autonomy and participation could flourish, and where individual rights and interests were honored, became a way of maintaining control and complying with the law. Fewer layers of management were more cost-effective—and more democratic. Flattening hierarchies, collaborative workgroups, and cross-cultural, cross-functional, self-governing teams paralleled the rise of the organizational ombudsman. All were contributors to the movement away from authoritarian, hierarchical organizational structures.

Alternative Dispute Resolution and Appropriate Dispute Resolution

Various challenges to authority and concerns about cost that characterized the period from the 1960s were also evident in the emergence of

mediation, and the broader field of alternative dispute resolution (ADR). There emerged some “competition” between formal and informal justice systems.

The formal judicial system, where authoritative third parties rendered binding decisions grounded in the law, was seen by some people as one of the agencies within society wherein power inequalities were replicated. Women and people of color were well represented among those raising questions about the formal systems. (These formal systems were built around “due process,” they followed clear rules and procedures: the rules of evidence, representation, impartiality, and disinterestedness of deciders, equal access to information by all and from all parties, and possible appeals.) This questioning of the role and impact of formal justice systems was somewhat ironic since the formal justice system, structured around due process, had earlier been considered among the cornerstones of social equality especially when the issues were related to class, race, and gender (Menkel-Meadow, 2012).

By comparison, advocates of the burgeoning alternative dispute resolution movement linked equality to an anti-authority stance and an emphasis on individual autonomy. They promoted “informal” justice by emphasizing “direct party empowerment and participation” in “case presentation and resolution.” The focus in informal justice was on self-determination, and future-oriented problem solving. Mediators sought solutions on the basis of needs and interests rather than rights and legal claims (Menkel-Meadow, 2012). As the differences between ADR and the formal system were being defined, some of its corporate proponents were moving to incorporate ADR into conflict management systems. This was done by claiming the advantages of ADR: cost effectiveness, efficiency, legitimacy, flexibility, and confidentiality (including protecting the image of the organization). These qualities were also attractive to overburdened court systems many of which were open to experimenting with mediation programs.

In many ways the organizational ombudsman field grew rapidly because it caught the ADR wave—while simultaneously providing an alternate path for some of the strengths and processes of formal grievance procedures and the formal justice system. Rather than lining up with one side or the other, or even addressing the tensions between formal and informal approaches to dispute resolution, the OO field affirmed the value of both. While the legal and ADR professions then got somewhat caught up in competitively debating the disadvantages and advantages of the two approaches, organizational ombudsmen were embracing both. OOs emerged offering *appropriate dispute resolution* options for the choice of disputants.

OOs did not present themselves as a venue for providing formal justice. (OOs do not conduct hearings or render, affirm, or overturn decisions.) However, they became a resource to which members of an organization could turn when they felt the organization’s formal grievance channels were not being implemented fairly or—much more common—when formal channels were inadequate to address key issues within the organization. This was especially true with respect to issues for which there were no formal policies or laws.

OOs frequently found themselves asking for formal policies that seemed to be needed for “new” issues. Examples early on included academic misconduct at universities, abrogations of corporate commitments of a kind that are now called “waste, fraud, and abuse,” unanticipated varieties of safety problems, and all the varieties of harassment and bullying (Rowe, 2010b). By affirming, rather than challenging, formal justice systems, while also offering alternatives to them, organizational ombudsmen presented themselves as a complement to the organization’s traditional lines of authority and status. The role of OO was structured from the start within the organization, although independent of, other major components of the CMS. In many milieux the organizational ombudsman role was not seen as a challenge to the authority of organizational leadership. Especially within the US, it was often on management initiative that the ombudsman program was developed.

In some organizations, in the early days of organizational ombudsmen, the establishment of an ombudsman program was discussed as a counter to movements towards unionization. It should be noted, however, that the situation has changed somewhat and there are instances where unions are partners in the creation of conflict management programs, e.g., in government agencies in Ontario, Canada (Lynch, 2010).

Whatever the motivations behind the development of organizational ombudsman programs, their establishment is either implicitly or explicitly an acknowledgment that the complexities of bureaucratic organizations call for programs and processes whereby inconsistencies, inefficiencies, rigidities, favoritism, newly configured indignities, and other forms of unfairness—and illegal behavior—can be surfaced and addressed. The establishment of an OO tacitly acknowledges that the formal procedures and processes of an organization can be unfair, slow or otherwise poorly administered (Gadlin et al., 2000).

In addition, in every organization, there are—for both individuals and groups—many issues and conflicts for which there cannot, realistically, be rules, regulations, or policies. These issues and conflicts nonetheless may need to be addressed. Organizational ombudsmen have often established their value by providing options for redress in matters for which there are no useful formal mechanisms—or in the many cases where there never would be sufficient evidence for formal grievance or complaint (Rowe, 1990, 2010a).

In an era where the very legitimacy of authority was being challenged on numerous fronts, the establishment of ombudsman programs that actually offer a path to questioning authority has served to enhance the legitimacy of that authority. This enhanced legitimacy and relatively swift responsiveness have sometimes improved morale and have served also to help some organizations retain top professionals. Even if they did not always employ the term “procedural justice,” ombudsman programs heightened employees’ and managers’ sensitivity to such matters. Research has demonstrated that procedural justice (enhanced by swift responsiveness) is critical to employees’ identification with their organization and acceptance of the legitimacy of its leadership (De Cremer and Tyler, 2007; Blader and Tyler, 2009).

Variations in Practice

Above, the organizational ombudsman concept and role was presented as if there were unanimity of opinion among OOs about the role. In reality the situation was—and remains—more diverse. Initially there were no professional organizations and no sense of common standards. Once professional associations began to form, significant differences appeared among the members.

Many OOs were solo practitioners who had tailored their ombudsman role to the idiosyncratic requisites and culture of their organizations. Different

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sectors—academic, corporate, governmental, international, and NGOs—each had their own demands and peculiarities. To make matters even more complicated, some divisions in the larger dispute resolution field (between formal and informal approaches to justice) were also replicated among the OOs. There were some OOs who were affiliated with the ADR movement, others who saw OOs as more akin to the formal justice system. Some were inspired by the concept of social justice, and still others were tuned to organizational and inter-personal power dynamics, and less focused on questions of rights and interests.

Among the factors that inclined OOs in one direction or another was their prior field of experience—senior line manager vs staff, high-tech professional vs social worker vs lawyer vs psychologist vs HR specialist vs academic—not to mention personal dispositions and skills. (In the early days surveys suggested that virtually all OOs had been selected on the basis of personal attributes—characteristics such as being trusted by the CEO, patience, fairness, objectivity, and empathy—rather than on the basis of formal training or previous work experience (Rowe and Ziegenfuss, 1993).)

There have been national differences as well. OOs in Canada, Europe, Africa, Asia, Australia, and South America have had their own customs and sensibilities. Pioneer OOs in South Africa, Japan, and New Zealand seem to us more like the US model; some in South America are developing somewhat different models.

In Canada and Europe some ombudsmen, especially in the academic world, developed the internal ombudsman role explicitly as an adaptation of the classical ombudsman role. These “neo-classical” ombudsmen proliferated in Scandinavia and were being created within many of the provinces of Canada and a few states and cities in the US. On the other hand, although they saw their responsibilities as including the conduct of formal investigations and issuance of reports and recommendations, Canadian and European ombudsmen in organizations were not confined to classical functions. They incorporated into their practices many of the same interest-based approaches to addressing issues and resolving conflicts, as did their US counterparts. In addition, some classical ombudsmen in Europe have reported that they have done the same (Luigi Cominelli, 2004).

In the US, from 1970 on, most OOs were careful to differentiate themselves from the classical ombudsman model. For one thing, some offices had been created with no reference to the classical ombudsman. They were spontaneously invented as independent, confidential, informal, internal neutrals and originally with different titles. There have been many of these OO-like offices around the world with different names, like the Registrars and Partners Counsellor of John Lewis in the UK, which were established in the first half of the 20th century. Other examples include the wide variety of “organizational troubleshooters” described by Ziegenfuss (1988).

Concerned about maintaining independence from formal processes and managerial responsibilities, and determined to avoid being subpoenaed by complainants—or forced by their organizations to breach confidentiality—OOs in the US eschewed formal investigations, fact-finding, and case records. Some avoided making public recommendations. At most they might acknowledge that in the face of a complaint they would “look into” the complaint while never fully spelling out what constituted “looking into” something. In the very rare circumstances (now contrary to IOA Standards of Practice) where an OO did conduct a formal investigation it would be clearly described as an exception to the rule, and the reasons for the exception would be explained.

IOA Standards of Practice are now widely shared and there is an IOA Certification program, but there is no precise standardization of practice within the US. Some US OOs still feel somewhat akin to the ADR movement and many provide conflict resolution services such as facilitation and mediation from within their offices. Others limit themselves to coaching and helping those who visit them to explore and analyze various options. They provide comfort and guidance, help to clarify policies and rules, and refer people to relevant organizational processes.

Other differences include the preferred level of dealing with issues. Some OOs hover safely at the level of individual cases, and others use experience with individual cases as an entrée into systemic and policy issues within the organization. Many OOs deal with very complex problems.

Figure 2 provides facts from a 2010 International Ombudsman Association survey. Figure 2 does not include the number of OOs around the world in this century. There are many hundreds, but it is not possible to provide an exact number. Some organizations have internal “Ombudsman” offices that do not function as Standards of Practice organizational ombuds. And, conversely, some organizations have senior managers who *do* function as neutral, independent, confidential, and informal conflict experts—thus practising to the IOA Standards of Practice—but with different titles.

Figure 2. Organizational Ombudsmen—A Brief Overview

Locations: Africa, Asia, Australia, Canada, Central America, Europe, New Zealand, South America, United Kingdom, United States.

Sectors: Aerospace, agriculture, business services and consulting, consumer goods retail and wholesale, financial, health care, pharmaceutical, high-tech, IT, manufacturing, oil and gas and other energy, R&D, telecommunications; a wide range of academic institutions, including school systems; federal, state and local government, quasi-government organizations, other not-for-profit, multi-national and international organizations; numbers growing, albeit slowly—about one in six of the Fortune 500 companies.

Length of Cases: Varies from OO to OO; 15% to 40% of all cases take less than an hour; at least 5% take more than 100 hours; 55 to 80% of all cases are in-between.

Common Topics of cases: Compensation and benefits; evaluative relationships; peer and colleague relationships; career progression and development; legal, regulatory, financial and compliance, safety, health and physical environment; service and administrative; strategic and mission related; values, ethics and codes of conduct.

Issues reported as more numerous in recent years: Multigenerational issues, cases with more than three issues, multi-ethnic, multi-language and multi-race issues; complex gender issues; bullying; cross-organizational, multi-cohort, multi-unit and multi-country issues; cases with multiple sets of relevant rules, codes, contracts or regulations; multiple offices involved in solutions; complaints about other offices in the organization; cases lasting longer than six months; and single cases becoming the impetus for a systemic response in a department, division or college, or for a systemic response organization wide. (Only those cases including groups were reported to be “much the same,” year to year.)

The significance of certain issues has been reported to be somewhat higher in recent years, especially in academia. These include: impact on the financial health of the organization, reputation of the organization, safety and security of the organization, personal relationships, and the job security, reputation, and health of individuals. Many OOs reported more discussions with compliance offices within the organization.

Source: IOA Compensation and Practice Survey, 2010, available to IOA members at <http://www.ombudsassociation.org/members-only/business-planning-and-policy-documents/member-surveys>

Source: International Ombudsman Association Compensation and Practice Survey, 2011.

Competencies and Functions of Organizational Ombudsmen

It is now well established that human beings make decisions quickly, often without knowing it, on the basis of intuitive understanding, modulated and informed by the slower processes of cognitive thought (Kahneman, 2012). Ideas like “trust” and “interpersonal chemistry” and “the perception of fairness” now share center stage in decision-making with “reason” and “rational choice” and “delivering justice.” This approach to understanding decision-making—inspired by research in social psychology and neuroscience—illuminates the importance of providing options in a conflict management system. An effective system requires options that can support responsible and effective problem solving and decision-making on the basis of both “trust” and “rational choice.” An OO needs to have skills in each domain of decision-making, and to understand how each domain works. The OO needs to try to understand his or her own decision-making processes and to understand those of all stakeholders in the CMS.

The first task for an organizational ombudsman is to build enough of a relationship with each stakeholder and stakeholder group to be perceived as fair, safe, accessible, and credible. The second task is to help all managers and employees actually to *understand* the organization’s conflict management system, its options and its resources. (This is the task that develops into de facto, informal coordination of a CMS.)

Many employees and managers move around constantly. Few people listen well. Few managers respond promptly to calls for help—in fact few managers respond in a timely way to any communication. People joke, “Nobody reads the rules any more.” Very few people understand any organizational conflict management system in its entirety. Few people understand their options. In this context, for many OOs around the world, the most basic functions of an OO include:

- delivering respect, for example affirming the feelings of each person involved in a concern, while staying explicitly neutral on the facts of a case, responding as quickly as possible when called, endeavoring to build some degree of relationship
- active listening, probing respectfully, serving as a sounding board
- providing and explaining information, one on one, for example about policies and rules, and about the *context* of a concern
- receiving vital information, one on one, for example from those reporting unacceptable behavior, criminal and safety violations, and the like
- reframing issues, illuminating the context, and facts and feelings, that might have been overlooked
- helping to develop options, and then helping to evaluate the pros and cons of all the choices for the issues at hand.

In their direct work with those who call upon the office, the OO’s orientation is to work with callers to develop some of the skills the callers will need to deal with their issues in context. OOs provide “just-in-time” support in learning about effective negotiation, one on one, in a way that is tailored to individual needs. These functions include:

- offering the option of referrals to other resources—including “key people” in the relevant department, managers and compliance offices, and all relevant support services
- helping people help themselves to use a direct approach, for example helping people to collect and analyze their own information, helping people to draft a letter about their issues, coaching and role playing to help people learn to negotiate and to engage in problem-solving. This is the function of teaching people “how to fish” rather than “giving them a fish.”

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Often those who come to the OO do not want or need direct intervention from the OO, or at least not initially. However, there are many situations where an OO may also offer, or be asked, to play a role. Except in the very rare case where the OO judges there is imminent risk of serious harm, and that there are no other options, this would be done only with permission from the person who asks for help—and of course the OO also has to agree to act. These functions include:

- offering shuttle diplomacy, for example helping employees and managers to think through proposals that may resolve a dispute in a fair way, and facilitating discussions, in a back and forth process; helping a manager to review or reformulate a decision
- offering mediation inside the organization, bringing various people together
- “looking into” a problem informally, for example checking for new policies, or resource constraints, checking unobtrusively with staff offices to find out if others have heard about a certain kind of issue
- facilitating a generic approach to an individual problem, for example asking for the law proscribing uncompensated overtime to be enforced throughout a whole division. This may lead to a fair outcome while protecting the identity of an individual who came forward.

Information from repeated ombudsman association surveys shows that an OO may spend 20–40% of his or her time serving the whole organization and its conflict management system. These functions include:

- providing early warning of issues that are “new” and potentially disruptive to the organization, by getting back to relevant managers in a manner consonant with confidentiality, when the OO sees something unexpected and potentially disruptive
- identifying and communicating about *patterns* of issues, for example reporting to each senior officer on a regular basis about what comes to the OO office about his or her domain; writing specific and/or annual reports
- working for systems change, for example suggesting new policies, procedures, and structures, and participating in relevant training about conflict management; serving as a resource person to policy committees; helping to spread good ideas that have popped up somewhere in the organization
- following up on a case with relevant stakeholders, and following up on recommendations made by the OO
- helping informally, and often invisibly, to connect and coordinate all the elements of the conflict management system—in the context of thousands of daily communications with employees and managers. OOs support all cohorts to understand and use all the resources and options in the system.

There are conflict management functions that an OO does not undertake. The functions that follow help to distinguish OO offices from all other line and staff managers. These include:

- keeping case records for the organization or for compliance purposes (as distinguished from keeping identity-free statistics for feedback to senior officers)
- pursuing formal investigations for the purpose of managerial decision-making and administrative action
- acting as advocate or witness in a formal adjudicatory process (as distinguished from advocacy for a fair process) for any stakeholder in the CMS
- accompaniment or representation of any party in a formal conflict management process
- dealing with formal appeals
- making managerial decisions about a grievance or conflict (except in the very rare case of imminent risk of serious harm, where there appear to be no other options)
- acting as an arbitrator or judge.

Challenges and Dilemmas

Some variations in OO practice can be understood in relation to the major developments that helped to foster the role: controversy about how formal and informal systems contribute to justice and problem-solving, and efforts to help organizations make sense of and adapt to changing notions of authority, leadership, hierarchy, diversity, bureaucracy, and government oversight (Gadlin, 2010).

From the beginning the OO role has been subject to contradictory obligations and responsibilities. Noriko Tada likens the Japanese OO to a kabuki “Kuroko” actor: a “visible invisible” on the stage. The Kuroko dresses all in black. He does not show his face, and is not formally part of the action, but without the Kuroko things do not work efficiently—and sometimes not at all (Tada, 2012). Brian Bloch, from his many years as an OO in India, reflects on the Hindu concept of Achintya Bheda Abheda: “an inconceivable oneness and difference” (Bloch, 2012). The OO must consider the rights and interests of all the stakeholders—independent—yet part of the organization. The OO can also be seen as an oxymoronic “inside outsider” (Gadlin, 2000).

Because they report to senior leadership and therefore are likely to desire the approval of “the boss,” OOs can be vulnerable to the influence of the senior leader. However, access to that leader also provides the chance to influence her or him. Most OOs report that their access to the top contributes significantly to their credibility. This credibility is amplified by their insider status. It is understood that they have an up-close understanding of the entire organization, the internal culture and politics of the organization. They know the key players for just about every matter that can arise (Tada, 2012). While it is possible for a long-term OO to become inured to the particular injustices and abuses tolerated in their organizations, they are also likely to be able to see through the pretenses and subterfuges by which abusive or overbearing managers maintain their organizational empires.

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From the perspective of any of the sophisticated frameworks from which we now understand organizational dynamics—systems theory, network theory, complexity theory—it is difficult to believe that an effective OO can really be independent in the full sense of that term.

In a similar way the second of the four pillars of ombudsman work, neutrality, is also problematic. First, there is the question of whether in fact *anyone*, no matter how strong his or her reputation for fairness, can actually claim to be either neutral or impartial. The term “neutrality” as used by OOs usually includes impartiality. Neutrality also refers to structural factors—not being part of the management team or any other organizational unit—while impartiality refers to how the OO conducts himself or herself in relation to individuals and groups, not advocating for or preferring one party. Impartiality involves an absence of bias. The OO can try to be both neutral and impartial (Gadlin and Pino, 1997).

However, the vast literature on unconscious bias demonstrates quite clearly that the ideal of being without bias is, in any literal sense, unattainable. Most OOs are scrupulous in their efforts to be equally fair and even-handed, in their treatment of each person with whom they interact, but too much is known about the influence of unconscious factors to have confidence that any given OO can actually ward off the influences of unconscious biases.

Recently some OOs have preferred the term multi-partiality because it acknowledges that in establishing a credible trusting relationship with various parties to a conflict, it is necessary to appreciate each of their perspectives, and to establish a supportive relationship concerned with the interests of all. Whereas impartiality connotes equidistance, multi-partiality connotes being comparably understanding of each party. Others would suggest that it is possible to affirm or at least understand the *feelings* of each party while staying explicitly neutral about the *facts* of a case.

One could argue that the OO is unbiased in the sense of not having a particular interest in the outcome of a particular case. But the OO’s commitment to fair process means that the OO must be concerned with the process by which a particular case is resolved. Although a rule or process by itself might be fair, the OO may raise questions about unfair implementations of rules. And the OO must make judgments about fairness in order to decide whether or not to proceed with a case.

Neutrality is equally problematic because, in addition to implying a lack of having a personal stake in an outcome, it also suggests not taking sides. But *not* taking sides—in organizations in which people differ significantly in formal power and status, not to mention different degrees of informal power and influence within the culture and politics of the organization—is more easily imagined than achieved. There are OOs who believe that they come closest to true neutrality by having no direct impact on the outcome of a situation, and who believe that they are mere facilitators of processes in which people develop and enact the resolution to their problems or conflicts. These practitioners may be vulnerable to the accusation that their existence simply ratifies pre-existing power discrepancies—that they are sanctifying organizational injustices that are incorporated into the organizational structure—and that this itself is a “bias.”

The challenge of OO neutrality gets more complicated when the ombudsman’s role regarding organizational change is considered. In addition to handling individual cases the OO has a responsibility to identify and bring to management systemic problems within the organization. Of course identifying a problem is a necessary first step in addressing it and therefore OOs may feel comfortable describing themselves as change agents within an organization. But an OO who has identified a problem usually has special insights that derive from working with the cases that exemplify the problem. Because of this understanding of the problem the OO may be asked to participate in the committee charged with rectifying it. The OO may therefore be invited into quasi-managerial functions—formulating a new policy (e.g. parental leave, research integrity), developing a program (e.g. to reduce racial tensions), creating ways to address negative features of organizational culture (e.g. bullying).

Although some OOs, concerned with maintaining independence and fostering neutrality, might refuse to participate in such activities, OOs still have responsibility for raising a problem in the first place. And raising a problem is never a neutral act, even if it is framed in the most neutral way possible.

Some argue that there is an alternative: to be a “resource” for a remedial task force though never a named member. But just “not being named” hardly means “not having an impact,” though this stance seems better than joining a committee. Simply put, there is no perfect way to be an independent neutral. Almost any organizational change has an impact on the distribution of power and within the organization and in being involved in such change the impact of the OO’s actions are not distributed evenly no matter how even-handed the OO has been in identifying, naming, and addressing an issue. From the perspective of systems theory, there is no such thing as neutrality. Things unfold differently when the OO is involved than they would have if the OO has not been involved.

Conclusion

The intra-organizational ombuds role has old roots in many cultures. In the modern world the role is configured in a way that may be unique in conflict management as an “inside outsider,” and “invisibly visible” conflict expert.

OOs can hear from everyone in an organization, across all the boundaries of geography, demography, rank, status, and expertise. OOs can offer all interest-based conflict management options, and refer to all rights-based formal channels. The OO may earn its keep by strengthening, and informally coordinating, the entire conflict management system of an organization. The OO also earns its keep by offering effective options to the individual employees and managers who call upon it.

Organizational ombuds appear to be proliferating in part because of demonstrable effectiveness. The idea of an OO also spread faster because it accommodated the essential spirit of ADR while avoiding the controversies between ADR and justice delivered by the courts. Rather than lining up with one side or the other, or even addressing the tensions between formal and informal approaches to dispute resolution, the OO profession affirms the value of both. OOs endeavor to foster *appropriate* dispute resolution rather than stereotypical “ADR.”

The OO profession is built on independence, confidentiality, neutrality, and informality. The individual OO continually faces dilemmas—the struggles to be impartial, to try to be neutral while fostering fair processes, and the challenge of practice as an independent professional, while earning trust within

the organization. OOs have to take great care to maintain confidentiality, and to remain reasonably outside the sphere of managerial decision-making.

The OO role itself, however, appears to be robust. Organizational ombudsmen typically support the lives of hundreds of employees and managers, students and others, while earning generally high satisfaction ratings. OO appear to deal with the widest range of concerns and conflicts within organizations and are one of the few offices that deal with the entire organization. OOs regularly help to surface illegal and otherwise unacceptable behavior and occasionally offer early warning of "new" issues. Ombudsmen regularly help people with concerns to learn how to deal directly with those concerns, and regularly work hard on systems improvements as well as acting as informal intermediaries.

While the contributions of OOs seem appreciated within those organizations that have one, it is not generally seen as essential. "Essential" offices are usually unambiguously designed to serve the needs of management whereas the OO by definition is independent and neutral. In organizations where the OO plays an important role it is often because that particular OO has earned trust with leaders and throughout the organization. Whether OOs will come to be seen as essential for competitive organizations will depend on OOs expanding their conception of the role in an effective way, and on organizations moving further toward becoming learning organizations.

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Notes:

(1) <http://www.ombudsassociation.org/about-us/code-ethics> and <http://www.ombudsassociation.org/about-us/mission-vision-and-values/ia-best-practices-standards-practice> (accessed 9.23.13).

(2) <http://www.uwo.ca/ombuds/SoPJune2012EF.pdf>.

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