Transplantation and Adaptation: The Evolution of the Human Rights Ombudsman

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Transplantation/Adaptation: Evolution of Human Rights Ombudsman


- current research on children’s ombudsman institutions in Western Europe
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- administrative law and comparative law literature assume ombudsman institutions follow the “classical” Scandinavian ombudsman model

- i.e. investigation of public administration using law and fairness standards, recommendation and reporting, no express human rights mandate
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• reality: around 50% of national-level ombudsman institutions worldwide have human rights mandates (and more at sub-national levels)

• e.g. defensor del pueblo, commissioner for human rights, “ombudsman”
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• originated in Portugal and Spain in 1970s

• spread to many Latin American, Central and Eastern European countries, some African, Caribbean and Asian nations

• recently spreading to more Western European nations, Victoria/Australia
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• argument: numbers of human rights ombudsman institutions will continue to increase relative to classical ombudsman institutions due to pressure or influence exerted by one or more forces
Forces Compelling Establishment of Human Rights Ombudsman

• democratization, institution building and comparative law influences

• limited state resources

• international initiatives to establish national human rights institutions (NHRIs)

• new human rights treaties and initiatives that use NHRIs for domestic implementation
Democratization, Institutions, Comparative Law

- regional and legal system influences

- regional influences – Europe, Latin America

- legal system influences – civil law systems, adaptation
Limited State Resources

• multiple institutions (ombudsman, human rights commission, children’s ombudsman, other thematic human rights institutions) are expensive

• both developing and developed states may find it more resource-effective to have one multiple-mandate human rights ombudsman (or commission) - at outset or later merger of multiple institutions
International Initiatives: NHRIs

• 1991 UN Paris Principles and their interpretation by International Coordinating Committee: preference for one national-level human rights commission or human rights ombudsman

• see regional preferences e.g. Europe and COE with many members having human rights ombudsman institutions
Human Rights Treaties/Initiatives: Use NHRIs to Implement Obligations

- UN Convention on the Rights of the Child: children’s ombudsman vs. general human rights ombudsman with deputy for children’s rights

- Optional Protocol to UN Convention Against Torture and National Preventive Mechanisms: human rights ombudsman as NPMs
Human Rights Treaties/Initiatives: Use NHRIs to Implement Obligations

• 2008 Ruggie Report on “Protect, Respect and Remedy: A Framework for Business and Human Rights”: use of NHRIs as non-judicial remedies for corporate human rights breaches

• UN Disabilities Convention: use NHRIs to implement obligations
Human Rights Ombudsman Core
Powers Vary

• some only have classical ombudsman powers of investigation of complaints against public authorities, recommending change and reporting to legislature and public

• others have additional, stronger powers
Additional Powers Given to Human Rights Ombudsman Institutions

- jurisdiction over private sector actors
- jurisdiction over full range of human rights
- own-motion investigation power
- power to inspect facilities where persons involuntarily detained
- litigation powers: before administrative courts, constitutional courts
- human rights research, reform and education
Human Rights Ombudsman Powers Vary

• argument: while it is possible for a human rights ombudsman with “classical” powers to be effective in promoting and protecting human rights, a broader array of powers should be given to such institutions to support its human rights mandates based on the jurisdiction’s legal system

• non-legal factors also play a role in effectiveness e.g. operating practices, resources