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## ENGAGEMENT AND POLITICAL INSTITUTIONS: THE CASE OF OMBUDSMAN

### ABSTRACT

In this article, I examine the relationship between engagement and political institutions by using the example of the creation and development of the ombudsman institution. The article starts with the short introduction to key theoretical views about institutions, political institutions and institutionalization. Then, I concentrate on how political institutions change, i.e. whether they can be changed through social engagement and whether and when we can actually say that they are originally created by an engagement. By using the case of ombudsman, I explore if political institutions can engage themselves and under what conditions, that is, whether are institutions characterized by in-built permanent reflexivity possible.

### KEYWORDS

engagement,  
institutions, political  
institutions,  
institutionalization,  
institutionalism,  
oversight bodies,  
independent bodies,  
ombudsman

Both engagement and political institutions can be considered essentially contested concepts. In case of political institutions (at least in their contemporary form), such debate lasts for decades, while “engagement” is still in its academic childhood. However, both concepts are characterized by “openness towards infinite debate, endless interpretations of meaning and the valence of the given term” (Sladeček 2008: 8; see Gallie 1956). While citizens and social groups regularly engage with political institutions, the opposite is not that usual. The former often seek change, while the latter are most comfortable with status quo.

Politics is at the heart of engagement as its inalienable and necessary feature. That is why we intuitively connect engagement with external changes of political institutions. However, one may decide to engage with the institutions, “from within the system, with the aim of bettering or battering it” (Zaharijević 2016: 314). With this article, I aim to problematize this thesis. My intention is to offer one possible way of thinking about engagement and political institutions. Taking into account the scope of the article, my plan is to examine the link between political institutions and engagement by using the example of the ombudsman institution.

The article starts with the short introduction to key theoretical views about institutions, political institutions and institutionalization, bearing in mind a full plethora of different definitions and their interpretations. I then concentrate

on how political institutions change, i.e. whether they can be changed through social engagement and whether and when can we actually say they are originally created through an engagement. By using the case of the ombudsman, I explore if political institutions can engage on their own and under what conditions, i.e. are institutions characterized by in-built permanent reflexivity possible? (IFDT, internet).

## Institutions in Social Sciences

If institutions are regarded as central in a social science discipline, it is in political science. However, frequency of the usage of that term in political science is in disproportion with the number of attempts to define them. Political scientists sometimes act like the meaning of this term is self-evident and that we recognize an institution as soon as we see one. This is even more curious because, as noted by Rothstein, “whichever story political scientists want to tell, it will be a story about institutions“ (1996: 134–135).

Political science publications in early post WWII period did not even mention the term „institution“. As observed by Truman in 1962, “the word [institution] does not have a meaning sufficiently precise to enable one to state with confidence that one group is an institution whereas another is not” (1962: 26). Interestingly, behaviorists during their wave in 1960s and 1970s had not denied that institutions had had a role. However, they introduced “broader” notions of structure (Almond and Coleman 1960) or system (Easton 1965), without abandoning the usage of “institutions“ and by avoiding to define institutions in the first place. Not even Sartori’s “Social Science Concepts” from 1984 nor Finer’s three-volume “History of Government“ from 1999 offered a clear definition of institution.

March and Olsen have transformed the debate about institutions with their “The New Institutionalism” (1984) and “Rediscovering Institutions” (1989). Their goal was “to explore some ways in which the institutions of politics, particularly administrative institutions, provide order and influence change in politics“ (March and Olsen 1989: 16). Nevertheless, they have successfully avoided to define those institutions and opted only to list some concrete examples of institutions.

If we try to compare the meaning of institutions in political science with those in economy and sociology, it appears to be a dimension, with economics and political science at the two extremes and sociology somewhere in the middle (Blondel 2008: 722). Sociologists see them as both organizations and activities; political scientists look at them almost exclusively as organizations, while for economists they are mostly procedures. For instance, North opens his influential study “Institutions, Institutional Change and Economic Performance” by saying „institutions are the rules of the game in a society or, more formally, are the humanly devised constraints that shape human interaction” (1990: 3).

Economists are primarily concerned with solving the problem of individual choice; thus, they focus on rules. The individuals are the agents of the economic

“machine” and cannot be expected to achieve their goals unless there are rules that determine how they are to relate to each other (Goodin and Klingemann 1996: 11). The situation is different in larger society, as individuals form different associations which constrain them. Institutions cannot just be based on rules; they have to include the way collective arrangements affect the behavior of individuals. Social analysis has to be based both on the choice of individuals and on what might be regarded as the “pressure” of the groups to which these individuals belong (Blondel 2008: 722). This is why looking at institutions as both organizations and procedures is particularly important.

If we take that politics is essentially a process of decision-making, it should be noted that such process takes place not between individuals but in communities and is applicable to those who belong to these communities, whether they participated or not in the decisions or indeed even agreed to them. This is why Easton underlines that politics has to be an “authoritative” process of decision-making (1953: 135–41).

Given that decisions are mostly being made within organizations, they are of utmost relevance for political science’s approach to institutions. However, that does not mean that institutions seen as rules and procedures are irrelevant for political science. Rules are part of institutional process, but in politics those rules and procedures are applied, mainly, through organizations, because they have to be applicable to large numbers who have not participated in the decision-making process. To that end, only if rules and procedures are “legitimized” by an organization whose “authority” the individual is prepared to recognize can they be also recognized (Blondel 2008: 723).

North observes that “[b]roadly speaking, political rules in place lead to economic rules” (1990: 48). Similar applies to the social field, as well. Some small social groups may function and operate rather independently of wider political processes, i.e. without having to call on the “authority” of the state. Nonetheless, in politics, the recourse to authority is continuous and universal; only in politics are organizations always on the front line, as rules and procedures, however important, have to be defended and supported by organizations (Blondel 2008: 723).

## Institutionalization

Even if we manage to offer some kind of definition of institutions, the next question is almost self-posing: how do they emerge? Do political, social, or economic “arrangements” become institutions automatically and immediately? Or do they develop in institutions after time passes?

In fact, the issue of institutionalization has concerned political scientists even more than institutions as such. Huntington devoted considerable time on this question. He defined institutions as “organizations and procedures which acquire value and stability” (1968: 13). With that, he indicated that this process takes place over time, i.e. it cannot be immediate.

In literature, institutionalization is mostly studied as “internal process”. Huntington sees time as a critical factor for the maturity of an institution. To

him, that process is more or less linear, i.e. time is viewed as being by itself one of the “causes” of institutionalization (1968: 13). In other words, “the longer an organization or procedure has been in existence, the higher the level of institutionalization” (Huntington 1968: 13–14). Huntington thus sees this process as exclusively internal. He is not alone in observing institutionalization only from the perspective of internal problems. Goodin and others in “The Theory of Institutional Design” (1996), published almost thirty years after Huntington’s work, also neglect external influences of institutional breakdown. Here, I particularly think of those who are in a way dependent on some institution, but have lost confidence and trust in it.

Support is important for political institutions and is one of the reasons why institutionalization as a process can hardly be looked exclusively as linear. In fact, external influences can reverse institutionalization as well. It is hard to deny that some support at least is necessary for political institutions to be maintained. Such support is indeed subject to fluctuations.

Blondel rightly observes that while the introduction of support in the equation renders the analysis of institutionalization in politics more realistic, it seems to complicate further the question of a definition of institutions in the political context. This is because the question arises as to whether political institutions can be examined independently from the support which they might enjoy, i.e. is a political organization or procedure still an institution even if it does not have support or has only very little support? (2008: 728)

While support is important, it should be not seen as precondition to the very existence of political institutions, particularly if we define them as organizations or procedures characterized by “stable, valued, recurring patterns of behaviour” (Goodin 1996: 21). Support seems both extraneous and irrelevant to these characteristics. The way in which the institutional arrangement is shaped is not dependent on external support for such arrangement. Moreover, if support is brought into the picture, since support is never “total,” the question arises as to what is the threshold below which the extent of support would be too small for the arrangement to be an institution. Governments, parliaments, political parties and constitutions all exist as institutions even if they enjoy very little support and have to rely on coercion to survive. However, it is also doubtful as to whether, in the extreme case of the near-complete collapse of such bodies, one can still refer to them as “institutions”. In circumstances when the government of a regime on the verge of collapse, it is clearly “de-institutionalized. As Blondel argues, such a government seems therefore to be no more than a “pseudo-institution” (2008: 728).

## How Do Political Institutions Change

As indicated, majority of scholars see institutions as relatively enduring characteristics of political and social life (rules, norms, procedures) which structure behavior and cannot be changed easily. Gérard Roland introduced a classification of “slow-moving” and “fast-moving” institutions (2004), which might be

useful for our discussion. The former generally change slowly, incrementally, and continuously, whereas the latter are more given to rapid, discontinuous change in large steps (2004: 116). The latter can be changed overnight. Roland uses an earthquake as an analogy to explain the difference between two. Pressures along fault lines build up continuously but slowly, then suddenly provoke an earthquake that abruptly changes the topography of a given area. Slow-moving institutions are the equivalent of these tectonic pressures; fast-moving institutions are the equivalent of the topography (2004: 117).

According to this scholar, social norms are an example of slow-moving institutions. While some social norms and values can change very rapidly in historical terms (e.g. a society's tolerance for cigarettes), in general, social norms and values change slowly. An important reason why social norms and values are changing slowly is the fact that they cannot be changed by an authoritative decision. To that end, legal systems tend to be faster-moving institutions than social norms but slower-moving than political institutions. A given law can be changed overnight, but the effectiveness of the legal system and the enforcement of laws depend on their acceptance and legitimacy in society and on the expectations of many actors (Roland 2004: 116).

The degree of centralization and power concentration has important implications not only for institutional experimentation but also for the nature and speed of political change. Roland underlines that political institutions that concentrate power in the hands of a few tend toward patterns of infrequent and abrupt change because, relative to institutions in which power is more dispersed, institutions with concentrated power leave more room for discretionary behavior and abuse of power by those holding office (2004: 122). Consequently, the high economic stakes of political power in centralized regimes tend to translate into a more pronounced temptation to resort to coercive methods to retain power (Roland 2004: 122).

For further discussion about relationship between political institutions and engagement, it is significant to note that so-called new institutionalism, as well as different approaches that developed from and in relations with it, start from an assumption that political institutions are moderately conservative, because they have reserves towards the changes that do not align with their goals (Vranić 2012). Institutions are autonomous, whereas the nature of their changes is external, while at the same time resistance towards any change is inherent characteristic of institutions (Vranić 2012: 249). Put differently, institutions can change from both internal and external factors, which gives us a solid foundation to further explore whether they can be changed as a result of an engagement.

## Engagement

For the purpose of this article, my starting position for defining engagement is the one that looks at it as a collective action characterized by the following “double movement”: 1) reflection on the existing social norms and rules, and consequently, 2) acting upon or against their modification or change (IFDT, internet).

If we compare definitions of institutions presented in first part of this article and this starting definition of engagement, we can even go that far to say that every engagement is essentially oriented towards institutions, because the notion is about reflection over existing social values, norms and rules, which together create the substance of an institution as a term. When these somewhat abstract elements of an institution are embodied, i.e. when they are given a formalized shape, we actually get an institution in the form of organization. In that sense, engagement is oriented towards the change of or preservation of an institution as both procedure and organization, depending on a concrete case.

In addition to the view that engagement has to be a collective action, I will also test a hypothesis that engagement can be expressed through individual action as well. In other words, I accept that social engagement exists when there is 1) reflection on the existing social norms and rules, and consequently, 2) personal or joint acting upon or against their modification or change.

While I think that engagement does not have to be a collective practice, I do accept that a reflection and call for the inclusion of others for the sake of fulfilment of the goals is indeed most often embedded in the engagement, i.e. action is “oriented towards inclusion of other in specific line of activity without commitment or previous agreement” (Fiket and Čeriman, 2018).

This upgrade of the definition of engagement is worthwhile because it specifies that it involves a specific line of activity, but without commitment. Here, it is important to specify what we consider under “commitment“, because, for instance, some sociologists, such as Howard Becker, actually define commitment as “consistent line of activity” (Becker 1960). If we would accept Becker’s definition of commitment, our thesis would be annulled.

I do agree that engagement is not the same as commitment, i.e. social engagement is not a synonym for joint commitment, as defined by Margaret Gilbert. Both concepts concur in underlining the importance of the will, given that joint commitment is in fact “*commitment of the will*“, while the will is the driver and the necessary prerequisite of engagement. However, they are not synonyms, since in Gilbert’s conception an individual cannot free himself/herself of joint commitment; that has to be done by other members, because they have all committed by publicly expressed will. In that sense, joint commitment is indeed a context for loyalty and its antithesis, betrayal (Gilbert 2013).

In terms of freeing of commitment, engagement is closer to individual (personal) commitment, in which an individual is in a position to free him/herself from his/her commitment simply by changing his mind (Gilbert 2013). The same case is with engagement, as there is no conditionality or limitation to an individual to simply change his/her mind.

The second notion of high relevance for both engagement and commitment is accountability. Gilbert underlines that the parties are accountable to one another for any behavior that deviates from the course to which they are committed by virtue of the jointness of the commitment (Gilbert 2013). I believe that accountability is also embedded in engagement. When we present

some topic as one of public interest or common good, we actually call others to engage, we call them to act, for the well-being of community as such, we call them to join the fight for or against something. In that sense, engagement is indeed characterized by antagonism, or as put by Zaharijević, “substantial antagonism seems to be the core politicality of engagement” (2016: 314). Hence, if we say that engagement does not imply commitment in formal (legal) terms nor commitment to stay in that specific line of activity, then accountability is also not constituted in the same way as in joint commitment. Nonetheless, the call for action does contain subtext of essential obligation of politically conscious being to react; such call is indeed meant to influence willingness of others; it appeals to Kantian duty to oneself as such (*ger. Pflicht gegen sich selbst*), as reminded by Bojanić and Djordjević (2016: 451). The crucial difference is in the nature of such commitment, which is almost an integrated part of the call for action, but does not transform in guaranty of survival of joint engagement.

For something to be characterized as joint and not personal engagement, it has to be based in reciprocity. To that end, I see every engaged act as, in essence, a social act, as defined by Husserl, and not Reinach.<sup>1</sup> Following Husserl, I insist on the importance of reciprocity for the creation of joint engagement, i.e. social act is an act, if one is doing something hoping that other will notice one’s intentions, and reply in their own way. For social act to be an act, there has to be a process of chaining, not mimesis (Bojanić and Ćipranić 2018: 31). Further on, engagement in every case asks for devotion and publicity, i.e. social engagement presupposes certain commitments to goals one sets to achieve (Cvejić 2016: 334). However, the question is what is the nature of those goals?

Fiket and Ćeriman in their research on academic female workers employed at the University of Belgrade emphasized that the orientation of engagement is always towards the common good (Fiket and Ćeriman, 2018). While in general, I agree with this view, I do have one dilemma. Is the common good a goal of engagement or is the common good necessary starting motivator of engagement? Or are both necessary? In other words, where do the common good stand in the engagement equation; on which side of the equality sign – left or right? Or on both? Does the engagement exist when someone publicly and transparently express his/her goals as those of public interest (or as the common good) or when at the end of engagement, public interests are indeed achieved?

If we accept that the engaged act is characterized as such by the researcher, *post festum*, then one may ask where the common good has to be placed? We can think of situation when the engaged act was not originally motivated by the common good, but has ultimately resulted in the common good. Similarly, it is possible to think of situation when an engaged act was indeed oriented towards the common good, but such common good was ultimately not achieved or it was warped during the engagement. Put differently, is the change of the nature of engagement from personal to common or vice versa possible during

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1 See more on this difference in: Bojanić and Ćipranić 2018.



the engagement? Is that the same engagement or not? This dilemma seems to be particularly relevant for the engagement oriented towards the creation or the change of political institutions.

## **When Can Political Institutions Be Created by Engagement**

If we say that some political institution is created by reflection of an individual about existing norms, rules and organization of state power; and where that reflection was followed by successful action oriented towards their change, can we then say that such institution was created by engagement? This case is about individual initiative, which can be characterized as personal social engagement, in sense that it is result of a private (single) evaluative perspective, as described by Cvejić (2017: 43).

If we add that above-mentioned individual was in fact a monarch – king, does that change anything? This situation is actually a description of the birth of the ombudsman institution.

At the end of the 17th century, Sweden was a major power in Europe with control over the Baltic Sea. In 1700, Russia, Denmark and Poland formed an alliance to defeat Sweden. The military prowess of Charles XII (ruled 1697–1718), a young inexperienced king, took the members of the alliance by surprise and, after his stunning victory, he earned the nickname ‘the Swedish Meteor’ (Dash 2012). After that surprising victory over Peter the Great at the Battle of Narva in 1700, Charles dismissed requests by his allies to discuss peace treaties. After year of war, in 1709 Charles was ultimately defeated by Peter the Great at the Battle of Poltava, and his army was decimated. Wounded, Charles and his remaining men took refuge in the village near Bender, in present-day Moldova, at the invitation of the rulers of the Ottoman Empire, who were also enemies of Peter the Great. Having left Sweden in 1700 and having been away at war for nine years, Charles remained in Turkey and continued to rule from abroad while struggling to negotiate diplomatic and financial terms to ensure his safe return to Sweden (Lang 2011: 58).

During Charles’ exile in Turkey, Sweden was in crisis, suffering from poverty, plagues, depletion of resources, danger of ongoing war and widespread corruption (Lang 2011: 59). Well aware that Sweden was in dire straits and guided by a coterie of advisors, Charles initiated a series of extensive policy and administrative reforms resulting in the decree for a major administrative reorganization signed on October 26, 1713 (Hatton 1968). The reforms included a decree creating the institution of the King’s Ombudsman. According to Hatton, among many reforms recommended and implemented by Charles and his advisors, only one has endured: The Ombudsman (Hatton 1968).

His Majesty’s Ombudsman reported directly to Charles and was charged with ensuring that judges, civil servants and military staff acted in accordance with the law and the King’s wishes, with the power to initiate legal proceedings (Lang 2011: 62; Wieslander 1999: 13). This early version of the ombudsman was not an idea deliberately conceptualized to protect the rights of individuals, but



was born out of a crisis of governance and with the goal to preserve the King. To that end, we do not consider the creation of this institution as an act of engagement, because its goal was not acting in public interest, neither it has in this phase resulted in the common good nor the public interest was ultimately met. While the establishment of the ombudsman at this stage contained some seeds of an attempt to improve administration, it was predominantly aimed at helping the survival of the King, and had not contributed to increased accountability, transparency or democratization of the state power.

However, further evolution of the ombudsman institution in Sweden suggests that the second phase of its development may indeed be a result of engagement. During the 18th century the Ombudsman was subjected to different transformation; its name and organization were changed multiple times. For instance, in May 1719, it was renamed the Chancellor of Justice (*Justitiekanslern*) and became an institution of Parliament rather than of the King. When, however, the King again became absolute ruler in the latter part of the 18th century, the institution returned to being associated with the executive (Orton 2001: 2 in McKenna 2011). King Gustav IV, who ruled from 1792 to 1809, paid the price for his absolutism, and was overthrown in a military coup. The coupists brought to power his uncle, who became King Charles XIII. The King committed to introduce the parliamentary system in Sweden and to limit his own powers. As a result, new Swedish Constitution was introduced in 1809, and included the Parliamentary Ombudsman as an office independent of the Parliament. The position was established in connection with the adoption of the Instrument of Government and was influenced by Montesquieu and Locke's ideas about the division of power, as well as some uniquely national influences (Wieslander 1999). A new constitution was introduced to balance executive power with the Riksdag (Swedish Parliament). It was determined that a Parliamentary Ombudsman (*Justitieombudsman*) would be elected to oversee public administration enacted in accordance with the law. With that, the Ombudsman's role was transformed to oversee the legality of work of administration and judiciary in the name of Parliament, and to contribute to legal, more fair and accountable state administration.

The same applies to further evolution of the ombudsman concept in Europe in second part of the 20th century. Context of the establishment of ombudsman on Iberian Peninsula and post-socialist Europe was very similar to that in Sweden, despite the fact they are separated by 150 years. Public intellectuals, civil society and political opposition called for the introduction of an ombudsman as an additional mechanism for oversight of the state authorities, and as one of guarantees of transition from authoritarian to democratic society.

Today, comparatively the most spread ombudsman model is the one that explicitly has a mandate for the protection and promotion of human rights (so-called hybrid model), in addition to fighting maladministration.<sup>2</sup> This model originated from the Iberian Peninsula, as part of efforts to establish accountable

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2 More on ombudsman models, see in: Glušac 2016.

democratic governance during 1970s after the breakdown of authoritarian regimes and adoption of new constitutions. In Portugal and Spain ombudsmen<sup>3</sup> have been created within the framework of big constitutional reforms in the process of democratization. They have had double role: to protect and promote human rights in young and fragile democracy, and to serve as an important actor in its defense and prevention of return to authoritarian society (Glušac 2018a: 313).

In postsocialist Europe, ombudsmen have been developed as a democratic request in the process of transition. Integral element of democratic changes was transformation of existing and introduction of new institutions, such as ombudsmen. In the ombudsman context, that process started with the creation of the Ombudsman in Poland (1987), and was concluded with the election of the first Protector of Citizens (Ombudsman) in Serbia in 2007. The common characteristic of these institutions is that they have been designed as hybrid ombudsman models. Such combination was expected, given that all countries in transition have strived to establish efficient and accountable public administrations, and to strengthen institutional guarantees for the protection of human rights, which are often violated by state and para-state structures in the past. It should be mentioned that the introduction of ombudsman in political and legal systems of post-socialist countries was not synchronized nor easy. It was marked by noticeable resistance of all three traditional branches of power (Glušac 2018a: 314). Only under pressure from the public, academia, civil society organizations and international instances had the states adopted legislation giving the ombudsman a broad and strong mandate. The executive had struggled to accept that independent mechanisms for oversight of its work has been established, as the public administration was not used to such scrutiny, while the judiciary in some states had perceived the ombudsman as competition, which is certainly not the case. In states where the ombudsman was given the right to oversee the judiciary, in terms of the respect of the set of rights to access to justice (as in Poland), the resistance of the courts was even stronger (Glušac 2018a: 314).

The evolution of the ombudsman institution confirms the thesis that system seeks self-sustainability and provides almost a reflexive resistance to any change, especially structural. The establishment of the ombudsman, and especially its constitutionalization, has changed the existing institutional architecture, and therefore elements of the existing system. Thus, following the development of the ombudsman institution, we can say that although the motive (goal) of its original establishment was personal, its final outcome is public, social. Its existence is in public interest. Efficient ombudsman is indeed the common good, in sense that this institution does not work in the interests of the rulers. On contrary, the institution has been transformed so as to control them.

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3 The term Ombudsman is gender-neutral, as the 'man' suffix itself is gender-neutral in original Swedish. That is, it applies correctly whether the Ombudsman is male or female. Following that, we use 'ombudsmen' in plural throughout this article.

## Whether and under which Conditions Can Political Institutions Be Engaged Themselves

Zaharijević asks where do the engaged stand, spatially and temporarily? Do they stand in the streets, in the Parliament, at the pulpit, in the factory? (2016: 315) She adds that the issue of ‘where’ also relates to the issue of inside/outside, and to the issue of capacities to be and remain outside, where ‘outside’ remains an almost entirely positive designation (referring to non-corruptedness, un-orthodoxy, powerful powerlessness) (2016: 315).

Syntagm “*powerful powerlessness*” which is related with those that stay “outside”, got me thinking in what terms can we describe those who are “inside”, i.e. within the system. I take “powerful powerlessness” to be something emancipatory, a raw power of the will to change something, but also as the absence of a monopoly of force to produce (implement) this change.

How can we label the power of so-called fourth branch of government, particularly of an ombudsman? It seems they have “*powerless power*”. Ombudsman has the power because he is anchored in the system, high positioned as a state authority of constitutional rank. He has power because he has exclusive competence to oversee, *inter alia*, those who have monopoly of force (state violence), such as army, police and intelligence.<sup>4</sup> His power rises also from his capacity and formal legitimacy to introduce important changes in the way entire state administration functions, because he can contribute to the change of values, promotion of social diversity, and advancement of legal and practical position of vulnerable groups. At the same time, given his decisions, i.e. recommendations, are not formally binding nor executive, his power is indeed designed as powerless.

The nature of this powerlessness is in many ways dependent of the level of (maturity of) democracy in the state he operates in. In strong democracies, the government sees institutional critics of the ombudsman as an instrument to enhance its work, while autocracy-prone government often neglects or labels such critic as political opposition, avoiding to respond to it with arguments (Glušac 2018a: 322). In weak states, the government sees critical voices of its own work as a critic to the ruling political party, ignoring the standard constitutional principle according to which political parties may not exercise power directly or submit it to their control. At the same time, authoritarian government marginalizes the ombudsman, i.e. implementing his recommendations either sporadically or concentrating on those on small cases of mala-administration, and ignoring those of systematic nature. In such context, the powerlessness of ombudsman’s power comes under the spotlight. The ombudsman should be an institutional opposition to the authoritarian government, given that the reasons of its establishment goes directly against the nature of the authoritarian government.

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4 Ombudsmen usually have mandate to oversee the work of entire public administration, including security apparatus. For more discussion on that, including the exemptions, see Glušac 2018b.

In that sense, ombudsman is engaged, because he fights for the greater good, for citizens' rights, for administration as citizens' service, but all that without having the prerogatives of force. In those efforts, ombudsman actually relies heavily on two actors, who are engaged almost by definition - public intellectuals and civil society, while he uses the media as the megaphone of his warnings.

As the power of the ombudsman is derived from the power of his authority, and not the authority of power, he constantly moves on the boundary between "inside" and "outside", between powerless power and powerful powerlessness. Executive branch is, on the other side, increasingly characterized by worrying "*powerful power*". Finally, despite numerous public protests across Europe and the world, there is still a large number of citizens who are characterized by "*powerless powerlessness*", because they choose to remain passive and uninterested in wider social and political processes.

### **When Institutions May Serve as Mechanisms for Channeling and Realization of the Goals of Social Engagement**

The state administration system should be designed to be visible, accessible and available to citizens. However, as this is often not the case, antagonism arises, expressed through mistrust, corruption and it ultimately results in huge distance between the administration and citizens. For most citizens, the State is represented almost exclusively by the public administration, as they have the most frequent contact with it. Thus, any structural problems in the functioning of democracy are manifested directly through its work. The centralization of the power of executive branch, which results in its *de facto* "dominance" over the parliament, triggers the collapse of the entire system of division of power, including through the normative and factual blocking of independent functioning of the judiciary and oversight bodies, as well as through making the participation of civil society in designing public policies obsolete. In such circumstances, there is no substantive oversight of the executive. When, in such circumstances, citizens or social groups want to express their dissatisfaction, to which political institutions can they turn to, not necessarily in terms of solutions, but for institutional support, in order to see is there an understanding of the problems "inside" the system as well? What political institutions can serve as mechanisms for channeling and achieving of the goals of social engagement?

Independent (oversight) institutions are logical address, provided they have managed to maintain factual independence in such a context. They can indeed be characterized by in-built permanent reflexivity over their actions, when their leaders truly want to achieve the purpose of their mandate. Precisely because the effectiveness of independent state oversight institutions - primarily the ombudsman - is notoriously difficult to measure, and because his (ombudsman's) decisions are not binding, he must constantly revise his strategy of action, must adapt to the changes, both external and internal. On the other hand, if the ombudsman wants only to rigorously pursue formal procedures,

does not want to think and act outside the box, does not want to be proactive, does not want to be brave and tackle difficult issues, but remains inert, procedural and marginalized, then he is everything but engaged.

If we look at some other independent oversight authorities, our expectations are similar. If, for example, personal and/or confidential data in the possession of state authorities are published in the media, or if state authorities refuse to provide information of public importance to citizens or the media, then the competent independent institution (e.g. commissioner or similar institution) should be a channel for the protection of these rights, but may also serve to channel initiatives of engaged citizens and groups.

Furthermore, citizens can, individually or acting through civil society organizations, actually engage to support independent institutions and focus on engagement that would have the aim of not changing, but preserving the institution. An example is the action “I want a Commissioner, not a yeasayer!” initiated by the CRTA (Center for Research, Transparency and Accountability) in Serbia, to draw attention to the fact that the process of selecting the Commissioner for Information of Public Importance and Personal Data Protection must be started and that the criteria of transparency, openness and integrity must be respected in the vetting and appointment process. Through a dedicated web site, all interested citizens had had the opportunity to send a letter to the National Assembly of the Republic of Serbia with the proposed transparent criteria compiled by more than 80 civil society organizations.

## Conclusion

This article discussed the relationship between the engagement and political institutions through the prism of the emergence and development of an ombudsman. It was demonstrated that its original form was not aimed to serve the public interest, but the maintenance of the King of Sweden in power. However, a later stage of its development brought a strategic shift, in sense that it was transformed into an institution that had indeed served to control the government, and not to maintain the King in power.

This article noted that the ombudsman has powerless power. Ombudsman has the power because he is anchored in the system, high positioned as a state authority of constitutional rank. He has the power because he has exclusive competence to oversee, inter alia, those who have monopoly of force (violence), such as army, police and intelligence. His power rises also from his capacity and formal legitimacy to introduce important changes in the way entire state administration functions, because he can majorly contribute to the protection and promotion of human rights. At the same time, given his decisions, i.e. recommendations, are not formally binding nor executive, his power is indeed designed as powerless. As the power of the ombudsman is derived from the power of his authority, and not the authority of power, it was pointed out that he constantly moves on the boundary between “inside” and “outside”, between powerless power and powerful powerlessness.

It was emphasized that the ombudsman's strategy, but also the way he is perceived both by other state authorities and citizens, depends largely on the context in which he operates. The ombudsman should be an institutional opposition to authoritarian rule, because the reasons for its establishment and the very mandate go directly against the nature of authoritarian regime. In this sense, the ombudsman is engaged, because he is fighting for the common good, for citizens' rights, for the public administration as citizens' service, at the same time with the absence of a prerogative of (physical) power. It was also underlined that in these efforts, the ombudsman actually relies mostly on two actors, who are engaged almost by definition - public intellectuals and civil society.

The Ombudsman can fulfill his mandate and maximize his influence only through in-built permanent reflexivity over his actions and strategies, especially when operating in fragile democratic environment. Precisely because his efficiency and effectiveness are so difficult to measure, he must constantly revise his strategy of action, must adapt it to the changes, both external and internal. If he does not want to do that and opt to be inert, procedural and marginalized, then he is everything but engaged; in fact, he then does not serve his purpose.

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Luka Glušac

## Angažman i političke institucije: slučaj ombudsmana

### Apstrakt

U ovom radu se na primeru nastanka i razvoja institucije ombudsmana propituje veza između angažmana i političkih institucija. Tekst započinjem kratkim osvrtom na glavna teorijska viđenja institucija, političkih institucija i institucionalizacije. Potom se koncentrišem na to kako se političke institucije menjaju, da bi fokus potom bio usmeren na to da li se one mogu menjati društvenim angažmanom, te da li se i kada može smatrati da političke institucije nastaju angažmanom. S tim u vezi, korišćenjem primera ombudsmana proveravam da li i pod kojim uslovima političke institucije i same mogu biti angažovane, odnosno da li su moguće institucije kojima je svojstvena kontinuirana refleksivnost spram sopstvenih normi delanja.

Ključne reči: angažman, institucije, političke institucije, institucionalizam, institucionalizacija, kontrolna tela, nezavisna tela, ombudsman