

THE OMBUDSMAN IN NEW ZEALAND

BY BRYAN GILLING

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Bryan Gilling *The Ombudsman in New Zealand* (Dunmore Press in association with the Historical Branch, Department of Internal Affairs, Palmerston North, 1998) (190 pages, \$29.95).

Secure in its international reputation for social innovations, proud of the advanced welfare state which those innovations had constructed and with a self-image as a "place where people take care of one another", New Zealand was a rather different place midcentury from the nation of today. Social innovations (one might almost say "inventions") could be urged and acted on in the virtual absence of crisis or compelling need. That they were simply a better way of doing things was enough of an argument to carry them forward into serious consideration and implementation.

Responsibility for these innovations lay in large part with individuals in law and government who became their advocates and argued persuasively for them, men such as Wild, Woodhouse and McCarthy. The finest memorial to this era is undoubtedly Sir Owen Woodhouse's elegant statement of the community's responsibility for the individual citizen and the logically coherent set of principles derived from it. Sir Owen's work led to the ACC, which, after a stormy career, is now in the hands of a government pledged to restoring it to something like its original form. The other innovation prominently associated with that era is the ombudsman.

In Gilling's new book we have before us an important account of the evolution of the New Zealand ombudsman providing an accessible and careful analysis of its first thirty years. What adds immeasurably to this account is that they were not just "any" thirty years but a time which contained periods both of government stability and also of radical changes in the

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government's structure, the economy, the class structure, the status of minority groups and foreign relations. Driving much of this change was the assertion of an ideology different in important respects from the consensus of the time when the office was established. The new ideology made constant appeals to "business" or "management" first as a metaphor and then as a template for any and all public activities. The relationship of the citizen to the community and the state was heavily affected by these developments, and it is precisely that relationship which is the ombudsman's sphere of activity.

The term "ombudsman" has suffered from success. As it has passed into currency it has been broadly applied to a range of functionaries and arrangements some of which are quite unlike the original Scandinavian examples. The modifier "classical" immediately identifies the New Zealand official to those familiar with the literature. The office is marked by independence and impartiality, openness and accessibility, simplicity of procedure and minimal structure, reliance on moral authority and working towards conciliation and resolution rather than coercion. This is its essential character and the story of the New Zealand Ombudsman is one of effective resistance by the incumbents to threats to this character. The other side of this balancing act is remaining responsive and effective in a rapidly changing environment.

The New Zealand Ombudsman office had members of the legal profession as its planners and movers. Their advocacy stemmed from a feeling that there were too few means of fine-tuning the relations of government functionaries and the citizens whose affairs they administered. Elections were an infrequent vehicle for this, were too comprehensive and, in any event, problematical in regulating the actions of the permanent civil service. The justice system was ponderous, expensive and time-consuming and thus a bad fit to many disputes. The lawyer-innovators sought in the ombudsman system a way around these difficulties.

One of the most interesting features of the workings of the ombudsman system is its non-adversarial nature. To many lawyers the adversarial system is an ingrained, almost instinctive pattern of thought, a lens through which all proceedings are viewed and construed. (Even some lawyers with experience in ombudsman work admit that adjusting their thinking is occasionally difficult.) The effectiveness of the system depends not on advocacy but impartiality, however. The ombudsman is only the righter of wrongs and the defender of the weak and the helpless *en passant*. He or she may be expected to tell the weak and the helpless that their complaints have no foundation when this is so and to tell those that consider themselves wronged that they have received due process.

If an institution is the lengthened shadow of a man, the ombudsman's relation to the first incumbent, Sir Guy Powles, is certainly a decisive example. His skill and experience in knowing when to push and when to stand back put the office on a firm footing, assuring its adherence to the classical model, and influences it to the present day. Later incumbents have shown an extraordinary commitment to preservation of the character of the office by great efforts such as dealing with expanded workloads with existing staff. Powles estimated that it took two years to achieve full acceptance of the ombudsman by the public service and the public.

The ombudsman and its office have necessarily become involved in emerging social issues. The demands for openness and freedom of information on the one hand and individual and organisational privacy on the other have been acutely felt by the office, charged as it has been with the responsibilities relating to the Official Information Act 1982. After 1984, new entities such as State Owned Enterprises posed a whole range of problems around information.

The response of the office to those emergent issues and expanded responsibility both in terms of procedure and structure is faithfully elaborated. Relations with local bodies and statutory boards, immigration and international standards on human rights, special problems of prisoners, outreach to minorities and the tension between official secrecy and freedom of information all receive attention. Most recently, the office has seen itself in a proactive role promoting good practice in government.

This book also stands as a study of institutionalisation, the process by which patterns of social activity become established and infused with sentiment, with the perception that they are "right" and valuable. It is also a study of evolution, the process by which an institution strives to maintain its essential character while adapting to change in its environment. As such it will be of great interest to sociologists and other students of government structures.

One of the great strengths of this book is its compactness and sharp focus. It sustains a level of detail acceptable to a specialist but not offputting to an ordinary reader. It raises issues appropriately and inspires reflection. How, for instance, has the virtual destruction of a professional civil service and with that such things as tradition, predictability and an institutional memory affected an agent such as the ombudsman whose work has assumed these things?

Gilling has successfully maintained the pace and focus of his account by refusing to be drawn off into lengthy discussions or details which are essentially supplementary. With the alternatives of placing such material in the text and impeding its progress or having it buried

and possibly lost in lengthy endnotes, he has used a third way: sidebars. He uses them for a variety of things – cases, biographies, topical quotations among them. This way the material is juxtaposed with related text and highlighted but may simply be read around or returned to at leisure. He also makes effective use of newspaper cartoons to summarize issues or public moods.

The book makes appropriate use of quantitative data as well as historical and anecdotal material. It charts trends in several activity measures such as numbers of complaints, sources and resolution times. It is appropriately annotated and has a valuable bibliography as an added feature.

People like myself who have taught graduate courses in ombudsman systems and those in the broader field of dispute resolution will readily appreciate the value of this study as a resource. It makes an excellent case for the continuing international relevance of the New Zealand experience as it has evolved. As Gilling observes:¹

The ombudsman role was arguably more important to New Zealand's people in the mid-1990s than when it was created. The new competition-driven economy had created social disruption and disorientation. This, in turn, had made the relationships between government and the citizen more contentious.

The book is a fine account of the development and continuing usefulness of a strong system which has withstood severe stress.

1 Bryan Gilling *The Ombudsman in New Zealand* (Dunmore Press in association with the Historical Branch, Department of Internal Affairs, Palmerston North, 1998) 113.