

Herwig Hoffmann and Jacques Ziller (eds.), *Accountability in the EU: The Role of the European Ombudsman*, Cheltenham: Edward Elgar Publishing 2017, ISBN 9781785367304, 304 pp.

In recent decades, there has been a steady stream of publications on the ombudsman sector, but the output has been sporadic. There has been some excellent work, but it has not always been well integrated into wider academic debates or effective in developing an interconnected body of knowledge on the ombudsman. There are signs, though, that scholarship on the ombudsman is moving up a gear. *Accountability in the EU: The Role of the European Ombudsman* is one of a series of recent books in the English language on the ombudsman and alternative dispute resolution (ADR) that has come close to accomplishing a broader and deeper understanding of the ombudsman, including at least four other edited collections¹ and three monographs.² This author knows of at least three others in the pipeline. Within all these works, there are signs of a maturing discipline.

This flurry of activity appears to be more than a temporary academic fashion and is broadly reflective of the public policy importance that has come to be attached to the ombudsman sector and other forms of ADR. The EU Ombudsman (EO), which is the topic of the book here under review, is typical of this trend, having been first introduced in 1995, and has grown to become a significant part of the accountability structure of the EU as detailed in *Accountability in the EU*. Any early reservations as to the body's role or potential for impact and longevity seem to have long disappeared. Ombudsman scholars should not be complacent regarding these things, but the fact that a whole collection, produced by a team of eminent scholars, has been dedicated to the EO represents a powerful statement as to the importance of the office in the legal architecture.

Edited collections come in different forms. Some attempt to build a structure around the disparate contributions, while others leave it to the individual chapters to do the work. *Accountability in the EU* is of the latter form, but it is connected by a simple focus on the EO. The book was inspired by the office's 20th anniversary (Ziller, Chapter 10) and pays only occasional attention to the

¹ M. Hertogh & R. Kirkham, *The Research Handbook on Ombudsman* (Cheltenham, UK: Edward Elgar 2018 (forthcoming)); D. Dragos & B. Neamtu (eds.), *Alternative Dispute Resolution in European Administrative Law* (Heidelberg: Springer-Verlag 2014); P. Cortes (ed.), *The Transformation of Consumer Dispute Resolution in the European Union: A Renewed Approach to Consumer Protection* (Oxford: Oxford University Press 2016); G. Kucsko-Stadlmayer (ed.), *Asian Ombudsman Institutions* (Verlag Österreich GmbH 2016).

² S. Carl, *Proliferation and Implementation of Prison Ombudsmen* (Peter Lang 2014); M. Remac, (2014) *Coordinating ombudsmen and the judiciary: A Comparative View on the Relations Between Ombudsmen and the Judiciary in the Netherlands, England and the European Union*, Intersentia, [Maastricht], Metro, 2014; N. O'Brien & M. Seneviratne, *Ombudsmen at the Crossroads: The Legal Services Ombudsman, Dispute Resolution and Democratic Accountability* (London: Palgrave MacMillan 2017).

broader ombudsman landscape. As such, the book is most obviously of value to scholars of the EO and the EU, with its variety of chapters containing rich legal, public administration and political science angles on the detail of the scheme's operation. As this book evidences throughout its content and footnotes, the EO is an institution that has previously attracted considerable academic and political coverage, but the book should be of value to anyone interested in understanding the way that the EU operates. As Trondal and Wille (Chapter 2) inform us, the EU is a complex multilevel network of people, states, law, institutions and regulation, and its system of governance is permanently turbulent and fluid. The EO offers an isolated image of how this complexity is managed and is an example of an institutional solution charged with the task of constructing order out of this wider chaotic political endeavour to resolve the permanent state of conflict disagreement in EU politics. To a greater or lesser extent, all the chapters in the book make the argument that this function of the EO has become a key part of the EU's bid to secure its own transparency and accountability.

The book contains valuable insight on how the EO manages this task. Towards the end of the book, there are powerful insider accounts provided by the former Ombudsman, Nikiforos Diamandouros (Chapter 9), and his Secretary General, Ian Harden (Chapter 8). These accounts clearly come from the perspective of individuals proud of their contribution, but they are thoughtful and reflective pieces that place their input in the context of the shifting environments within which they were working. We get a clear sense from these chapters as to how the office perceives itself and its input into the wider European legal order. Other chapters are produced by academics from a number of different specialisms, which gives the book an impressive breadth. Intriguingly, one of the editors tells us that the 'idea was to convene a number of scholars from different disciplines who had not, for the most part, specifically published about the ... EO (not the 'usual suspects' in ombudsman studies).'³ This variety of skillsets helps prevent the book from becoming too concerned with the details of the EO's operation. Further, several of the chapters support their analysis with a targeted interrogation of the data surrounding the office (e.g. Neuhold, Chapter 3; Tridimas and Tridimas, Chapter 4; Dragos and Neamtu, Chapter 5), while others provide a detailed historical study of the office's evolution and practice (e.g. Hofmann, Chapter 1; Mastroianni, Chapter 7).

Now what of the value of the book for the wider community of ombudsman scholars? It is widely observed that the ombudsman sector is built upon diversity; it is one of its distinguishing traits and reasons for its successful global adaptation. Given this attribute, there are reasons for querying the value of a study of the EU Ombudsman for other schemes, particularly as it has several atypical

³ Ziller, Chapter 10, 259.

features. The office is almost unique in its supranational dimension and, compared to most schemes, it is arguably more closely engaged with bureaucracy than users. It is an office which is also more strongly wedded to a rule based model of ombudsmanship, with the book regularly reminding us that maladministration 'occurs when a public body fails to act in accordance with a rule or principle which is binding upon it'.⁴ Some national ombudsman schemes take the same approach, but many operate through more fluid conceptions of administrative fault.

Notwithstanding the special nature of the EU Ombudsman, there are some common themes under which this collection could add value to wider study in the sector. Surprisingly, one area on which the book does not dwell is the long-standing debate about the optimum function of the ombudsman. Perhaps, this debate is predominately an obsession confined to the UK, and more specifically England, where concerns are regularly expressed as to the dangers of the ombudsman converting into a complaints-handling factory which is insufficiently focused or equipped to add value to deliberations about good administration.⁵ In *Accountability in the EU*, there are references to the debate, but there is a general sense of comfort amongst the authors as to the loose dual ombudsman mandate of complaint-handling and influencing better public administration. Instead of debate, what we are provided with is plenty of evidence of the value of the ombudsman's proactive work in deriving lessons from its work and cajoling public administration into enhanced performance.

By contrast, throughout its inquiry, the book is stronger in its interrogation of the links between the ombudsman and the wider network of EU institutions in which it operates. Drawing from the literature on accountability, Olsen, Trondal and Wille (Chapter 2), in particular, provide a fascinating model for analysing and explaining the stability of an institution such as the ombudsman which, on paper, is vulnerable. The EU Ombudsman, we are told, has proved to be a remarkably resilient institution in building a role within the EU's evolving administrative order. Likewise, Neuhold (Chapter 3) explores the relationship between the European Parliament and the Ombudsman, albeit with a focus on complaints made about Parliament. More could have been made of the overlap of this role with the scrutiny function of Parliament, but this is a theme which comes up again in Diamandouros's chapter (Chapter 9). The conflicting challenge faced by the two institutions of being both scrutinised and a scrutiniser raises issues of institutional design that need to be accommodated for in accountability theory. The Ombudsman's role in promoting transparency across EU institutions is explored in some depth by Dragos and Neamtu (Chapter 5),

⁴ European Ombudsman, *Annual Report for 1997* (Luxembourg: The Publications Office 1998), p. 23.

⁵ N. O'Brien, 2015, 'What Future for the Ombudsman?', 86(1) *The Political Quarterly*, Vol. 86, No. 1, pp. 72-80.

and the boundary lines of appropriate competence and specialism between the courts and the ombudsman is a feature of Mendes's chapter (Chapter 6). These are all themes that are mirrored in the work of all ombudsman schemes and, in some cases, the book offers not just an interesting analysis on how the various relationships operate in the EU but also some methods for interrogating those relationships.

Charting the dynamics between institutions and establishing theoretical models considered to explain their likely success or failure is a project that transcends the different forms of ombudsman in operation. Within this book, however, one theme that is not picked up on in detail is the perspective of the actor that perhaps most needs to be influenced, namely the administrator. The book is largely infused with an assumption that the influence of the ombudsman is real and abundant evidence is offered to support this conclusion. Yet, on this topic, elsewhere, there is the beginnings of a sceptical body of work that demands more proof of this claim and also raises the possibility of unwanted and unforeseen side effects occurring as a result of the ombudsman's input.⁶ As ombudsman scholarship continues to expand, the alternative perspective and the testing of claims in favour of the ombudsman's influence are areas in which more work needs to be invested. It is probably also fair to say that most of the current work on the ombudsman is, as with much of this book, based upon information generated by ombudsman schemes themselves, rather than fresh empirical work. There is nothing wrong with this form of empirical inquiry, but a challenge for future collections such as this is to expand the array of knowledge informing the debate.

In a similar vein, one topic about which the book never asks questions is the viewpoint of the user as to the functionality of the ombudsman office. The recent empirical study of Naomi Creutzfeldt into the viewpoints of users in three different countries has raised the profile of this issue.⁷ She has also gone on to hypothesise that her findings suggest that different legal cultures can explain different responses to the perspectives of users in different countries. The chapter by Tridimas and Tridimas (Chapter 4) gets nearest to exploring the user perspective, although on the preliminary question of whether or not citizens are aware of the office. Through an examination of the output of the Eurobarometer survey, Tridimas and Tridimas inform us that little is known of the EO amongst EU citizens, albeit noting variances between countries. Awareness is a theme of study that has long been present in ombudsman scholarship, with one worry being that in practice it mainly serves the middle classes and fails to

⁶ C. Gill, 'What Do Government Agencies Learn from the Ombudsman?', in: Hertogh and Kirkham (eds.), *The Research Handbook on Ombudsman* (Cheltenham, UK: Edward Elgar 2018 (forthcoming)).

⁷ N. Creutzfeldt, 'A voice for change? Trust relationships between ombudsmen, individuals and public service providers', (2016) *Journal of Social Welfare and Family Law* 38(4), 460-479.

reach out to those most in need from protection against public administration. The Tridimas and Tridimas chapter offers some fresh perspectives on this question, while the final chapter by Ziller (Chapter 10) has an intriguing section on the issue of nomenclature. Could it be that the title of the institution affects people's perceptions of it?

One line of analysis contained in this book that will be of much interest to lawyers is the degree to which it is possible to discern a body of substantive ombudsprudence from the work of the ombudsman. The extensive study of Dragos and Neamtu (Chapter 5) into the EO's transparency work details the powerful rule of law development, as well as guarantor, work that can be performed by an ombudsman. In the EU context, this work has value because of the difficulty for individual citizens to bring legal proceedings against EU institutions. What is of particular interest for ombudsman scholars, though, is that Dragos and Neamtu identify evidence of the ombudsman progressing good administration norms in a systematic fashion. There is additionally a finding that, through the study of the ombudsprudence of the EO, one can find new norms worthy of addition to any future revision of the European Code of Good Administration. Mendes (Chapter 6) pursues a similar theme, albeit from the direction of a review of the jurisprudence of the Court of Justice of the European Union, interrogating the limits of its workable interrogation of administrative discretion and thereby hinting at areas where an ombudsman should take over.

Overall, *Accountability in the EU* is a collection that will retain value for some years and serve as a starting point for future research into the EO. One could offer comments on lines of analysis that were not pursued and the lack of any chapter that really challenged the institution in a critical fashion, but, there, the challenge is laid down for later scholars. *Accountability in the EU* provides us with a robust claim for how the EO should and does operate to add value to the accountability network in the EU; future work should test these claims in more detail. However, what I have aimed to show in this review is that *Accountability in the EU* also illustrates lines of inquiry that should be mirrored elsewhere in the ombudsman sector. For the future, it is important that these connections are properly made and nurtured.

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