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### International Ombudsing

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**International Ombudsing: navigating discursive channels**

**Proefschrift**

ter verkrijging van de graad van doctor aan Tilburg University op gezag van de rector magnificus, prof. dr. Ph. Eijlander, in het openbaar te verdedigen ten overstaan van een door het college voor promoties aangewezen commissie in de Ruth First zaal van de Universiteit op dinsdag 16 september 2014 om 10.15 uur

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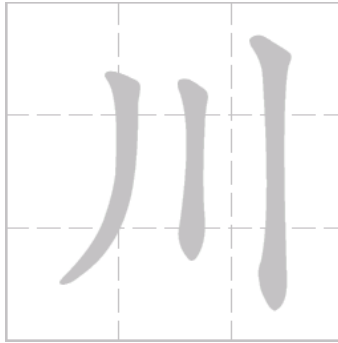
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*Asian pictograph for river – Chuan*

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# International Ombudsing: Navigating discursive channels

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By

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Taos Institute

Tilburg University

Eventually, all things merge into one, and a river runs through it.

The river was cut by the world's great flood and runs over rocks from the basement of time.

On some of the rocks are timeless raindrops. Under the rocks are the words,  
and some of the words are theirs. I am haunted by waters.

Norman MacLean, A River Runs Through It

### Abstract

This is a study about ombudsing. Ombudsing may be said to provide a rare, often fair-minded mechanism of protection for the individual with a grievance. My thesis question is as follows: What is the problematic for which the practice of ombudsing is constructed as the answer and how do practicing ombudspersons address it? I posit that, whether in public, private or social sectors, ombudspersons are required to navigate the currents, the winds, and sometimes the storms that flow through institutional discourses. I examine ombudsing in the context of institutional power relations and with a consideration of channels through which to facilitate voice, give feedback to the governing and allow for *parresia*, or frank and fearless speech, for ordinary citizens. I explore currents in international ombudsing by analyzing existing literature and interviews with fourteen practicing ombudspersons working in different sectors, around the globe. Using a theoretical perspective of relational constructionism, I examine the practice of ombudsing against the backdrop of governance and institutional power relations in public, social and private sectors. I shift the lens of analysis away from traditional political science perspectives to institutional and discourse theory in order to understand ombudsing in operation through the responses of practicing ombudspersons. I identify some shared historical imperatives and also challenge some perspectives on historical separations between modes of ombudsing, such as the division into classical, industry and organizational models. In each of these contexts, silent citizens often have much that needs redress through dialogue. It is not just an offer of participation, but a request for justice. There is often an absence of adequate channels for citizens to provide feedback to civil authority to obtain justice and the resulting silence – such as the silence produced by fear or retaliation – necessitates the construction of legitimate channels such as the ombuds office. In this study I use discourse theory to look at the discursive spaces in

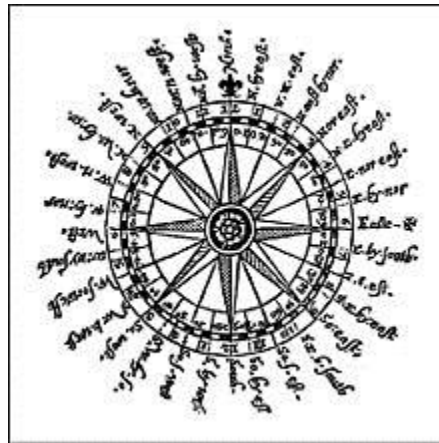
which the practice of ombudsing takes place. I also introduce the idea of discursive channels through which issues might be addressed. In order to identify these discursive spaces and channels I designed a method of inquiry to carefully listen to practicing ombudspersons. The study adds to historical discourses in the field by analyzing the relational field in which ombuds must work. In particular, ombuds must establish for themselves a position between the governed and those who govern. Here they can help facilitate and legitimate the voice of the ordinary citizen. Whether through a complaint, a grievance or a conflict, ordinary citizens need a sanctioned opportunity to speak up without fear of retribution. Finally, I propose the use of narrative mediation as one navigational tool that can help ombudspersons traverse both the professional discourses and the work in practice. Stories from the field suggest that ombuds offices often make a difference for ordinary people. The nature of that difference lies in the addition of an official sanction to the voice of the ordinary citizen. Ombudspersons can listen to the voices of the ordinary citizen, protect the confidentiality of those who visit the office, and also help provide information or make suggestions to those who govern to do their job better. The ombudsperson legitimates the ordinary person's concern in a situation where it otherwise risks failing to rise to the level where it gets addressed by those who govern and administer.

My argument here is that while there are notable differences in ombudsing situations and practices, there are also important shared principles and ideas that strengthen the role and further the professional dialogue. These ideas include the conceptualization of ombudsing as safely navigating the discursive field between the governed and the governing. Such navigation requires the intentional exploration of discursive spaces and the establishment of discursive channels where those often marginalized and left out of dominant institutional discourses may find voice and redress.

### Acknowledgements

I would like to acknowledge all those who have helped make it possible to complete this dissertation. I am deeply grateful to my advisor, John Winslade, who supported and guided me with great kindness throughout the process; it was the inspiration and hopefulness from our discussions that kept me going. I would like to acknowledge Pamela McCabe whose compassionate, humble and relational leading led me to begin this journey. Thanks also to family and friends for ongoing encouragement and patience. A special thanks to members of the ombudsing community and those visitors who enter the office doors. You inspire me.

I dedicate this dissertation to my husband, Allen. I may find the words to complete this paper, but I cannot find the words to tell you how much I love you.



*An ancient compass*



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We may be floating on Tao, but there is nothing wrong with steering.

If Tao is like a river, it is certainly good to know where the rocks are.

— Deng Ming-Dao



# Chapter 1:

## Introduction and overview

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### 1.1 International ombudsing: Navigating discursive channels

In this dissertation I explore currents in international ombudsing. Ombudsing has been spreading around the globe, with particular growth from the mid-20<sup>th</sup> century (Gregory & Giddings, 2000). Ombudsing may be said to provide a rare, often fair-minded mechanism of protection for the individual with a grievance. It is my aim to explore the forces that shape modern practice in this valuable office. My thesis question is as follows: What is the problematic for which the practice of ombudsing is constructed as the answer and how do practicing ombudspersons address it? I posit that, whether in public, private or social sectors, ombudspersons are required to navigate the currents, the winds, and sometimes the storms that flow through institutional discourses.

It is my hope that from this study, my contributions to the field are as follows:

1. With this study, I endeavor to add to the literature by looking at what is the problematic for which the practice of ombudsing is constructed or *why* the role continues to develop and proliferate around the world in public, private and social institutions;
2. My theoretical perspective is a departure from previous studies. While others have looked at ombudsing through the lenses of political science, public administration and administrative law (Sawyer, 1964; Anderson, 1968; Caiden, 1983; and others), I shift the perspective significantly by considering the social construction of institutions and the function of discourse in the work of ombudspersons. I use the lens of institutional governance to examine the spread of ombudsing. I explore Foucault's ideas on

governmentality, power relations and *parresia* (or frank and fearless speech). His theories on governmentality and power relations add a dimension of understanding to how we govern ourselves and others and to the complex relational dynamics of power. His approach to the idea of *parresia* adds a critical perspective to the need and challenges individuals encounter when speaking “truth to power.” These ideas are relevant to the practice of ombudsing which is generally situated in complex institutional contexts.

3. I conclude, that whether in public, private or social institutions, ombudspersons may be described as navigating institutional discourses. I suggest that narrative mediation is a particularly effective tool to navigate these discourses and I introduce the term of “discursive channels.” Ombudspersons are often positioned to redress complaints and concerns by examining and exploring forms of institutional discourse through administrative, legal and other institutional channels. While classical ombudspersons may investigate complaints and organizational ombudspersons may resolve conflicts, I posit that “navigating discursive channels” is a way of conceptualizing common practices in ombudsing.

But how will this study impact the practitioner? This study aims to chart new streams of reflection and to stimulate deeper dialogues for those in practice and those studying ombudsing. Increasing our understanding of shared themes, goals and principles may strengthen and improve our ability to deliver valuable services for visitors to the ombuds office.

The plight of an individual with a grievance against an organization or bureaucracy can be a heavy burden to bear. Concern for maltreatment of an elderly parent in a nursing home, a student with a grievance but afraid of retaliation, a staff member concerned with maladministration, a whistleblower needing a safe place to share concerns, or a person seeking

the airing of human rights abuses – these are examples of grievances brought to the ombuds office. Ombudsing is a unique practice that has been steadily growing worldwide. It often resonates with pulses of democracy. It can give voice to individuals in the face of officialdom. At the same time, in the words of Gwynn (1968), it can “improve administration” and provide for the “protection and psychological security of citizens” (p. 42).

For this study, I am operating in the capacity of learning and listening in order to more deeply understand the role. The study is anchored by the differential in two personal experiences within institutions. In one institution, feedback and full participation were encouraged, engendering increased engagement from institutional constituents. In the second institution, feedback and the airing of concerns were discouraged, resulting in fear and suppression of voice for institutional constituents. When I began this study, I was a student of ombudsing. I have recently become a practitioner. This study is an inquiry of current practitioners to discover concepts that inform the practice of ombudsing and to help develop new concepts.

I began the study with some general research questions. Over the course of the study, the questions became more clear and succinct. These include: Why has ombudsing spread? How do practitioners in the field view their work today? How do practitioners position themselves in the discourses of the institution? I wove these questions together in the formulation of the central thesis question of this study: What is the problematic for which the practice of ombudsing is constructed as the answer and how do practicing ombudspersons address it?

I explore this thesis question through an examination of the history and literature of ombudsing and through interviews with fourteen practicing ombudspersons from different countries. I use discourse analysis to better understand the findings. The focus of this study is an inquiry of practicing ombudspersons with the goal of understanding the problematic which

informs their work and seeking out concepts that inform the practice and identifying additional concepts. In this study, I follow a rich tradition in some of the literature on ombudsing wherein researchers ask practitioners to describe their work in their own words (Gellhorn, 1966; Caiden, 1983).

To achieve this purpose, I explore the history and development including: ancient models, Swedish origins, the international spread and the spread across sectors. I look at how the role developed and key concepts in ombudsing. These include: independence, integrity, impartiality, confidentiality, accessibility, and others. I consider the role of governance. Governance includes a system of complex power relations that often privilege some members of the system. But this is a study of theory and practice. One of the questions that arose in the study was what might be effective tools of for navigation difficult discourses in institutions? One answer is the employment of narrative mediation that can be used within and across sectors for navigating communicative channels. Ombudspersons may be well-positioned to see a broad range of institutional practices and discourses and identify discursive channels that can be traversed through these contexts. Where do you go when you have a complaint or concern within or against an organization? The ombuds office is one such legitimate place, and this study aims to increase the understanding of this valuable idea.

### **Central ideas**

There are three central ideas that guide the study. These are as follows:

1. Governance. The spread of ombudsing across sectors may be related to institutionalization, the evolution of systems of governance and the diffused modernist technologies of governmentality. Foucault (1991) theorized that modern government is focused on administration, surveillance and the production of the good citizen. It also requires a system of handling complaints that is

orderly, well-governed, and produces good citizens who are loyal because their voice is heard (but through legitimate channels). That is, a relational system evolves that loosens the rigidity of hierarchy. Many ombuds offices emerged from public, private and social sector systems of governance. For example, the first student ombuds office in Canada emerged from student government at Simon Fraser University (Johnston, 2005). Governance is a system of decision making and power relations. From Foucault it may be considered an extension of a mentality – a governing mentality and means of social control (Foucault, 1991). As noted earlier, governance includes a system of complex power relations that often privilege some members of the system.

2. Safe harbor. There is a need for a safe space for ordinary citizens to bring concerns. Where do ordinary citizens and members of organizations go to do this? There are various grievance channels. Individuals can write to their government officials. They can use time-honored channels of protest (for example, petitions, demonstrations, but their effectiveness depends on numbers). In the modern world, complex administration produces injustices. Often these are small injustices that are local, particular and personal. In organizations people with grievances can often go to the human relations divisions. But when those do not work or when they fear retaliation or retribution, the ombuds office is a place to bring concerns.

3. Feedback to the governing. There is a need of the governing to receive feedback on how their decisions are affecting people. The ombuds office can provide reports that document issues and trends, while maintaining the confidentiality of those visiting the office. This information can provide guidance to decision makers who are unclear of the impacts of their decisions. The hypothesis of this study is that the ombudsperson can play a role in helping to navigate relations between the governed and the governing.

In addition to these three central ideas, I use the metaphor of navigating in at least four ways in this study.

### **Navigating discursive channels**

- 1) Navigating discourses *about* ombudsing - Ombudsing is a relatively young field. For many years it resided within the domain of public governance. While it still exists and grows in that realm it has also grown in the private and social sectors. A study of the field of ombudsing requires a navigation of the discourses *about* ombudsing. This aspect is considered primarily in the review of literature.
- 2) Navigating discourses *within* ombudsing – Ombuds practitioners have a variety of reflections on their practices across sectors, around the world. Some ideas are held in common, some are disparate. There are different types of discourses that emerge such as management, legal, and administrative discourses. This study navigates discourses among practicing ombudspersons. This aspect is considered primarily in analysis of the interviews.
- 3) Navigating discourses *in practice* – Ombuds practitioners serve in the public, private and social sectors. Whether investigating complaints, addressing concerns or resolving conflicts, ombudspersons are situated within complex institutional power relations and are often well-positioned to identify and navigate a multiplicity of discursive channels. These may include formal channels such as laws, administrative requirements, policies and procedures. But it may also include less common and less visible channels such as helping to identify the discourses on the margins and moving them to new discursive spaces. It may include being aware of the potential for new



and positive discursive shifts. This study touches on this aspect in various chapters, and it is presented as an idea for future research.

- 4) Navigating *this study* – you, the reader, will likely be navigating the structure, content and ideas of this study. Somewhere in the pixels and the pages, you will bring your own relational experiences to bear on the intertextuality and discursive spaces of this study. My hope is that readers will consider the journeying aspect of navigating and moving between the familiar and the unfamiliar.

This introduction will provide an overview of the dissertation. However, before proceeding into that overview, it may be helpful to briefly consider some currents in ombudsing.

### **Currents in ombudsing**

The idea for ombudsing has ancient roots, but in many ways, ombudsing is a relatively young phenomenon with strong growth since the mid-20<sup>th</sup> century. Antecedents and early ideas similar to the ombudsman institution are documented in history around the world (Kracke, 1976; Perry, 1978). The idea of ombudsing is related to the issues of governance, and specifically through ideals of good or improved governance. The decree for the first ombudsman in 1713, the “*Hogste Ombudsmannen*” or High Ombudsman, was one part of an extensive proposal for administrative reforms during the reign of Swedish King Charles XII (Hatton, 1968). Nearly 100 years later, in 1809, the Parliamentary Ombudsman in Sweden was established on the recommendations of a constitutional committee. Conceived by now as a check on the power of parliament, the office of the ombudsperson seems to have derived from the influential growth of democratic theory in the eighteenth century. It is said that the committee was influenced by the writings of Locke and Montesquieu (Wieslander, 1994) and the twin ideals of separation of powers and democratic principles.

Ombudsing grew slowly at first. Before the 1960s the model existed in only a few Scandinavian countries (Reif, 2011). By the end of the 21<sup>st</sup> century, the ombuds idea could be found around the world in many forms. According to Gregory and Giddings (2000):

Forty or so years ago the Ombudsman Institution was confined to a handful of countries and the word Ombudsman meant nothing to most people outside Scandinavia. Nowadays, in the late 1900's, the office is a global phenomenon, estimated to be operative in something like ninety countries.... (p. 1)

Gregory and Giddings (2000) also speak of the challenge and paradoxes of effective administrative control and the need for accountability in an era of “big government.” The ideas of control and desire for accountability may be found in public administration and state government. Ideas of administrative control and desire for accountability may also be found in corporations, universities, non-profit organizations and other areas of society where governance is prevalent. For many of us, administrative processes and bureaucracy permeate our lives. But there is power in bureaucracy, and issues of administrative injustices need to be addressed.

It is worth noting that there is much discussion in the literature about designation and categorization and there are valuable approaches offered to clarify designations (Rowat, 2007; Abedin, 2011). This appears to be important as the role develops. Perhaps it may be said that the categorization has not kept pace with the proliferation. Still, there appears to be even less literature and discussion on *why* the idea is proliferating. The worldwide increase in ombudsing offices in other sectors suggests value, even if the designations have lagged behind. In 2000, Gadlin, provided the following reflection on the subject:

To some degree, people are uncertain about the ombudsman profession because there are so many variations of the role that now exists in settings and with approaches quite

different from its origins in the early 19th century. In North America, the ombudsman role emerged late in the 1960s during a period of tremendous social turmoil, amidst a growing demand for protections of citizen's rights and a demand for mechanisms by which people could address maladministration by government, educational, and corporate bureaucracies. (p. 37)

Gadlin notes the proliferation of ombudsing. In the literature, ombudsing is sometimes described in two categories: Classical and non-classical. In some parts of the world, such as New Zealand, the ombuds designations are more closely determined, in order to ensure consistency in the concept. While there are distinctions, institutional governance appears to be a rather common backdrop. Here, below, Gadlin describes the variety of practice that existed by the time the article was published in 2000:

In addition to the classical ombudsmen in government, and the organizational ombudsmen in education, government and the corporate world, there are: 1. Executive ombudsmen who are similar to the classicals but lacking the same independence since they are appointed directly by a governmental executive: 2. Citizen advocacy ombudsmen established by statute whose authority is limited to dealing with the issues of designated populations such as the long-term care ombudsmen or children's ombudsmen; and 3. Ombudsmen like the human rights ombudsman springing up in some South American and African countries who have responsibility for oversight of democratic rights in their countries. Often these ombudsmen have the authority to bring suit and make binding decisions. Finally there are, unfortunately, many people who are designated as ombudsmen but who really function more like ethics officers or other functionaries. However, the major dividing line in the way ombudsmen think about and define

themselves is still between the classical and the organizational interpretations of the role.

The competing interpretations of the ombuds role are in the midst of being reconciled...

(Gadlin, 2000, p. 37-39)

The description above details some of the distinctions in the field. There now are many types of ombudspersons. A few of these include: media, health care, victim's rights, education, open government, mental health and other designations of ombudspersons. It is helpful to know and contemplate the distinctions and classifications in the field. However, in this study I focus less on the designations and more on *why* the idea is proliferating. As noted above, the worldwide increase in ombudsing offices in other sectors suggests value, even if the designations have lagged behind. The word ombudsman is of Swedish origin. There is extensive discussion in the scholarly literature about the term. In this study I attempt to use the versions respectfully.

In this introduction I present a short overview of the chapters of this research study. The chapters flow as follows:

1. Chapter one is an introduction and overview of the research and background for the study;
2. Chapter two is a brief history of ombudsing which provides historical context for the role;
3. Chapter three presents the development of ombudsing and institutional and discourse theory;
4. Chapter four is a consideration of the method of inquiry used for the study;
5. Chapter five presents the research results;
6. Chapter six concludes the study with an examination of navigating discursive channels.

At the heart of this study of ombudsing is a concern about better understanding power relations and pathways to facilitate voice and *parresia* for ordinary citizens. After discussing the chapters, I ponder why ombudsing matters and present some case studies from the public

domain. Then I will discuss some interesting aspects of this borrowed Swedish word. Finally, I provide the background for the study.

I begin with a brief description of ombudsing and then move to the two primary theoretical angles of the paper: the social construction of institutions and discourse theory. These perspectives are intertwined, but may provide a means to conceptualize the spread of ombudsing and the value it provides. Why is that? Because for ombudsing to be effective, a constant study of the societal forces in play may help illuminate valuable aspects of the role it plays and the role it can potentially play. And for ombudsing to be strong and deliver its necessary services to citizens, it needs to have a strong theoretical and practical research base in order to fulfill its promise.

## **1.2 Ombudsing history**

I begin the study with a history of ombudsing in chapter two. Ombudsing has a rich history with ancient precursors from around the world. The original ombuds idea and its antecedents are all situated in systems of governance. It is helpful to have an understanding and context of where ombudsing originated in order to better understand ombudsing today. In chapter two, I look at the arc of the history from early origins to contemporary development of the role.

The history of ombudsing provides a wider context for the emergence of contemporary models. While the first decree for ombudsing was a part of administrative reforms, the office created in 1713 appears to have been an act of desperation by a distant king ruling his country through letters (Corobon, 2010). There is a clear sense of irony that an institution now associated with peace was launched by a warrior king.

Although the early version of the ombudsman was not an idea deliberately conceptualized to protect the rights of individuals, it was about the limitation of administrative

and official power (albeit on behalf of the highest authority, the King). The parliamentary model was significantly different in function from the Highest Ombudsman, but it appears that this early version presented an idea that shifted and grew before taking hold as the parliamentary model. It seems that the idea inadvertently became a seed for stronger, improved contemporary models. Contemporary ombudsing generally *does* represent an idea deliberately conceptualized to protect the rights of individuals.

While there are distinct aspects of public administration that may serve to preserve the characteristics of classical ombudsing, in reality, there is diversity both in public systems of governance and public administration ombuds offices (Gregory & Giddings, 2000). Public administration is run by systems of governance and complex institutional power relations. Private and social sector institutions are also, generally, run by systems of governance and complex power relations. The work of classical ombuds practitioners is critical and the foundational literature is rich with scholarship and insight on the development of the role. In this study I attempt to build on the understanding of the role and the background within which it develops across sectors. Therefore, in order to consider the development of ombudsing, it may be valuable to look at governance and institutionalization.

### **1.3 Ombudsing development**

In chapter two I present a history of ombudsing from early antecedents to contemporary models, as documented in the ombudsing literature. In chapter three, I provide a second part to the literature review to place the study in context and to examine, in greater depth, the contemporary development of ombudsing. Apart from the history of the idea, it is helpful to understand the current development of the role and the contemporary backdrop against which it has spread. In chapter three I explore specifically the international spread of ombudsing, the

spread across sectors and the role development with attention to integral principles in ombudsing such as independence, impartiality, confidentiality and integrity.

I also present the theoretical basis for the study in chapter three. A critical part of this dissertation study is a consideration of the development of ombudsing and the theoretical perspective of the study. There are different theoretical lenses through which to view ombudsing. Much of the existing literature looks at ombudsing through lenses drawn from political science, public administration and administrative law. In this study, I shift the lens to bring ombudsing into focus through two different theoretical frameworks.

In chapter three – I explore that development and, specifically, its international spread, and the spread across sectors. I also research the development of the role of ombudsing with attention to integral principles in ombudsing, including independence, impartiality, confidentiality and integrity. I present a general theoretical lens of social and relational constructionism that will serve as the framework within which this study can be located. The theories of social and relational constructionism center societal relations and language or discourse. So therefore, I move from the general theoretical lens to examine a particular theoretical lens of discourse theory, and highlight related concepts I intend to utilize later. These include: discursive spaces; discursive channels; discursive positioning; discourses in ombudsing; and the idea of navigating through institutional discourses. I follow with a consideration of important concepts drawn from these theoretical resources that are useful in the study of ombudsing. These include: power relations between the governed and the governing; institutionalization and habitualization – the freezing relations of power. I examine governance and governmentality. I introduce Foucault's notion of parrhesia and consider how narrative mediation might have a special fit within ombudsing because of its association with the same

background assumptions. I also look at gaps in the ombudsing literature and identify where this study can address them. Finally, I consider the focus of the study in preparation of an examination of the methodology and findings.

Ombudsing does not exist in a vacuum. As a social practice, it exists inside a web of other social and institutional practices. So does my inquiry into the world of ombudsing. It too is conducted within the context of a larger field of inquiry. My hope here is that articulating a theoretical perspective can both serve the purpose of guiding the inquiry and also help explain the reasons for the increasing popularity of ombudsing.

The theory of social constructionism allows for the existence of a multiplicity of perspectives, a multiplicity of world views. This is a useful point of view for ombudspersons seeking to understand multiple perspectives in complaints, concerns and issues brought to the office.

There are some theoretical terms that I will be using in this study. These are listed below, as defined in Burr (2003):

*Agency*: The capacity to make choices and to act upon them.

*Discourse*: This term is used primarily in two senses: (1) to refer to a systematic, coherent set of images, metaphors and so on that construct an object in a particular meaning; and (2) to refer to the actual spoken interchanges between people.

*Discourse analysis*: The analysis of a piece of text in order to reveal either the discourses operating within it or the linguistic and rhetorical devices that are operating within it.

*Positioning*: In interaction, the practice of locating oneself or others as particular kinds of people through one's talk.



*Postmodernism:* The rejection of ‘grand narratives’ in theory and the replacement of a search for truth with a celebration of the multiplicity of (equally valid) perspectives.

*Poststructuralism:* The rejection of structuralism’s search for explanatory structures underlying social phenomena.

*Reflexivity:* Term used by social constructionists to refer to the application of the theory back onto itself and its practices. Used particularly in the context of research, where the researcher reflects upon his/her own position in the research process. (p. 201-204)

These are some of the theoretical terms that will be used and referenced throughout this study.

As noted in the introduction, I posit that, whether in public, private or social sectors, ombudspersons are required to navigate the currents, the winds, and sometimes the storms that flow through institutional discourses. But the question also arises, what tools, then, help ombudspersons navigate? In this context I consider the ideas of narrative mediation as a tool for navigating institutional discourses. While I am not studying narrative mediation in particular here, it can be recognized as a practical approach that shares many key assumptions with the ideas and concepts about ombudsing referred to above. It therefore has specific value as a tool that ombuds can utilize to assist ombudspersons in navigating discursive channels. Today, many ombuds offices provide a space, a discursive space, in which people can facilitate and re-negotiate discourses between the governed and the governing. This study is centered on the foundational role of discourse and the recognition and growth of discursive themes and concepts in the construction of that discourse. This includes the idea of mapping out some specific discursive spaces and channels which ombudsing can inhabit. As ombudsing continues to emerge worldwide, the dialogues and perspectives of practitioners are pivotal to shaping and transferring the role and the idea.

### **1.4 Method of inquiry**

This study is a qualitative social science dissertation. For my method of inquiry, I used the approach of semi-structured active interviewing to explore the role of ombudsing through interviews with practicing ombudspersons around the world and across sectors. Centering social practices and relational discourses, I employed aspects of discourse analysis to interpret the data.

Four purposes of the research design and methodology are: (1) describe the research design and my approach to the study; (2) articulate the methodology undertaken in the study; (3) describe the procedures for data collection; and (4) outline the discourse analysis approach which is used to analyze the data. In addition to discussing the research design and methodology for the study, chapter four also presents values and ethical choices that were made in the course of scholarship.

A key aim of this study was to gain a clearer understanding of the field from ombudspersons around the world practicing in public, private and social sectors. The research design was grounded by two influences: a goal of collecting firsthand information from practicing ombudspersons in different countries and sectors; and a use of active interviewing. The purpose of the research design was twofold. First, it was built with the goal of ensuring an international scope and was based on a tradition in some of the foundational literature to learn from practicing ombudspersons firsthand. Secondly, the design was influenced by social constructionist theories of the co-creation of meaning through the use of semi-structured active interviews. While English was the main language for the study, and attempts were made to fairly capture the intended meaning, there were ideas that may have shifted in translation. This chapter also reviews ethical and procedural approaches to data collection and the plan for data analysis.

### **1.5 Findings – Voices from the field**

In the findings chapter of the study, I present the data. In large measure, ombudsing seeks to help to facilitate pathways for voice in the face of officialdom and that was underlined in the data. Ombuds officers around the world operating in many different sectors endeavor to facilitate voices of citizens. As noted, this study centers discourses that are foundational to social practices and relational interactions. So the results presented in this chapter are discourses in ombudsing. Since this chapter presents and examines the discourses of practicing ombudspersons, the goal was to listen to their firsthand impressions and perspectives.

In response to the interview questions, the participants outlined from a variety of angles the tasks, functions, practices and principles embodied in contemporary ombudsing, as they are experiencing it and conceptualizing it in the contexts of their work. The chapter looks at patterns and competing forces that animate the discourses of ombudsing as they were stated by these participants.

Foucault has shown how discourses are implicated in relations of power in social relations. Ombudsing takes place against a backdrop of governance. I interviewed practitioners in traditional government sectors, but institutions are constructed with systems of governance. So, therefore, issues in relations between the governed and the governing may be expected to be found in the discourse of those interviewed. I also look at the discursive positions taken up by the practitioners and consider key values that practitioners describe. Finally, the findings chapter provides an overall reflection on these ombudsing discourses.

In order to understand ombudsing from the point of view of practitioners, the method of inquiry was to interview practicing ombudspersons from around the world, in various sectors. Fourteen practitioners generously agreed to participate. Their responses illuminate many important themes and ideas. These responses were then analyzed using discourse analysis.

Through this discourse analysis of the material that came up in the interviews, seven questions were identified to ask of the data. They were as follows:

1. What are the concepts ombuds use to describe their work?
2. How do ombuds think about what they are doing?
3. What are problems of government in a democratic society?
4. What are problems that ordinary people have in their relations with government?
5. What is the discursive positioning of ombuds, and what tensions and conflicts do they feel?
6. Who do ombuds see themselves as serving?
7. What are key values and principles that ombuds hold onto?

These questions highlighted some themes that animate the work of ombudsing. The findings section of this study looks at excerpts from the interviews and seeks out the patterns that emerged in the participants' responses to these seven questions. The voices of practicing ombudspersons illuminate the strengths and challenges of the role and the various means of safely facilitating voice within institutions. One outcome was that ideas of risk, safety and vulnerable populations become more explicit in the discourses. This is a significant finding, as it helps surface what appears to be widespread fear of speaking out against injustices perpetrated by institutions. It also helps signify the value of the key principles of independence, integrity, impartiality, and confidentiality which help to address the fear of speaking up.

### **1.6 A preview of the conclusion: Navigating discursive channels**

My goal for the dissertation was to research currents in international ombudsing with the aim of improving knowledge of the ombudsing value and function. The research was designed to examine modern ombudsing in practice. This study was motivated by personal experiences. I experienced increased engagement and relief when I was able to speak up and also experienced

the contrasting frustration when there were not legitimate channels to raise concerns. This research was catalyzed by a very real personal understanding of the risks and challenges of speaking up and finding voice in institutions. From its traces in ancient history (Kracke, 1976) to its present form, ombudsing has carried traces of the principles of good governance, and of providing a channel for legitimizing the voice for the ordinary citizen while providing valuable feedback to the governing. While ombudsing emanated from traditional systems of governance, governing is not limited to the public sphere. People struggle with the risks of power relations, day-to-day, in all sectors. Ombudsing has emerged in the social and private sectors, within corporate, university, non-profit and other governing systems. From a theoretical basis of social constructionism, the study utilized a discourse analysis method to examine the responses of participants as they described their ombudsing practice. This approach made visible the ways in which the practices were being constructed within institutional discourses and in the context of power relations.

As two of the participants in the study noted, ombudspersons are well placed to navigate institutional channels of communication. But work needs to be done to identify methodologies and conceptual tools that can be useful in practice. Whether in the classical or other models of ombudsing, narrative mediation provides a culturally grounded approach to navigating and re-storying interpersonal and organizational discourses. Narrative mediation provides a helpful means to navigate conflicting and difficult discourses. The literature and research data support the idea that key principles such as independence, confidentiality and impartiality are vital to the shaping of the role. In order to provide a safe space for *parresia*, a safe space for lodging complaints, grievances, concerns and conflict, certain aspects of the role must be intentionally constructed. Practices of independence, confidentiality, neutrality, accessibility, integrity and

other defining principles are critical to help create the safety needed to mitigate fear, retaliation and other risks of speaking up. Today, many ombuds offices, in different sectors, provide a space, a discursive space, in which people can facilitate and re-negotiate discourses between the governed and the governing.

### **1.7 Background: Freedom, fear and restraining stories**

The foundation and motivation for this study may be found in two divergent personal experiences. In one experience, employee voice and participation were encouraged. I felt safe to speak up, and I was encouraged to raise complaints and concerns. I felt that as my input and ideas were welcomed, I became more invested and engaged in the work of the organization. In the second experience, I felt fear of punishment for speaking up, and I became increasingly restrained in my engagement.

There can clearly be risks attached to speaking up. And yet there are benefits to individuals and to the functioning of society when channels are provided for issues deserving attention to be aired. Detert and Edmonson (2005) talk about the risks of speaking up in the workplace. Winslade and Monk (2008) refer to stories of conflict as often restraining. For me, the differential between engagement and restraint is pivotal to undertaking this study. In an uncertain economy, in places where employees can be fired “at will,” job security is important, and the possibility of being fired is very real. Such restraints can dominate to an extent that precludes legitimate concerns from being spoken. Whether in the public, social or private sphere, it is valuable to have mechanisms that facilitate the voice of the ordinary person.

In the first experience I worked for a non-profit organization which was in crisis. Many board members and volunteers left, and because the organization had dwindling finances, two thirds of the staff left. A new board member took on a leadership role, and with one remaining

staff member, a few board members and other stakeholders, she began to use a series of tools to facilitate dialogue and re-construct the organization. She facilitated many different types of meetings, including one-on-one discussions, in dyads and triads. As a trained and experienced mediator, she surfaced difficult issues and created safe, respectful environments for all community members to speak up. Over the course of a few years, she helped transform the working environment from one of fear and silence, to one of freedom and respect. When acknowledged for her leadership, she gave all the credit to the “team.” As interpersonal relations and dialogue became strengthened, so too did other important aspects of the organization such as programs, outreach and the finances.

In this organization, I was the only staff person who remained through the crisis and for the rebuilding. It was profoundly transformative, both personally and for the workplace. It was so transformative that I decided to go back to graduate school to study organizational psychology and to try to understand the process that had taken place. At first, I thought it might be ascribed to organizational mediation. But it was more than mediation. The board member had used numerous tools. She made it safe to speak up, even on difficult issues and maintained confidentiality. She used a little mediation, but employed other techniques such as collaboration, facilitation, and other relational techniques to build trust and strengthen working relationships. This individual was not an ombudsperson, but she used tools that are often described as within the scope of ombudsing.

As I researched in the area of organizational psychology, I discovered the area of organizational ombudsing, which seemed to articulate approaches related to what I had experienced. The subject was so engrossing that I began exploring the history. I wanted to know where this odd word had come from. I have been studying the field of ombudsing for seven years

now and I find more hope in the idea than ever before. I completed a master's degree thesis focused on the history and origins of ombudsing. Ombudsing is growing worldwide in a number of areas, including in the domain of responding to human rights issues (Reif, 2011).

The second experience occurred more recently. I worked in a large organization. Numerous events were occurring within the organization. There were intensifying financial crises and growing discord among staff and administrators, but there were no legitimate pathways for those who had a concern to have a voice and to express their concerns. Instead, many of those who did use whatever channels they could improvise to speak up were punished for doing so. I experienced these events as oppressive of individual employees and was given clear advice to beware of the dangers I would run if I was to speak my mind. Some colleagues who spoke up were fired; others lived in fear of speaking up, including those with knowledge of institutional processes that might have proved valuable to the success of the organization. So the voices of those who had something to say were lost. As persons who had contributed to the organization, they were not honored and the organization missed the opportunity to learn from what they might say.

Both these instances are sometimes described as “risky voice” opportunities, as discussed in Detert and Edmundson (2005). A risky voice opportunity is one in which the contemplation of speaking up engenders fear. Here is how Detert and Edmundson describe it:

Risky voice emerges as stressful and often intensely emotional; informants widely report the belief that those who speak up with unpopular opinions may be harassed or humiliated, passed over for promotion, or, in rare cases, even fired. (p. 1)

Experiencing risky voice opportunities can be painful. There may be direct or indirect retaliation. People lose their jobs for speaking their mind. But sometimes risky voice



opportunities can be turned into a transformative force within an organization. That was evident in the first situation described above. In such cases, people will listen, and channels are created to legitimate people speaking about concerns. In other cases no listening channel is created. The painful suppression of voice from the second experience made me reluctant to take the risk of speaking up in that context. It created an experience of alienation that was perhaps unnecessary. On the other hand, it strengthened my interest in the subject. What had not been acknowledged was that often, institutional constituents have good reasons to speak up, both for their personal satisfaction and in order to contribute to the institutional discourse. If this principle is recognized, the benefits are many. My interest in ombudsing grows out of thinking about this principle. At the heart of the concept of the ombudsperson is the desire to provide a unique and safe pathway to facilitate dialogue. The ombuds idea can provide benefit to the individual but also to the organizational system by providing a pathway for the expression of the voice of the citizen, a pathway to speak truth to power, even in risky voice contexts.

It is worth noting that sometimes the expression of concerns and feedback is messy. It may not be delivered in the most rhetorically precise way. It is here that the notion of *parresia* arises. As described by Foucault, *parresia* is a means to speak truth to power without the use of rhetoric (Foucault, 2000). Ombudsing can be argued to provide a safe place where institutional constituents can raise concerns and feedback can be garnered for the purpose of better governing, while protecting the safety of the constituents through anonymity and confidentiality.

My experiences of the freedom and suppression of voice within organizations thus led me to the study of ombudsing. My interest, however, has become practical as well as theoretical. In 2012, I completed an internship in the office of the Ombudsman at the National Institutes of Health. Recently, I was hired as the first faculty ombudsperson for a university and I am able to

use my learning in practice. The extensive study of ombudsing and discourse with practitioners has strengthened my hopes for the potential of this idea. Through this research study, I wanted to learn more about the background, development and key discourses in the field across sectors and across geographic boundaries in order to better understand ombudsing in practice. The research process has contributed significantly both to my understanding of ombudsing and the wide range of possibilities in practice.

For this study, I position myself as both a student and practitioner, studying and learning about the idea of ombudsing in theory and practice. I am as interested in the questions as I am interested in theories. This paper is a contemplation of international ombudsing, governance, discourse and voice. I endeavor to examine international ombudsing from a reflective and respectful position. This project represents my voice and my relational experience in response to what I have read and to what people have told me. It represents those who have influenced and taught me, voices from the literature and voices from practitioners. It is, therefore, in itself a relational construction through language.

Despite the spread of ombudsing around the world, there is still a scarcity of literature (Hyson, 2007). My hope is to contribute to the growth of this literature. Studies like this one are needed in order to better understand ombudsing and to participate and further the dialogue by looking at the history, development, current practices and discourse on the subject. This study is for those unfamiliar with the ombuds idea as well as those who have knowledge of it. It is my hope that readers will find much to contemplate and reflect on in the ensuing study, but this is by no means the last word on the subject. This study is intended to be one more contribution to the dialogue. My hope is that it will bring more understanding and appreciation for the work of ombuds practitioners for the purpose of better understanding the ombudsing concept and of

focusing the work more directly on some productive concepts. Worldwide, on a daily basis, ombudsing practitioners are by and large, quietly making valuable contributions to their community – addressing a wide range of administrative injustices.

### **1.8 Why ombudsing matters**

Ombudsing may be said to give voice to citizens: a key democratic ideal. The ombuds idea has emerged against the backdrop of governance and one aim is to help address bureaucratic power. The problems of governance are wide. Ombudsing exists within the relations of power between the governed and the governing. The French philosopher, Michel Foucault, wrote extensively about power relations. In his essay entitled, “Governmentality”, Foucault (1991) contemplates the problem that practices of governance must address:

How to govern oneself, how to be governed, how to govern others, by whom the people will accept being governed, how to become the best possible governor... (p. 87)

It is here in the power relations at the nexus of governing and being governed, that we find the ombudsperson. Foucault argued that power is not so much held by individuals as it is constructed in relations between people. Whether in the realm of national governance or the governing systems of organizations such as hospitals and universities, the office of the ombudsman may be increasingly found, seeking to give a safe space for the ordinary person’s voice to be heard.

As noted earlier, in the modern world, complex administration produces injustices. Often these are small injustices that are local, particular and personal. In organizations people with grievances can often go to the human relations divisions. But when those do not work or when they fear retaliation or retribution, the ombuds office is a place to bring concerns. Sometimes the process allows insight in the application and interpretation of institutional policies and

procedures or the absence of needed policies. In the next section we look at a sampling of cases which demonstrate some of the work of ombuds offices.

### **Sample cases**

In order to get a closer look of the work of the ombuds practice, here are some examples of cases from the public domain. This section looks at three examples of ombuds' cases: a United States Long Term Care Ombudsman case; a case from The Irish National Ombudsman for Children; and a university case handled by the Australian national parliamentary ombudsman. These cases are publicly posted, but identifying characteristics have been removed to protect the confidentiality of the people involved. In addition, these are examples of cases which are investigated, though not all ombudspersons have investigatory processes as a part of their mandates.

The first case comes from the Long Term Care Ombudsman in the United States which is dedicated to protecting the elderly and vulnerable populations in nursing homes. In 1971, President Nixon formulated an eight-point nursing home program. The eight points included 'Assistance for state investigative "Ombudsman" units' (Hunt, 2007):

The idea for the ombudsman program was developed by Dr. Arthur S. Flemming, Counselor on Aging to President Nixon. He envisioned the program as an *advocacy* program for residents and personally wrote the first guidelines for it. In summary, the rapid growth of nursing homes and a concern for the quality of care and quality of life experienced by the residents of these facilities were in part responsible for the creation of the Long Term Care Ombudsing Programs that exist today. (p. 5)

The Long Term Care (LTC) Ombudsing program today exists in all fifty states and has been in active existence for over forty years. It is a federally legislated program. The LTC Ombudsman

receives complaints, investigates complaints, and when possible, seeks a remedy. While the LTC Ombudsman shares some of the original identifying aspects of the classical ombudsman, it is not a “special parliamentary officer.” It is, however, a boon to vulnerable populations in United States nursing homes. The following is an example of a case, brought to the LTC Ombudsman. The names and identifying information have been changed to protect the individuals involved:

Case Study #1 – This case looks at protection from undue influence by someone outside of the facility. This case comes from Senior Advocacy Services (2013):

**Problem:** Jane was admitted to the dementia unit of a skilled nursing facility. Adult Protective Services (APS) had been following her case for a year, because of reports that Carol had befriended Jane and was taking financial advantage of her. APS assessed that Jane's dementia was progressing quickly, but was able to convince her that she needed to get away from Carol's influence. Carol found out where Jane had been moved to and immediately started insinuating herself into Jane's life at the facility. The staff asked the Ombudsman to assess Jane's feelings about Carol, because they were very uncomfortable with Carol's behavior in the facility.

**Action:** The Ombudsman interviewed Jane in private. During the conversation, the Ombudsman was able to gain Jane's trust. Even though she showed signs of memory loss, it was very clear that she resented Carol's attempts to control her life, and said, "I should never have given her that money. Now that's all she wants." The Ombudsman asked Jane if she still wanted Carol to visit, and Jane said, "No."

Outcome: With Jane's permission, the Ombudsman contacted Carol and told her that Jane did not want her to visit anymore. Carol became extremely angry and threatened the Ombudsman with lawsuits. The Ombudsman explained to Carol that didn't matter, the fact is that she was not welcome to visit Jane at the facility. In order to resolve the financial issue and upon Jane's request, the Ombudsman helped facilitate Jane's conservatorship for finances. With Jane's money safely managed, Carol disappeared. Jane was moved to a local residential care home that provides specialized care for people with dementia, and is living her life out happily. (Senior Advocacy Services, 2013)

The case above is an example of how an LTC Ombudsman assisted a nursing home resident. They advocate on behalf of the elderly and other vulnerable nursing home residents and provide critical assistance to patients like “Jane.”

Case Study # 2 – This case is an example from the Irish Ombudsman for Children - Handling of a bullying complaint by a school (2013):

Complaint - The complaint was brought by the mother of a teenage girl who raised concerns that her daughter was being bullied in school. The mother advised that she had reported the matter to the school and was of the view that the school had not taken her concerns seriously and had not implemented its anti-bullying policy.

Investigation - Having examined the matter the office established that the mother had raised her concerns about bullying with the school, both verbally and in writing, on a

number of occasions over the previous years. The school acknowledged that concerns had been raised with them but were of the view that this was an informal discussion and that at no time had the anti-bullying policy been invoked by the child or the family. Therefore no formal investigation had taken place.

Findings - The office found that there were difficulties in relation to the process to be followed in invoking the anti-bullying policy which had led the young person and her family to believe that the school was not taking their concerns seriously. The parents understood that in raising the concerns with the school both verbally and in writing that this would lead to the implementation of the anti-bullying policy. No evidence was provided to indicate that the anti-bullying procedure had been followed by the school. The school had responded to this communication by initiating their complaints procedure.

Outcome - The office found that there had not been adequate communication by the school with the family in relation to their concerns about bullying and particularly that the family was not advised of the steps required to invoke the anti-bullying procedure. Furthermore, there were further difficulties with communication from the school to the family in relation to the investigation of their complaint.

Recommendations and response - The office recommended that the school review its anti-bullying policy, specifically in relation to the steps required to invoke the anti-bullying policy. The Office also recommended that the school and Board of Management give consideration to reviewing their procedures for communicating with parents when

concerns of this nature arise, in order to ensure that students and parents are aware that the matter is being taken seriously and to ensure that a positive working relationship is maintained. The school agreed to arrange a meeting with the family to discuss their concerns and undertook to address the issues raised in relation to policy, procedure and practice.

People are using ombuds offices in situations like these. Citizens, students, patients and other populations are seeking resolutions to grievances, concerns and conflicts through these services.

Case Study #3 – This is a sample student case from a Commonwealth ombudsman (2013):

The complaint - A student enrolled at a university applied for credit based on recognition of prior learning (RPL). The basis for the application was the successful completion of TAFE studies and 26 years work experience in related areas. In submitting her application, the student relied on the university's Credit Transfer Policy, which stated that "professional and para-professional experience, subsequent professional development activities or training and other experience, through work or life, may be taken into account in the granting of RPL credit."

The university declined the student's application on the basis that no credit could be awarded for 'industry experience' or her TAFE courses, as they were not considered comparable with the course. Reasons for the university's decision were not provided.



The student applied for a review of the decision and provided further information about her work experience and studies. The reviewer upheld the original decision without providing adequate reasons for the decision.

The student appealed the review decision, but was unsuccessful. Following receipt of the appeal decision, the student attended a meeting with the chairperson of the appeal committee to discuss the appeal outcome. No record of the meeting was kept by the university. The student then lodged a complaint with the Ombudsman.

Investigation - Internal correspondence revealed that work experience was not recognized for credit transfer purposes and that the university did not recognize competency-based certificate courses. These practices were not disclosed to the student at any stage.

The Ombudsman considered that the meeting held at the conclusion of the appeal process was relevant to the university's decision not to approve her application, and that a record of the meeting should have been made.

Making a difference - The Ombudsman concluded that the university's failure to provide reasons for its original and review decisions prejudiced the student's ability to understand those decisions and effectively exercise her review and appeal rights. The Ombudsman recommended that the university amend its credit transfer policy to require that full and proper written reasons for its decisions be provided to an applicant.

To enhance the transparency of the university's credit transfer application process, the

Ombudsman also recommended that practices applied in the assessment of credit transfer applications be documented and made available on the university website. On the basis of the information provided by the university during the investigation, the Ombudsman was satisfied that it did have regard to the student's cumulative knowledge and experience. The university agreed that it would maintain a written record of discussions with students about the outcome of appeal decisions.

These three cases, from very different ombuds practices, illustrate the use of the service and the kind of responses offered by ombudsing offices. Such cases and stories from the field suggest that ombuds offices often make a difference for ordinary people. The difference lies in the addition of an officially sanctioned voice to the voice of the ordinary citizen. The ombudsperson legitimates the ordinary person's concern in a situation where it is otherwise failing to rise to the level where it gets heard in the face of the power of those who govern and administer. These are examples of some of the services provided by ombuds offices.

### **1.9 A borrowed word**

The word ombuds is a borrowed word from Swedish. The word ombudsman is derived from Old Norse. Along with other Swedish words like glogg, lignonberry, moped, smorgasbord and tungsten the word ombudsman, with some variations, has joined the international lexicon. There do not appear to be many words in English that begin with the letters 'omb.' In the Oxford English Dictionary, ombudsman may be found in between two other foreign words: ombu and omda (Ombudsman, 2013). The word ombuds has the following Swedish associations:

Business agent, creditor's agent, insurance agent, local agent, press agent, sales agent, trade union agent: These are all "ombudsman" in Swedish. Gulberg's Swedish-English

dictionary uses four column inches to amplify the basic meaning of ombud:

“representative, agent, attorney, solicitor, deputy, proxy, delegate.” Ombudsman requires another couple of inches. Lawyers are ombudsmen, diplomats are ombudsmen, even members of Parliament are ombudsmen. (Anderson, 1968, p. 1)

As the word and idea have moved from Scandinavia around the world, issues appear in the borrowed word, which in some ways mirror the challenges in the adaptation and adoption of the concept as a whole. For example, while the term ombudsman is used by many offices, a concern with gender issues has increased adaptations of the word such as ombudsperson. The word ombudsing has emerged in use as the idea spreads. Ombuds is a borrowed word from another language tradition and cultural heritage. The phenomenon of integrating borrowed words into languages, and contemplating meaning, is an ancient conundrum. The Cratylus is an ancient Greek text on language and naming. It is a discussion of some of the attributes of words and the challenge of using words from other languages. In the Cratylus we find the following:

Socrates: Why, you know that anyone who seeks to demonstrate the fitness of these names according to the Hellenic language, and not according to the language from which the words are derived, is rather likely to be at fault (Cratylus, 550 BC).

Even back in 550 BC interesting dialogues were held on how to make meaning from words and in particular, from the application of foreign words. There are a number of considerations in applying the word ombuds. Out of respect for the Swedish origins, some strive to maintain the original forms of the word. Some countries have applied existing words that are more aligned with aspects of their native languages such as “defensor/a”; and “mediator.” In addition, the original word has significance as a “representative” while the modern idea of the “ombudsman” has also gained international meaning and heft in its formal designation of the role.

Curiously the word ombuds itself may be said to have attributes of illocutionary force. In areas where the word still has some unknown qualities, it may be effective in helping visitors hold their expectation in abeyance. If people are not sure what the term ombuds means, there may be value in the meaning of the term remaining somewhat open. This openness may even allow for the creation of new discourses.

As an interview participant in this study noted, a whole dissertation could be written on the word itself. In this study I have elected to use versions of the word which are not gender specific, except in cases where I am referring to the title of a specific office or person that uses a specific term such as ‘ombudsman’. I have also honored the chosen term in quotations from other writers and in transcribing comments by participants. I attempt to use all variations of the word with respect and care. In addition, I use the word ‘visitor’ for those who use ombuds services. Where do you go when you have a complaint or concern within or against an organization? The ombuds office is one such legitimate place. Ombudsing has a rich history and development and this study aims to increase the understanding of this valuable idea.

# Chapter 2: Literature review - part 1

## A history of ombudsing

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### 2.1 Introduction - An Ancient Notion

History shows us that there are ancient, multicultural antecedents to the ombuds idea (Kracke, 1976; Perry, 1978; Waley, 1938), but the first formal ombudsman, the Highest Ombudsman, emerged from a curious series of events. Swedish King Charles XII, having tried to rule his rapidly declining country from afar for thirteen continuous years, signed a series of administrative reforms, which included a decree for the *Hogste Ombudsmannen*, the Highest Ombudsman, in October 1713. At the time, Sweden lay in ruins, the citizens suffering from famine and poverty after years of war and hardship while their ruler lived thousands of miles away, in Turkey, as an unwanted guest of the Ottoman rulers. The appointment of the Highest Ombudsman was intended to make sure that state officers were acting in accordance with laws and regulations (Wieslander, 1994). The Highest Ombudsman is now known as the Chancellor of Justice. The Swedish Parliamentary Ombudsman was formally created in 1809 and is a vital, thriving institution today along with the Chancellor of Justice.

Early versions of the ombuds idea included protection of individuals as well as aims of good governance and conflict mitigation. For the Parliamentary Ombudsman and contemporary models, independence and integrity have emerged as critical components. With the growth of ombudsing across sectors, reflection on structures and patterns of power, governance, accountability and culture may continue to prove fruitful. To reflect on events leading into modern ombudsing, in this chapter I present some ancient, multicultural antecedents, key events

in the creation of the Highest Ombudsman, and briefly considers the Parliamentary Ombudsman which is foundational to many contemporary offices.

A survey of history provides us with ancient stories of justice for the aggrieved provided by leaders around the world with mythical qualities of benevolence, such as Solomon, Yao, Saint Louis, Anusharvan, Theodosius the Great and King Harsha (Kracke, 1976). One example is from the 3rd or 4th century B.C. in the Chinese “Ritual of Chou”:

By means of the lung stone he gives an outlet to common people in distress. If anywhere, far or near, there is anyone without brothers or without children, old or young, who wants to report a grievance to the higher authorities, but his headman will not transmit the complaint, such a one is to stand upon the lung stone for three days, and any gentleman who hears his words must report them to the higher authorities and bring the blame home to the headman. (Waley, 1938, p. 494)

We also find documented proof of early systems for redress in cultures across the globe. Bells and drums were an integral part of many early legends of citizen grievance systems lending a particular audial component to the concept of citizen’s appeals. Grievance bells are noted in the third and fourth centuries in Chinese history and also in Japan in 647, the Khitan Empire in 1039, Islamic writings in the 11th century, India in the 12th century and in Siam and Europe in the 13th Century (Kracke, 1976).

The first reference to a petitioner’s drum, in 269 AD from Korean historical records, depicts a *sinmun’go* drum designated for announcing complaints during the leadership of King Taejong of the Joseon dynasty. All citizens could request justice for wrongs or notify the king of dangers by using this drum located near the palace (Woo-Keun, 1970).

In addition to colorful stories of devices such as bells and drums to sound the pleas of the wronged, there are other representations, which may have aspects related to the ombudsman idea. These include the Chinese Censorate and the Roman Tribune of the Plebs. In addition, prototypes for the ombudsman emerged in Middle Eastern cultures and within the medieval Germanic tribes, as well as in Swedish culture. Swedish King Charles XII hatched his idea of an ombudsman while living in Turkey, in exile as a guest of an Ottoman sultan. In the Ottoman tradition, “Protection of the people against oppression, called mazalim, was always a primary duty of the just sultan...” (Darling, 2008, p. 510). Mazalim sessions can be found in records of Persian history. From 1457 to 1478, Uzun Hasan ruled Aqqyunlu in northwestern Iran and Eastern Anatolia. According to the account of Budaq Munshi, describing a mazalim session:

When Uzun Hasan had finished the morning prayer, the ‘drum of justice’ would be sounded to indicate the convening of the court of appeals (diwan-i-pursidan). There he would appear in person clothed in dervish attire (libas-i-darwishan) ... Needy, indigent plaintiffs (hark as az faqui wa darwish) were then summoned to present their suits through a public official who acted as their advocate and intermediary (parwanchi-yi ajaza wa masakin dar an dawr i-tibar dashi sukhan-I faqiranra miguft wa dara maqam-muhimm-sazi mishud). Cases would be settled immediately and secretaries in attendance would draft and issue the orders. The plaintiffs would leave the court with firm decisions not subject to change or alteration. (Perry, 1978, p. 208)

History suggests that devices and concepts of representation for the wronged traveled across borders throughout time. Some of these ideas embodied a sense of protectorate for the people, as well as constituting attempts to improve governance. In 1976, Edward Kracke noted that, “The ombudsman institution had incorporated, consciously or not, much of the

heritage of the quests for individual justice found in both East and West” (p. 8). Vilification trees, lung stones, bells, drums, colorful clothing, cries for justice and complaint boxes - the voice of the aggrieved has sounded for thousands of years entwined in our historical connections. Today the ombudsman position is a critical institution around the world. In 1713, Swedish King Charles XII signed a decree for a number of administrative reforms, including a decree for the King’s Highest Ombudsman. What led to the inception of this post created by decree in Timurtasch, Turkey? And who was King Charles XII of Sweden?

## **2.2 A western king**

King Charles XII was one of the last warrior kings in Europe. He was a colorful and complex historical figure who has captured the imagination of many historians and literary figures including Robert Nisbet Bain, Voltaire and Strindberg. Studies indicate that Charles XII was considered both a hero and a villain, depending on the aims of the authors in depicting his rule (Moerk, 1998). Moerk also suggests that the arc of his rule had a profound impact on Sweden’s attitudes to war and peace.

Born in 1682 in Sweden, Charles XII was the only son of King Charles XI and Queen Ulrica Eleonora. He was the third king of the Wittelsbach dynasty and ascended the throne at the tender age of fifteen, on his father’s death in 1697. At the end of the 17th century, Sweden was a major power in Europe with control over the Baltic Sea. In 1700, Denmark, Poland and Russia formed an alliance to defeat Sweden. The military prowess of Charles XII, a young inexperienced king, took the members of the alliance by surprise and, after a stunning victory, he earned the nickname ‘the Swedish Meteor’ (Cooke, 1981, p. 144).



Disciplined and bellicose, Charles soon began waging what was known as the Great Northern War, in Europe, lasting eighteen years. He waged battles against enemies of Sweden, including his mortal enemy and peer, the Russian Emperor, Peter the Great. One of the first was the Battle of Narva, in 1700, where Charles and his men triumphed over Peter the Great. Despite repeated requests by his allies to engage in or discuss peace treaties, Charles declined unless he personally perceived a benefit (Bain, 1895). Charles roared through the already declining resources of the Swedish state, expediting its decline as a great power. In 1709, Charles was decisively 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 of Varnitsa 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.

### **2.3 Ruling from afar: The Kalabalik and a peculiar respite**

In Turkey, Charles lived off the resources of the Ottoman Empire and gained another nickname Dembiras Sarl, or ‘Ironhead Charles’, for living on the state’s iron coins, and in reference to his obstinate nature (McCarthy, 1965). Initially welcomed by the Turks, over time he became less welcome. He began inciting wars from within Turkey. According to Bain (1895), he was asked to leave but repeatedly refused. He angered the Sultan and orders were given to take Charles from Bender to Adrianople, dead or alive (p. 210). Charles still refused to leave.

To all remonstrances he was either deaf or rude. When the clergy protested against needless blood shedding, he bade them go and preach elsewhere as he meant to fight.

When even his own soldiers implored him not to stain the honor of the Swedish name by

drawing his sword against friends and benefactors, he roughly replied: “Hold your tongues and obey orders!” (p. 211)

And so, in February 1713, Charles fought a battle, which is referred to as the Skirmish at Bender or the “Kalabalik” (Kent, 2008; McCarthy, 1965). According to McCarthy (1965), Kalabalik is a combination of two words meaning, ‘tumult’ or ‘the hunting down of dangerous game’, which in this case was King Charles (p. 391). With a band of approximately fifty men, he battled against thousands of Turks and Tartars (McCarthy, 1965). At the end he posted his remaining men and ordered them to “hold out till 4 o’clock next morning, when they would be able to dictate their own terms besides filling the whole world with amazement at their valour” (Bain, 1895, p. 215). The Turkish army then returned with flaming arrows to try to burn Charles and his army out. Charles went to the roof to extinguish the flames but, exhausted and with the house collapsing, retreated with his men to the nearby Chancellery. There he was captured.

Charles was moved from Bender to Adrianople where he was put under house arrest at the castle of Timurtasch and succumbed to an unknown illness. There is speculation about this respite and whether or not he was truly ill. According to Voltaire (1908), Charles,

[...] who was always in the extremes, felt the Turks did not pay him that respect which was due to his royal person, or oblige him to compromise his dignity, took to his bed, and resolved not to quit it as long as he should stay at Demotika. He remained 10 months in his bed pretending to be ill [...] During the time that Charles was thus passing his time in bed; he was apprized of the desolation of all his provinces that were situated without the limits of Sweden. (p. 305)

Carl Gustafson Klingspor, who was present at the time, wrote:

His Majesty did not counterfeit a malady when he kept abed for forty-three full weeks, but did in truth suffer from a tertian fever, which put us in terrible apprehensions and caused us to return with him to Demotica, if he might there during the winter recover his health from the salubrious breezes of the place. God wot, our hopes were mightily fulfilled, for here he grew healthy and vigorous. (Gade 1916, p. 324)

According to Bain he was:

...passing his time in playing chess, reading romances, and dictating dispatches [...] Not till New Year's Day, 1714, did he resume his clothes and his old active habits. In the following March a special envoy from Stockholm [...] arrived at Demotika with orders from the Senate to bring Charles back at any cost. For by this time the condition of the kingless kingdom was absolutely desperate. Her resources were utterly exhausted, the last vestiges of her continental empire, except Stralsund and Wismar, had been swept away, and the people, believing Charles to be either mad or dead, clamoured for a new sovereign. (p. 220)

Charles himself apparently referred to “our lazy dog days in Turkey” (Hatton, p. 314) but it is likely that, after the Kalabalik, he continued suffering from earlier battle wounds and possibly a bout of malaria (Hatton, 1968).

#### **2.4 Declining empires and administrative crises**

During Charles' exile in Turkey, Sweden was in crisis, suffering from poverty, plagues, depletion of resources, danger of ongoing war and widespread corruption. To paraphrase historian Robert Nisbet Bain (1895), writing of the 1709 Battle of Poltava, had the King been present, perhaps Sweden would not have been as damaged by this battle. The country was in great need of strong leadership. Early in his career, Charles had restored many of the Swedish

territories lost by his ancestors but, during his long exile, the country had plummeted into crisis. With increasing difficulties, including economic decline, government disarray, and territorial disputes with neighbors, Sweden's strength as a nation was weakening. But Sweden was still governed by a monarch far away. Months would pass between when the king dictated his orders and when they arrived and often much had changed in the interim. Charles XII was an absolute monarch and the senate was not empowered to act on its own discretion. Decisions that were made were likely to be undone by an order from Charles at Bender. Although he once had much promise as a ruler, decisions made from a distant land without his being privy to all that ensued on the home territory made ruling very complex. Ideas that he mandated from Bender, but which were no longer relevant in Sweden, meant his rule was constantly challenged. Things became so desperate that the councilors in Sweden sent Major-General Liewen to Demotica to plead for the King's return.

Faithfully did he recount to his King the sad state into which our beloved country had fallen through his absence, and that the very government was going to wreck did he remain longer away. Thereupon he handed His Majesty the letter from the Council, in which they full plainly stated that the country could be regarded as a body, whose sinews were all severed and from the veins of which all blood had been drained. What it now attempted for defense both by land and sea went on but tardily, for his subjects were filled with melancholy near to despair, which could not be conquered. It did now seem as if there be but a few months before those who still hold ground would totally go under. The poverty was so great that the very officials had neither pen nor paper and the wealthiest must lie abed sixteen hours of the day, being without candles to light the dark hours with. (Gade, 1916, p. 326)

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 from Timurtasch. The decree for a major administrative reorganization was signed on October 26, 1713 (Hatton, 1968). One of the goals of the King's reforms was to "make government more efficient and just." (Hatton, 1968, p. 314) The reforms included a decree creating the institution of the King's Highest Ombudsman.

### **2.5 Administrative reform**

In the modern world, the ombuds office is often created as an administrative reform to increase or improve governance and accountability. The seeds of this idea were evident in the 1713 decree. Charles XII faced a level of broad complexity in ruling a declining empire from thousands of miles away. In addition, since the Swedish Estates were operating in his absence, his situation very likely expedited, in Sweden, the movement away from absolute sovereignty that was sweeping across Europe.

Charles' massive reform included six 'state expeditions' or departments. Two of these expeditions covered foreign affairs, and three covered domestic affairs (military, state economy, and trade). There was to be an ombudsråd at the head of each of those five expeditions. The word ombudsråd was given by the King with the idea of someone whose role included serving an intermediary function between the King and the administration (Hatton, 1968). The intention was that each ombudsråd would talk about expedition activities with the King and assist with the execution of decisions. It was the ombudsråd's job to: "[...] take the initiative and to lay before the King plans which would be for the service of His Majesty and benefit of the State." ... These five expeditions were expected to cooperate and the ombudsråds were expected to work

together on related issues. The ombudsrads were also expected to meet with the King for matters of great importance such as the budget for the coming years. (p. 343)

In addition, the reform designated a sixth expedition. This was separate and known as the ‘revisions-expedition’, and the Highest Ombudsman was to serve as the head. His primary objective was to ensure that laws were obeyed and to oversee the “proper, efficient and fair functioning of the administration” (p. 343).

While in Timurtasch, Charles provided nominations for a Hogste Ombudsmannen as well as ombudsrads for the five other expeditions. The first Hogste Ombudsmannen, Leijonstedt, started immediately. These reforms were made in addition to recommendations in areas such as tax reform and the creation of a Hogste Ordningsmannen, the Highest Order Man. This position was designated as a central authority (Hatton, 1968).

...someone to see that orders and regulations were carried out not only by administration (that was the field of the Hogste Ombudsman) but also among the population at large. In 1718 a ‘Hogste Ordningsmannen’ was designated to be in charge of ‘order’ in the broadest senses in cooperation with local authorities. (p. 440)

The administrative reforms were sent to Stockholm in 1713, but they did not take effect until the King returned to Sweden. Of the many reforms recommended and implemented by Charles and his advisors, only one has endured: the Highest Ombudsman (Hatton, 1968).

## **2.6 The decree for the highest ombudsman in Timurtasch, Turkey - East meets West**

Ombudsing is often considered a Western notion, but the multicultural antecedents and location of its creation suggest broader influences. Swedish King Charles XII had lived in Bender before signing the decree for the Highest Ombudsman at Timurtasch Castle. The city of Bender, or Bendery, is in the country now called Moldova, formerly Moldavia. Suleiman the

Magnificent conquered the town then known as Tighina, in 1538, and renamed it Bender. It is governed as part of the autonomous region on the right bank of the River Dniester (Bender, 2011).

During the Middle Ages it was under the Principality of Moldavia and was a commercial port. For much of the Ottoman Empire (1538-1812) it was under Turkish rule. The castle was outside the town which, in 1713, was known as Adrianople. Adrianople was once known as Uksdama but was renamed Hadrianople by the Roman Emperor Hadrian (117-138). The city was conquered by the Goths in 378, later by the Ottoman sultans and was captured during the Russo-Turkish wars. A multi-ethnic trade center over the centuries, it is now known as Edirne.

There appears to be somewhat limited research on what led to Charles's initial creation of the idea of the ombudsman in 1713. Charles' writings (now stored in the Swedish National Archives) show that discussion around the concept and word usage (including the choice of the word 'ombudsman', a word already in use with Old Norse roots) preceded the signing of the ordinance in Timurtasch (Orton, 2001). According to Mats Melin, former Swedish Chief Parliamentary Ombudsman (2006):

Even if the first of Ombudsmen was elected by the Swedish Parliament, the very essence of the idea of an Ombudsman – an independent official with the power to investigate complaints from members of the public and who can criticize illegal, unfair or improper actions by public authorities and make recommendations – is not unknown in other, even older cultures. Within the Islamic legal system, for example, during the era of the Abbasids, complaint handling agencies called Diwan al Mazalim were established. (p. 2)

It is hard to determine all that may have influenced the creation of the ombudsman. The word has Scandinavian roots and associations. Grievance resolution appears to have been a part

of Ottoman administration. The Record Book of Complaints provides documentation on problems, petitions and grievances of citizens and casts some light on a variety of Ottoman Empire grievance procedures including the mazalim, but these records are from the late 18th century, after Charles' exile (Ursinus, 2005).

Charles worked with representatives from many cultures, was schooled in the classics and may have been familiar with other cultural representations of intermediaries for the government. He may have been influenced by Turkish culture. According to Daniel Goffman (2002), the strong influence of the Ottoman Empire in Europe has been underestimated. He states that, "The Ottoman Empire constituted an integral component of Europe and that neither the Ottoman polity nor Europe makes a lot of sense without the other." (p. xiv)

In any case, Charles' decree launched a newly formed concept for the Highest Ombudsman. A translation of the rough draft of the order from old Swedish includes:

Instructions (King Charles XII, 1713): Wherein His Majesty the King resolutely wills that the Highest Ombudsman, in this office, shall have these rights. Given at Timurtasch on October 26, 1713 Printed by Johan Henrik Werner, Royal Printer, 1717.

The Highest Ombudsman's Office consists first and foremost of having a universal insight into (overseeing) how ordinances are observed, and each of these Offices complies with his duty, which he executes in part through his own arrangement, in part through inquiries and proposals handed in to His Majesty the King and in part through orders issued in the Name of His Majesty the King. Secondly, to himself on certain occasions plead the case against those who likely offend [...] (p. 1)

According to Bengt Wieslander, former member of the Swedish Justice of the Supreme Administrative Court and President of the Supreme Administrative Court (1994):



This Ombudsman had no political authority, but was to ensure that laws and regulations were observed, and that officers of state discharged their duties. Should the Ombudsman find that this was not the case, he had the right to prosecute for negligence. (p. 13)

Frank Orton, Former Swedish Ombudsman against Ethnic Discrimination (2001) states:

The task of this Ombudsman was to ensure that the judges, military officers and civil servants in Sweden were observing the laws of the country and the rules laid down for them. Having at that time been away from Sweden since he left thirteen years earlier on his campaign against Russia, the King obviously felt a need to have someone monitoring things in his home country on his behalf. (p. 1)

### **2.7 Seeds of an idea – Lasting change**

Charles returned to Sweden in 1714. The new administrative reforms, including the expeditions headed by ombudsrads and the Hogste Ombudsmannen were implemented on his return. New Swedish administrators as well as trusted advisors helped move the reforms forward. The literature indicates that these reforms had some success and the ombudsrads met as required in the King's reform (Hatton, p. 439-440). The first Hogste Ombudsmannen, Leijonstedt was apparently quite active in the role. Charles, once known for his power and process in arbitrating territorial disputes, spent his remaining years dedicated to sieges to reclaim areas of the Swedish Empire lost while he was in exile. Charles was killed at Friedriksen in 1718, during a battle against Denmark. After a life fraught with conflict, even his death was controversial. For centuries, historians and forensic experts have studied the evidence to determine whether his death was an accident or regicide, as some contend, the result of an assassination made to appear accidental (Nordling, 1998).

The early version of the ombudsman, the Hogste Ombudsmannen, was not an idea deliberately conceptualized to protect the rights of individuals, but was born out of a crisis of governance. It nevertheless contains the seeds of an attempt to improve administration. Ombudsing literature often points to the Swedish Parliamentary Ombudsman as the first ombudsman:

The reason, why the Ombudsman institution, thus established by the King in 1713, sometimes is not mentioned as the forefather of all the world's ombudsman institutions, is precisely its close connection with the executive power, its not being as independent as an ombudsman is nowadays supposed to be. Its role in relation to the development of the ombudsman concept is nevertheless significant. Strong under King Charles and his predecessors, the monarchy became weak soon after his death in November 1718, while parliament grew correspondingly strong. As a result, this 1713 institution, in May 1719 renamed the Chancellor of Justice, Justitiekanslern, in reality 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. But Parliament did not forget its value. (Orton, 2001, p. 2)

The ombudsman concept evolved significantly between its inception in 1713 and the creation of the Parliamentary Ombudsman in 1809. His Majesty's Highest Ombudsman reported directly to Charles, an absolute monarch, and was charged with ensuring that judges and administrators acted in accordance with the law and the King's wishes, with the power to initiate legal proceedings. On the King's death, many of his reforms came to an end, but the Hogste Ombudsmannen endured.

## 2.8 The Parliamentary Ombudsman

The term Frihetstiden is used to describe the period of Swedish history from 1718 to 1772, between King Charles's death and the autocratic rule of King Gustav III. The parliament had much jurisdiction over the country and the period was marked by significant development in science and the arts. This Period of Liberty or Age of Freedom was also relatively peaceful, with a movement from absolutism to a modern parliamentary system. The title of Highest Ombudsman was changed, in 1719, to Justitiekanslern. Under increasing parliamentary rule after Charles, the Chancellor of Justice became an ombudsman for the government. The Swedish Parliament elected its own Chancellor of Justice in 1766, but in 1772 the appointment of the Justitiekanslern reverted to the monarch. The monarch at the time, King Gustav IV, maintained autocratic rule until he was effectively deposed in 1809, and today the Chancellor of Justice again serves as an ombudsman for the government (Justitieombudsmannen, 2011). This Chancellor of Justice maintains a key and valuable role in Sweden today (Orton, 2011).

The concept of the Parliamentary Ombudsman was drawn up in the 1809 Swedish Constitution 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, 1994). A new constitution was introduced to balance executive power with the Riksdag (Swedish Parliament). It was determined that a Parliamentary Ombudsman would be elected to oversee public administration enacted in accordance with the law. According to Wieslander (1994), the first article of the first chapter of the Constitution, known as the Instrument of Government, states that, "public power shall be exercised under law" (p. 9). A constitutional committee proposed the formation of a Parliamentary Ombudsman in

1809. This was incorporated as Article 96. Here, independence and integrity appear as key elements in defining the role of the Ombudsman. The proposal delineated requirements of the position:

At each Rikstag the estates were to appoint a man, known for his knowledge of the law and exemplary probity, to act as their representative in accordance, with the instructions which were to be issued to him, to exercise: Supervision of the observance of the laws by judges and officers of state, and to prosecute, with due process of law, those who in discharging their duties, through violence, personal considerations, or for some other reason, act unlawfully or fail to fulfill the duties pertaining to their office.

(Wieslander, 1994, p. 14)

There has been some debate on the similarities between the Parliamentary Ombudsman and the Chancellor of Justice (formerly the Highest Ombudsman) because of their similarities in administration:

The few records that remain regarding the reasons for creating, in 1809, a post which resembled that of the Chancellor of Justice, but whose occupant was to be appointed by the Estates, reveal that the Parliamentary Ombudsman was intended primarily to establish a system of supervising the discharge of public office which was independent of the Government. This intention is expressed clearly in a brief subordinate clause in the Constitutional Committee's memorandum on the draft Instrument of Government.

(Wieslander, 1994, p. 14)

Frank Orton (2001) states that:

This 1809 institution is still, almost 200 years later, a well-functioning institution in Swedish society, keeping public servants in check with its inspections and its criticism in

individual complaint cases, helping others with useful advice and examples of good governance, seldom exercising its original role as a prosecutor bringing wrong-doers before a court of law. (p. 2)

According to Stanley Anderson (1969):

[...] In the Basic Law of 1809 [...] the Swedes provided for a Riksdagens Justieombudsman, 'Parliament's Agent of Justice'. The post provided a counterweight in the balance of power whereby King and Parliament both controlled administration, that is to say, primarily the judges and police. Finland followed suit when it gained independence in 1919. The modern embodiment of the Ombudsman is reflected more accurately in the Danish version, as provided in the 1953 Constitution. The Ombudsman as we now know him is a constitutional officer appointed by Parliament to receive, investigate and report on citizen's complaints of bureaucratic abuse. The Swedish and Finnish offices have come to serve the same function, as have the newer offices in Norway [...] (p. 2-3)

### **2.9 Modern Ombudsing – Contingent turns of history**

Ombudsing grew slowly at first. The Highest Ombudsman was created in 1713 and underwent changes with the political winds of Europe, with the first Parliamentary Ombudsman created in 1809 in Sweden. This was followed by the establishment of the office in Finland in 1919, when they gained independence from Sweden. In 1953, Denmark created their office, in 1962, Norway and New Zealand, then in 1967, Great Britain (Anderson, 1969). In the 1950s and 1960s, the idea grew rapidly worldwide with continued growth in the public sector and new versions in the private sector and in academia. In academia, creation of the office was largely due to student advocacy and unrest on campuses. The advance of ombudsing reportedly occurred on

various North American campuses, including Simon Fraser University in Canada, Michigan State University, and the State University of New York at Stony Brook in the 1960s (Anderson, 1969). In recent years, the position has expanded in concert with calls for corporate accountability, health care needs and human rights advocacy across the globe. But as ombudsing grows today, and as ombuds offices are thoughtfully and carefully constructed with attention to ideas of independence and integrity, reflections on the early models can provide insight on multicultural influences as well as historical trends in institutional and executive power.

### **2.10 Conclusion**

The year 1713 was, by all appearances, a desperate time for a distant king ruling his country through letters (Corobon, 2010). Perhaps there is irony in the idea that an institution now associated with peace was launched by a warrior king. Although the early version of the ombudsman was not an idea deliberately conceptualized to protect the rights of individuals, it was about the limitation of administrative and official power (albeit on behalf of the highest authority, the King). The parliamentary model was significantly different in function from the Highest Ombudsman, but it appears that this early version presented an idea that shifted and grew in the ensuing years.

It is worth reiterating that today's ombuds model is an idea deliberately conceptualized to protect the rights of individuals. Today's model is deliberately conceptualized to be independent and to provide safety for raising complaints and concerns. It may be said that Swedish King Charles XII inadvertently formulated an idea which was strengthened and improved upon by the Constitutional committee in 1809 that formed today's parliamentary model. As the worldwide growth in ombudsing suggests, this function provides valuable services. The plight of an individual with a grievance within or against an organization or bureaucracy can

be a heavy burden to bear. Today many governments and institutions around the globe have an ombuds officer. An ombuds officer can provide guidance and explore options for grievance resolution providing relief and hope to individuals.

The term 'pioneer' was originally a military term for foot soldiers who dug ditches and paved the way. Swedish King Charles XII was a warrior king but perhaps in the field of ombudsing he was an accidental pioneer. Perhaps the unheralded members of the Constitutional Committee creating the Parliamentary Ombudsman Office in Sweden in 1809 were pioneers. But probably it is the men and women around the globe working with integrity and noble aims who continue to pioneer this valuable function.

# Chapter 3: Literature review - part 2

## Institutionalization and discourse theory

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### 3.1 Introduction

In chapter two I presented a history of ombudsing from early antecedents to contemporary models, as documented in the ombudsing literature. Here, in this chapter, I provide a second part to the literature review to place the study in context and to examine, in greater depth, the development of ombudsing. Apart from the history of the idea, it is helpful to mine the literature to understand the development of the role and the backdrop against which it has spread.

In this chapter, I explore the development of ombudsing and, specifically, the international spread, the spread across sectors and the role development with attention to integral principles in ombudsing such as independence, impartiality, confidentiality and integrity. Next, I present a general theoretical lens of social and relational constructionism which will serve as the framework within which this study can be located. Social and relational constructionism center societal relations and language or discourse. So then, I move from the general theoretical lens to examine a particular theoretical lens of discourse theory, and highlight related concepts I intend to utilize later, including: discursive spaces; discursive channels; discursive positioning; discourses in ombudsing; and navigating. I follow with a consideration of important concepts drawn from these theoretical resources which are useful in the study of ombudsing. These include: power relations between the governed and the governing; institutionalization and habitualization - the freezing relations of power. I examine governance and governmentality. I introduce Foucault's notion of *parresia* and consider how narrative mediation might have a special fit within ombudsing because of its association with the same background assumptions. I



also look at gaps in the ombudsing literature and where this study can address these gaps.

Finally, I consider the focus of the study in preparation of an examination of the methodology and findings.

Ombudsing does not exist in a vacuum. As a social practice, it exists against a background web of other social and institutional practices. So does my inquiry into the world of ombudsing. It too must be conducted within the context of a larger field of inquiry. My hope here is that articulating a theoretical perspective can both serve the purpose of guiding the inquiry and also help explain the reasons for the increasing popularity of ombudsing.

There are different theoretical lenses from which to view ombudsing. Much of the existing literature looks at ombudsing through lenses drawn from political science, public administration and administrative law. In this study, I want to shift the lens to bring ombudsing into focus through two different theoretical frameworks. First, I consider the social constructionist view of institutionalization and habitualization and related ideas such as governance, governmentality, power relations, and *parresia*. In this chapter I shall explain how these concepts work together to form a network of interrelated ideas. Secondly, I consider discourse theory (Karlberg, 2012) and related ideas such as discursive spaces (Culler, 1976), and discursive positioning (Winslade, 2006). Building on this topology of discursive theory, I also introduce the term “discursive channels.” While this idea does not appear to exist in the literature, I introduce it in this chapter because it is an idea that flows from the literature on discourse theory. I posit that, whether in public, private or social sectors, ombudspersons are required to navigate the currents, the winds, and sometimes the storms that flow through institutional discourses. But the question also arises, what tools, then, help us navigate? In this context I consider the ideas of narrative mediation as a tool for navigating institutional

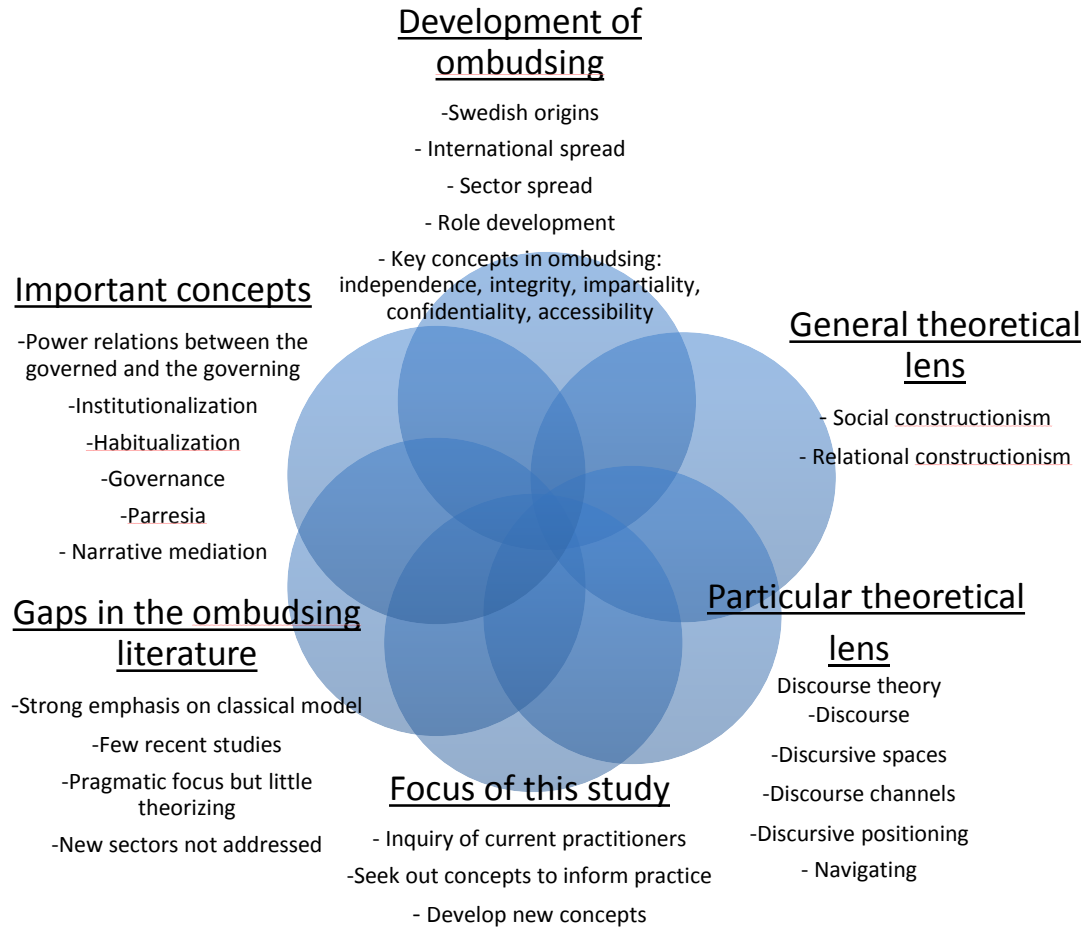
discourses. While I am not studying narrative mediation in particular here, it can be recognized as a practice approach that shares many key assumptions with the ideas and concepts about ombudsing referred to above. It therefore has specific value as a tool that ombuds can utilize to assist them in navigating discursive channels.

Gregory and Giddings (2000) note:

As to why the Ombudsman has flourished and multiplied in recent years, part of the explanation, it would seem, is to be found in the perceived need, increasingly acknowledged in democratic states, to promote accountable administration in an era of <<big government>>. With the activities of large, complex bureaucracies impinging more and more on the lives and livelihoods of individuals, the problem of exercising effective control over officialdom becomes increasingly acute and at the same time more intractable. It is one of the dilemmas of our times. In the modern state democratic action is possible only through the machinery of bureaucratic organization. But bureaucratic power, if it is not properly controlled, is itself destructive of democracy and its values. (p. 1)

As the quotation above delineates, ombudsing exists in systems of governance and bureaucracy. It exists in relation to government, power relations and the discursive interactions between individuals. In this chapter, I explore these forces.

The following diagram maps out themes to be addressed in this chapter of the literature review, (see Figure 3.1).



**Figure 3.1 Diagram of chapter organization**

The diagram in Figure 3.1 maps out key ideas in this study of ombudsing and locates the theoretical ideas that will serve as the foundation for the review of relevant literature and for overall basis for this research project. This chapter builds on the previous chapter on the history of ombudsing to further explore the international spread of the ombudsing idea and the development of the role. In addition, in this chapter I delve into key principles in ombudsing such as independence, confidentiality, neutrality and others. Next, I identify and examine some important concepts related to the context in which ombudsing is practiced, such as power relations between the governed and the governing, institutional theories, and ideas of governance.

The concept of *parresia*, or frank and fearless speech, is also considered in relation to ombudsing, as is the practice of narrative mediation in facilitating discourse shifts.

### **3.2 Development of ombudsing**

As we saw in the history of ombudsing in the previous chapter, the ombuds concept has been steadily growing around the world and may now be found in public, private and social sectors. While the classical model exists largely in the context of national and other forms of traditional government, many of the newer models are formed within the context of the governance of institutions. This section explores the development of ombudsing and key concepts that have emerged in the literature about this field of practice.

#### **International spread**

By the end of the 20th century, the ombuds idea could be found around the world in many forms. As noted earlier, Gregory and Giddings (2000) associated the spread of ombudsing around the world with a growing emphasis on the concept of accountability to citizens of government. The ideas of citizen control and desire for accountability by those who govern may be found in the public sector and may also be found in the private and social sectors in which systems of governance and administrative control are also prevalent.

#### **Sector spread**

By the early 1960s ombudsing had begun to spread across sectors (Anderson, 1966). One reason for this spread may be that the practices of governance and of governing are not themselves limited to a traditional government realm. Systems of governance may be found in public, private and social sectors. An example of an early movement across sectors from traditional government to organizational governance may be seen in one of the first ombuds

offices in academia created by student governance at Simon Fraser University in Canada.

According to Johnston (2005):

The office of the ombudsman was the most original innovation of the newly crafted constitution. It was an idea that had received recent publicity. New Zealand and Norway had created ombuds offices in 1962 and Denmark had done so in 1955. Previously the office had existed only in Sweden and Finland. No Canadian government had yet adopted the idea; and no Canadian university student society had tried it. Over the next fifteen or twenty years most Canadian provinces and many campuses created ombuds offices, but SFU's charter students were ahead of the pack... Most complaints were directed against faculty and administration and involved matters like library fines, and rejected bursary and scholarship applications or admissions applications, as well as issues that students had with their treatment in courses and classes. The office proved its worth and became a permanent institution at SFU because the early ombudsmen at SFU were remarkably successful in getting the access, information and co-operation they needed from faculty and administrators. This was how student government began at SFU. It was briefly a perfect democracy. (p. 153-154)

The model of the student ombudsman at Simon Fraser is illuminating as an example of the progression of the idea from public governance to the student governance model, from the public sector to academia. It is also interesting that the student model predated the government models in Canada. The ombuds office is still strong at Simon Fraser University. It stands as one of the examples of ombudsing navigating across sectors, while still sailing in the waters of governance and power relations.

### **Role development**

Ombudsing aims to provide a channel, generally within systems of governance, for addressing complaints and humanizing bureaucracy. Ombudsing is situated within larger oceans of discourse such as democracy and operates in modern institutions within the social relations that constitute them. According to Caiden (1983):

The ombudsman humanizes relations between government and citizen and enlarges personal security by reducing the arbitrary, incorrect and tardy acts of officialdom. Democracy is not so much correct institutional forms, such as a representative constitutional system, but a state of mind, a way of life, a respect for personal security in its widest sense that includes an individual's feeling of safety, humanity, human dignity, and personal worth. This personal security is the condition sine qua non for a sound democracy as a tolerant society based on natural respect and understanding between individuals. As a set of social relations, democracy is reflected not only in the political sphere but also in the everyday relations between people, between public officials and citizens, between judges and those subject to court jurisdiction. The whole idea of the justitieombudsman was to democratize public administration in this sense, that is, reduce the distance between public officials and the public, to get them to respect and understand one another, to conduct public business in such a way that personal security was enhanced. (p. xviii)

Caiden speaks to the uniqueness of the ombuds model as a means of bridging the divide between public officials and citizens. His quotation also surfaces concepts of safety and public security in relation to processes of public administration and ideals of democracy. The steady growth of ombudsman offices suggests the value it continues to provide for protecting such safety. By

providing a specific place to lodge complaints and concerns, the office of the ombudsperson is intended to provide both a mechanism of accountability and a means of humanizing bureaucracy.

The first ombudsman decree was created within a system of sovereign governance but with a nod towards improving administration (Hatton, 1968). The Parliamentary model improved upon the initial idea by factoring in ideas drawn from Locke and Montesquieu (Wieslander, 1994) of checks and balances (checks on the power of those who govern and greater balance in the relations between the governors and the ordinary citizen). It achieved this by situating the ombuds office apart from the governing structures of parliament and providing a deliberate place for lodging complaints. But these key concepts did not emerge in a vacuum. They emerged in large part in response to problems in the power relations between the governed and the governing. It is necessary therefore to explore what might be meant by power relations. The next section explores some theoretical perspectives on social relations which ground this study.

### **3.3 General theoretical lens**

#### **Social and relational constructionism**

Ideas of interconnectedness and relational being have a rich history. Indigenous peoples, such as the Navaho, have long held appreciation for our interconnectedness and interrelations (Whiteman, 2009). Their ideas are perhaps echoed by social constructionist writers in recent years. In writing about theories of relational being, Gergen (2001) states:

Traditional theory of the civil society is built upon an ontology of bounded units or entities – specifically “the individual,” “the community”, the state, and so on. Such a theory not only creates a world of fundamental separation, but invites the use of traditional cause and effect models to comprehend relations. One is either an actor, directing the course of events, or is reduced to an effect. How can we comprehend the

social world in such a way that is not composed of entities, but constituted by processes of relationship? This is no easy task for we at once confront the implications of Wittgenstein's pronouncement that "The limits of our language are the limits of our world." (p. 2)

Gergen articulates our interconnectedness and highlights the key role of our "processes of relationship." He also succinctly notes our interrelatedness in the following statement (2002):

The Enlightenment paean to individualism "I think therefore I am" is replaced with "I am linked therefore I am." (p. 7)

Ombudsing exists to facilitate voices from many different populations from the center and from the margins. People bring a multiplicity of experiences that inform their perspectives. Therefore, it may be valuable to have a theoretical perspective that allows for divergent worldviews.

Ombudsing functions amidst government and governing relations and social constructionist theory is rooted in a relational negotiation of meaning and in a deep curiosity toward the power of language and how we use discourses to create our realities. Social constructionism is a sociological theory of knowledge based on the seminal work of Berger and Luckmann (1966).

They posited that:

... reality is socially constructed and that the sociology of knowledge must analyze the processes in which this occurs. (p. 1)

Social constructionism allows for the co-existence of multiple worldviews and acknowledges the power of language in constructing our realities. I have found the theory of social construction to be valuable to this study for a number of reasons. Berger and Luckmann (1966) wrote of a "sociology of knowledge that must concern itself with the social construction of knowledge" (p.



15). This theory privileges human relations and language over fixed or essentialized structures of thought. Burr (2003) notes that:

... language provides the basis for all our thought. It provides us with a system of categories for dividing up our experience and giving it meaning so that our very selves become the products of language. Language produces and constructs our experience of each other and ourselves. (p. 62)

The perspective of social constructionism has implications for how the ombuds idea can be understood. The ombuds concept has been developed in linguistic exchange through historical relations. For example, the first idea of ombudsing, the royal ombudsman, emerged as a part of administrative reforms, designed to improve processes through which a king was endeavoring to rule his country from afar (Hatton, 1968). The parliamentary ombudsman was created as a part of a system of checks and balances for a new parliamentary government in Sweden in 1809. Today it has proliferated across sectors. It is not surprising, from a social constructionist lens, that the original concept would have taken on adaptations and developed new nuances, given that it was becoming resident in new language contexts. The interaction of language and relationality gives rise to promising areas of inquiry that are opened up by constructionism such as a consideration of the pivotal role of language in the construction of peaceful relations.

Schaffner and Wenden (1995) discuss the importance of language as a factor in the production of conflict, together with economic and political factors. Theoretical foundations based on relationality may also open the doors for broader cultural participation in the discourse. Social and relational constructionism also opens the possibility for new horizons of relational being. There are, however, multiple theoretical approaches to ideas of power, and, therefore, there is a degree of challenge in selecting a theory.

Gergen (1995) provides a starting point in his suggestion that a constructionist lens may provide a meta-theory with room for different perspectives on power. He notes that:

... to explore possibilities for a constructionist theory of power may enable new conceptions of power to emerge, and new conceptual resources to enter the cultural list.

(p. 32)

Rethinking our approach to relational constructionism may help shake loose old ways of conceiving power. Power relations are nevertheless closely linked to ideas of relational being and are critical to an understanding of our interconnectedness. According to Hosking (2011):

Relational constructionism ... has a number of distinctive features: it clearly speaks about ontology and power (unlike many other constructionisms); it centres and gives ontology to construction processes (to how, rather than what) and sees persons and worlds as emerging in processes (rather than assuming individual minds and actions); it opens up the possibility of soft self-other differentiation (rather than assuming that 'hard differentiation is 'how it really is'), and; it centres dialogical practices as ways of relating that can enable and support multiple local forms of life rather than imposing one dominant rationality on others. (p. 47)

Hosking's quotation and the ideas of relational constructionism point toward the idea of constructing new forms of relational interaction. Weedon (1987) goes further when she states: "Power is exercised within discourses in the ways in which they constitute and govern individual subjects" (p. 113). From this perspective, power relations and governance are intertwined and are interlinked with our discourses. They inevitably play a role in the construction of relations between people and in the flows of communication within institutions. In the next section, I

consider a particular theoretical perspective that builds on the assumptions above, namely discourse theory and related discursive ideas.

### **3.4 Particular theoretical lens**

This section focuses on discourse theory and related ideas. As noted earlier in this chapter, language and discourses are intricately woven throughout our lives and our daily relations as we co-construct meaning. The ways in which we construct meaning in our lives through discourse have become an important focus of the social sciences and humanities, as has the study of discourses through discourse analysis. In this section, I will look at the concept of discourse and discourse theory as central to the analysis of the practice of ombudsing in this study.

#### **Discourse theory**

Discourses and language are central to the construction of our social relations (Burr, 2003; Fairclough, 2003). Discourses and language are also central to the construction of the ombuds role. The word discourse comes from the Latin *discursus* or “running about.” Fairclough (2003) writes of discourses in this way:

I see discourses as ways of representing aspects of the world. The processes, relations and structures of the material world, the ‘mental world’ of thoughts, feelings, beliefs and so forth, and the social world. Particular aspects of the world may be represented differently, so we are generally in the position of having to consider the relationship between different discourses. (p. 124)

Fairclough speaks here of our relationships in discourses and our ability to co-create meaning between our worldviews. Karlberg (2012) notes that discourse theory may be said to have

emerged from the “linguistic turn” which occurred in the realm of the social sciences and humanities. He talks about discourse theory in these terms:

The term discourse theory encompasses a diverse set of insights, assumptions and concepts that have emerged across a range of disciplines in recent decades... Most approaches to discourse theory rest on the underlying premise that language, and language use, do not merely reflect or represent our social and mental realities, but they actually help construct or constitute these realities. (p. 1)

Karlberg suggests that there are links between discourse theory and peace and notes that discourse theory has much to offer to the fields of peace and conflict studies (2005). Since mediation and conflict resolution factor into ombudsing, links between discourse theory and peace are especially relevant to the field. Fairclough (2003) notes:

Different discourses are different perspectives on the world, and they are associated with the different relations people have to the world, which in turn depends on their positions in the world, their social and personal identities, and the social relationships in which they stand to other people. Discourses not only represent the world as it is (or rather is seen to be), they are also projective, imaginaries, representing possible worlds, which are different from the actual world, and tied in to projects to change the world in particular directions. The relationships between different discourses are one element of the relationships between different people – they may complement one another, compete with one another, one can dominate others, and so forth. Discourses constitute part of the resources which people deploy in relating to one another, keeping separate from one another, cooperating, competing, dominating – and in seeking to change the ways in which they relate to one another. (p. 124)

As Fairclough notes, we represent our worldviews through the means in which we deploy our discourses. With their dynamic nature, discourses are pivotal to forming and sustaining relationships. There are many kinds of interacting discourses related to our positioning and identities. Discourses can also be dangerous. Foucault (1982) asks:

What, then is so perilous in the fact that people speak, and that their discourse proliferates to infinity? Where is the danger in that? (p. 216)

Foucault goes on to examine the production of discourses in relation to power, analyzing the processes of exclusion. He says:

I am supposing that in every society the production of discourse is at once controlled, selected, organized and redistributed according to a certain number of procedures, whose role is to avert its powers and its dangers, to cope with chance events, to evade its ponderous, awesome materiality. (p. 216)

As Foucault notes, discourses, the production of discourses and power are interwoven.

According to Weedon (1987):

Discourses in Foucault's work are ways of constituting knowledge, together with the social practices, forms of subjectivity and power relations which inhere in such knowledges and the relations between them. Discourses are more than ways of thinking and producing meaning. They constitute the 'nature' of the body, unconscious and conscious mind and emotional life of the subjects they seek to govern. Neither the body nor thoughts and feelings have meaning outside their discursive articulation, but the ways in which discourse constitutes the minds and bodies of individuals is always part of a wider network of power relations, often with institutional bases. (p. 108)

Weedon's interpretation of Foucault provides a conceptualization of discourse and governing power relations. Discourses may be closely aligned with societal power. According to Van Dijk (1989):

Power is directly exercised and expressed through differential access to various genres, contents, and styles of discourse. This control may be analyzed more systematically in terms of the forms of (re)production of discourse, namely, those of material production, articulation, distribution, and influence... Through selective investments, budget control, hiring (and firing), and sometimes through direct editorial influence or directives, they may also partly control the contents or at least the latitude of consensus and dissent of most forms of public discourse. (p. 22)

Power can be seized through control of discourses, as Van Dijk notes. But dissent and speaking up may come with risk. There are many examples of how speaking up can be perilous. Hence there is a need in any democratic system to develop ways to mitigate this danger. The office of the ombuds represents one such possibility. Ombudspersons may be uniquely positioned to identify and navigate discursive channels for remediation.

Discourse theory provides important tools for understanding relationships and power dynamics, including those that pertain in institutional contexts. But the concept of discourse has also been extended in various useful ways. One of these ways lies in the idea of discursive spaces (Culler, 1976, Nakayama & Krizek, 1995). Discursive spaces may be said to be unbounded areas for new discourses to be created and/or reconstructed. There is existing literature on this concept which is presented in greater detail below.

In institutions, it is not uncommon to hear people apply the metaphor of communicative channels, for instance they may talk about legal and administrative channels. While I could not

find prior writings on this subject which describe these channels in terms of discourse, I am proposing the term “discursive channels” in order to facilitate development of a theory of the spaces in which ombudspersons operate. I introduce this term in this section because it flows from the literature on discourse theory. Ombudspersons are generally independent of existing institutional communication structures. They can position themselves to navigate multiple institutional channels. These channels are frequently talked about in structural terms. There are legal channels. There are procedural channels. From a social constructionist perspective, these channels are not just structured in advance, however. They are spaces in which discourse is exchanged and their very existence is maintained by the discourse that defines the institution. In other words, people in relationships create institutions through the exchange of discourse and also create the spaces in which discourse can be exchanged.

Perhaps it may be said that, while most ombudspersons navigate institutional channels, there is also a need to specify the conceptual tools that might help them do so. For example, whereas “classical ombudspersons” are likely to investigate complaints, organizational ombudspersons may be more likely to mediate conflicts. The use of terms like complaints and conflicts shapes the discursive space differently and suggests the construction of a discursive channel adequate to the working through of an issue. As the ombudsperson seeks to achieve redress for administrative complaints or conflicts, he or she will also need to be equipped with tools with which to work in the discursive space. Narrative mediation is a good example of a tool for seeking redress that uses the concept of discourse in order to make sense of what puts people in conflict with each other.

One of the interesting discoveries this study has afforded is my awareness that narrative mediation provides a promising means of navigating interpersonal and institutional discourses as

well as discursive spaces and channels in order to mediate dialogue and conflict. It ties in theoretically with a conceptualization of ombudspersons as well positioned to see a broad range of institutional practices and discourses and to identify discursive channels that can be traversed through these institutional contexts.

But in the end, these are not merely theoretical musings. Our human interactions with and within institutions are often of critical importance. We may need vital services from a hospital, or a government. We may have administrative obstacles to getting water, or critical services after a disaster. On the spectrum of responding to these obstacles, we could do nothing. We could accept these obstacles and throw up our hands. Or, we could move directly into extreme legal proceedings. But as the literature and participants note, the ombuds office often provides and intermediary means to facilitating and finding our way through administrative obstacles. Sometimes the ombuds office is also able to recognize and report on maladministration. But while this chapter delves into theory, the study is predicated on a hope for helping people navigate bureaucracy in order to improve administrative services and to reduce some of the conflicts and concerns raised in institutional processes and procedures. As one ombudsperson noted, the ombuds office provides a safe harbor to discuss these issues.

In the case of classical practitioners, they are often able to navigate administrative and legal channels. Most ombudspersons may also be well positioned to facilitate discursive shifts and heighten new ways of relating. The next sections examine ideas of discursive spaces, discursive channels and looks at means of navigating institutional discourses.

### **Discursive spaces**

The notion of discursive spaces provides hopeful possibilities for reconstructing and reconstituting dialogues, discourses and relational interactions. For the purposes of this study, the



phrase ‘discursive space’ is intentionally broad in order to frame it as an area of possibility for expanding discourses. It may be said to be a combination of two fairly unbounded words.

According to Nakayama and Krizek (1995):

The emergence of the spatial metaphor in academic work has encouraged scholars in cultural studies and ethnography alike to rethink the ways in which individuals and groups construct identity, administer power, and make sense of their everyday lives. Our dialogues are now replete with spatial tropes of boundaries, centers, margins and borderlands. More recently, in addition to the uncomplicated binary reality of centers and margins, we find an expanding discussion of discursive spaces, fields of interaction, trajectories, and territories, each contributing a somewhat distinct and theoretically challenging lens. These “new” metaphors invite the disarrangement of modern thought by promoting a complex spatial view of postmodern life, which honors the legitimacy of multiple realities. At the same time, these spatial metaphors consider the milieu present at the intersection of differing” realities” while recognizing the variance within each of the “realities.” (p. 291)

Nakayama and Krizek apply the idea of discursive space to an analysis of narratives of cultural identities. The idea of discursive spaces may be found in many interesting applications. In early use, the term ‘discursive space’ was applied to ideas of intertextuality (Culler, 1976). Fiske and Taylor (1984) write of geographic boundaries in Australia and “geographic and discursive space” (p. 42). Karatani & Lippit (1991) apply the phrase to describe differences in cultural designations of epochs and time periods. Ginsberg (1994) considers a range of media forms as discursive spaces and places for displaying indigenous media. Hauser (1987) explores the design of deliberative and discursive spaces and participatory governance to empower citizen

participation in Kerala, India. Flores (1996) writes about deliberately creating discursive spaces through: “a rhetoric of difference which allows a marginalized group to reverse existing and external definitions and create their own definitions” (p. 152). She further describes the idea:

When Chicana feminists refuse to accept mainstream definitions of themselves and insist that they establish and affirm their own identity, they build a space through discourse. For Chicana feminists, this process is accomplished in three stages. They begin by merely carving out a space within which they can find their own voice. After establishing this space, they begin to turn it into a home where connections to those within their families are made strong. Finally, recognizing their still existing connections to various other groups, Chicana feminists, construct bridges or pathways connecting them with others. Such a process allows for the construction of boundaries that establish the Chicana feminist homeland as distinct but are flexible to allow for interaction with other homelands. (p. 1)

Flores writes of Chicana feminists constructing discursive spaces and notes that ideas of creating space are not uncommon in feminist works. This suggests the wish for those, sometimes on the margin to create new areas of discourse. Even silence may be considered a discursive space. There are good silences, bad silences and unforgiveable silences (Onwuachi-Willig, 2012).

There are broad and culturally diverse applications of the notion of discursive space. My interpretation of the literature is that the construction of discursive spaces has the potential to allow new possibilities and broader participation in discourses. Discursive spaces may include written and verbal types of discourse, areas of silence, and places of misunderstanding and reflection. My interpretation from the literature is that discursive spaces may be considered as sites in which there exist possibilities for new ideas and for discursive shifts to occur.

The concept can be useful for thinking about the work that ombuds do. Ombuds offices around the world work with diverse communities and may be well-placed to help visitors who come to the office to identify and navigate institutional discourses and to find channels for improved communication. Identifying and creating discursive spaces may open new dialogues and bring marginalized discourses to the center. Perhaps a greater dialogue and emphasis on the idea of discursive spaces can allow new possibilities and greater inclusion of dialogical approaches. This idea could have helpful implications for practice. The idea of a discursive space is a site where the re-ordering and reconstructing of discourses, or at least of discursive positioning, can take place. It is where the unheard can be heard. For example – pre-existing policies in an organization may not take into account some of the issues brought to the ombuds office. Establishing a discursive space for such issues to surface allows otherwise marginalized discourses to be brought to the center for consideration and to broaden inclusion.

In the study of discourse, there are many ideas associated with the adjective of ‘discursive.’ There are discursive fields (Snow, 2008), discursively structured opportunities (Bazerman, 1997), and discursive shifts, to name a few. The idea of discursive spaces describes a broad topology, which includes a variety of discursive practice possibilities. Identifying sites where discursive spaces can be intentionally constructed as spaces where a dialogue can be deepened is crucial for working with diverse populations.

### **Discursive channels**

An extension of the concept of discursive spaces is the concept of discursive channels. Discursive channels is a term that I propose in this study. I could find no prior research on this idea. Discursive channels might be considered as the grooves or spaces in which relations between people are negotiated and worked out. As noted earlier, institutions are often marked by

a variety of written and verbal discourses. These can include codified discourses such as policies and procedures and legal requirements. These are sometimes referred to as administrative channels, legal channels and channels of communication. Many ombudspersons around the world and across sectors may be able to work within a variety of these discursive channels. Whether investigating complaints or helping visitors explore options in a conflict, many ombudspersons must first consider institutional laws and policies and procedures. The ombudsperson may help visitors navigate a course through formal administrative channels but also identify new channels of communication. Ombudspersons may be able to help make connections and clarify progressions in administrative procedures. They may also help navigate between social practices in institutions and identify new areas of dialogue and discourse. In reviewing complaints and hearing conflicts and concerns, an ombudsperson may identify areas where discursive shifts can occur. Integral to a contemplation of the navigation of discursive spaces and discursive channels is a deeper awareness of discursive positioning.

### **Discursive positioning**

The idea of discursive positioning brings awareness to how individuals may take positions in discourses. Discursive positioning brings attention to how people position themselves discursively. Winslade (2006) notes that discursive positioning is:

... a concept that points to the ways in which people take up positions in relation to discourse in the very moment of making an utterance in a conversation. At the same time, speakers offer the other person(s) they are addressing a position (or choice of positions) from which to respond. Positioning theory makes cultural influences visible in discourse in the very moment of the establishment of their influence. It also makes visible the ways

in which people resist and refuse dominant discourse in the detail of conversational exchange. (p. 505)

Positioning theory as iterated above brings discursive relations into clearer relief by drawing attention to how people take positions in discourse both in the moment and in relation to other discourses in which they have participated. Winslade goes on to say (2006):

As people speak, they position themselves not just in immediate relation to the other person(s) in the conversation, but also in relation to utterances in other conversations (Bakhtin, 1984, 1986). (p. 505)

An awareness of the discursive positions that people take in dialogues broadens the field of understanding and possibility. Noting these discursive positions may open up space for new dialogues. Winslade notes the idea of positioning in conflict and mediation:

Frequently conflict might arise from the ways in which people are at least uneasy, and often downright unhappy, with the effects of how they are being positioned by the other party (or parties). But they might also be held to the “truth” of their contradictions by others with whom they are in conflict. Mediation conversations hold out the promise of opportunity to reposition oneself carefully in a relation or to make more room for another’s position taking. (p. 507)

Winslade notes the role positioning may play in relational conflicts. Understanding, examining and reflecting on discursive positioning opens up possibilities for changing discourses. For example, an employee may have a complaint about a boss. The boss may feel that she is following a particular procedure. The employee may feel that he is in a subordinate position, but may feel that the procedure is not being properly or fairly followed. In addressing this differential, it is valuable to consider the positioning and the impacts of positioning in a

discourse. The employee may be afraid of speaking up because the other person has the ability to fire them. An ombudsperson may be able to pay attention to the discursive positions being taken in redressing the complaint or conflict. Ombuds offices are generally created to receive and redress complaints, grievances and in some cases resolve conflicts. A contemplation of discursive positioning provides a valuable perspective for understanding and re-writing or re-negotiating written or verbal discourses.

### **Discourses in ombudsing**

In the written and verbal discourses of ombudsing, one of the most salient genealogical traces is the notion of independence, particularly as the office of the ombuds is carefully constructed to be independent from governing systems. This is first identified in the deliberate positioning of the Swedish parliamentary model of 1809 (Wieslander, 1994). It appears to be listed as a key principle in the operationalizing of ombudsing. And in answer to the question, “Independent from what?” it is often critical in providing a separation from the impinging of power relations.

It may be said that one approach to independence is to create a deliberately separate discursive space between the governed and the governing and thus a space of safety for complaints and criticisms. As Gottehrer (2009) succinctly puts it, “People are more willing to complain to an independent office” (p. 6). This stresses the importance of independence. The idea of independence may be found both through the written and spoken discourses on ombudsing. Oosting (2009) analyzes both independence and integrity in a speech on the essential characteristics of a classical ombudsman. While speaking directly of the parliamentary or classical ombudsman, his remarks hold weight in other models. In his speech entitled,

“Protecting the Integrity and Independence of the Ombudsman Institution: the Global Perspective”, he states:

... I referred to the parliamentary ombudsman as the classic ombudsman. What is his position in the political and administrative system? Viewed from the vantage point of the *trias politica*, the classic ombudsman occupies a unique position with regard to that system of the three powers of state. As far as the legislature is concerned, the parliamentary ombudsman, although appointed by parliament is not part of it. (p. 4)

Oosting shows that from its creation, the parliamentary ombudsman works to exist in a manner that is structurally separate from the three-tiered government system. He goes on to say:

I have used the word independence several times now as a key characteristic of the ombudsman’s position. It is a core concept in the title of my address. I should therefore like to discuss it in more depth. A suitable comparison is with the position of the courts in a democracy governed by the rule of law. After all, they too must be independent. And the independence of the ombudsman, like that of the courts, should be based on and regulated by law, preferably in the constitution. What does this requirement of independence actually comprise? I would distinguish three aspects. (p. 8-9)

Oosting describes three key aspects of independence: institutional independence, functional independence and personal independence. Ombuds positions are often carefully crafted with attention to the role, the mandate and other characteristics.

I want to suggest that a new discursive space is envisioned here, apart from existing institutional practices. While ombudspersons may be said to prioritize psychological safety through practices of confidentiality, neutrality, accessibility and above all, independence from

traditional power relations, envisioning safety as a discursive space may be considered a new perspective.

Oosting talks about the important principles of impartiality and integrity:

Complementary to the aspect of personal independence is the importance of the person holding this office being seen to be unprejudiced and impartial. His personal integrity must be beyond all doubt. What is more, the ombudsman must have the courage to use his independence to view government in a critical light and voice his criticism in public, regardless of whom it may offend. He must never forget that his influence, and hence his effectiveness is to a large extent determined by his personal authority. He must establish and sustain this authority by the way he performs his duties... (p. 10)

Independence from the pressures of the governing apparatus, and independence from the power relations can help strengthen the credibility of the ombuds office in its efforts to provide voice for individuals. Again, Oosting:

Why is independence an essential condition for every ombudsman in his role of public protector? Three concepts are paramount here: effectiveness, confidence and authority. They are intimately connected, and predicated on one another. (p. 11)

Striving for independence from traditional power relations and providing a safe discursive space for complaints and concerns are key components of ombudsing.

### **Navigating**

As mentioned in chapter one, the metaphor of navigating is used in this study. Whether investigating complaints, addressing concerns or resolving conflicts, ombudspersons are situated within complex institutional power relations and are often well positioned to identify and navigate a multiplicity of discursive channels. These may include formal channels such as laws,



administrative requirements, policies and procedures. But they may also include less common and less visible channels such as helping to identify the discourses on the margins and moving them to new discursive spaces. They may include being aware of the potential for new and positive discursive shifts. While this study touches on this concept of navigation in various chapters, it is presented also as an idea for future research. The next section explores, in more depth, ideas of power relations between the governed and the governing and examines the theoretical lens used for this study.

### **3.5 Important concepts**

It is at the nexus of governing and being governed, that we find the ombudsperson. The ombuds office is a place to lodge a complaint and in some cases a place to discuss a grievance, conflict or concern. It is a place where ordinary citizens and members of institutions can safely report grievances, conflicts and concerns without fear of retribution. It is a place where reports can be made of maladministration and systemic issues to provide feedback to the governing, while maintaining the confidentiality of those who visit the office. Whether in the realm of national governance or in the governing systems of organizations such as hospitals and universities, the office of the ombudsman may be increasingly found giving a safe space for the expression of voice by citizens, students and other populations. This section looks at important concepts related to ombudsing including: power relations, institutionalization, habituation, governance, *parresia* and narrative mediation.

#### **Power relations between the governed and the governing**

Classical ombuds offices are often situated within institutions to reduce bureaucracy and red tape (Smith, 1998), and to work to decrease maladministration (Caiden, 1983). The notion of bureaucratic power is ancient (Kracke, 1976). Gregory and Giddings (2000) note:

It is one of the dilemmas of our times. In the modern state democratic action is possible only through the machinery of bureaucratic organization. But bureaucratic power, if it is not properly controlled, is itself destructive of democracy and its values. (p. 1)

The term bureaucracy is said to have been coined by the French economist Jacques Claude Marie Vincent de Gournay, who was also responsible for popularizing the economic concept of 'laissez-faire' (Tsoukas & Knudson, 2005, p. 149). The word bureaucracy comes from the French word for desk "bureau" and "cracy", the Greek word for "rule." It may be defined as, "a system of government in which business is carried on in bureaux or departments. Hence, bureaucrat, the head of a department in a bureaucracy; now used to imply an official who rigidly or unfeelingly sticks to the rules" (Ayto, 2005, p. 205). The phrase "red tape" may be described as:

Official formality, or rigid adherence to rules and regulations, carried to excess; so called because lawyers and government officials tie their papers together with red tape. Charles Dickens is said to have introduced the expression, but the scorn poured on this evil of officialdom by Carlyle brought the term into popular use. (Ayto, p. 1152)

Both bureaucracy and red tape, speak to forms of power wielded within complex organizations. Finding one's voice or making complaints, in large bureaucracies can be both difficult and frustrating. The creation of the first parliamentary ombudsman office, and the creation of many offices based on that model, have been in keeping with efforts to provide a place for complaints to mitigate the misuse of power. Government exists to serve the people. Martin Oosting, Former Dutch National Ombudsman states:

Government is not an end in itself. It derives its *raison d'être* from its task of serving the interests of its citizens and the institutions of their society, and it derives its legitimacy

from the way in which it does so ... In a nutshell: government rules in order that it may serve. It is obviously clearer still in areas in which the government protects or cares for individuals and their interest, or provides public services. Looked at in this way, it is somewhat paradoxical that the public also needs to be assured of protection *against* the government. But the government's work is done by human beings, although increasingly supported by technical resources. Individuals are dependent on government and on the quality of its performance, in many ways ... So it must meet high standards, summed up in what we generally refer to as good governance. (p. 3)

Oosting articulates here the complexity of power relations between the governed and the governing. But from the theoretical lens of social construction, governance is the result of a series of socially constructed relations and processes. In a study of the social construction of corporate governance, Othman and Rahman (2011) point to the complex, subjective and ambiguous processes of governance. Government, and governance – administration affects people's daily lives in many ways, so there is value to maintaining and monitoring what Oosting refers to as the "quality of its performance."

Foucault explored the history of patterns in self-governance and governing others. He wrote of the relation of power between people and described it as, "an ensemble of actions which induce others and follow from one another" (1982, p. 786). Within systems of governance, therefore, we find relations of power. The ombuds office is generally situated in institutions of governance which are marked by complex power relations.

There are theories of power from mainstream scholars and from the margins and marginalized groups. Feminist groups have brought a range of important perspectives to political theory. There are important ideas on black power, indigenous power, power perspectives from

differently-abled and queer communities, to name a few. Hannah Arendt (1970) wrote that power is, “the human ability not just to act but to act in concert” (p. 143). Many people have contributed to theories and perspectives on power. But as Arendt reminds us, power resides within human interactions.

Foucault noted that power in the modern world is dispersed and exists at many levels in power relations. He examined patterns of societal and institutional governance of the self and others and well as conditions of power and subjectification (1982; 1991; 1992; 2011). He states:

It is true that I became quite involved with the question of power. It soon appeared to me that, while the human subject is placed in relations of production and of signification, he is equally placed in power relations which are very complex. Now, it seemed to me that economic history and theory provided a good instrument for relations of production and that linguistics and semiotics offered instruments for studying relations of signification; but for power relations we had no tools of study. We had recourse only to ways of thinking about power based on legal models, that is: What legitimates power? Or, we had recourse to ways of thinking about power based on institutional models, that is: What is the state? It was therefore necessary to expand the dimensions of a definition of power if one wanted to use this definition in studying the objectivizing of the subject.

(1982, p. 778)

In addition to analyzing the legitimization of power, Foucault also examined broad ideas of power as power relations. He states (1982):

Power relations are extremely widespread in human relationships. Now this does not mean that political power is everywhere, but that there is in human relationships a whole range of power relations that may come into play among individuals, within families, in

pedagogical relationships, political life etc... Liberation is sometimes the political or historical condition for a practice of freedom ... Liberation paves the way for new power relationships, which must be controlled by practices of freedom. (p. 434)

Foucault theorized about power in our human relations as shaped by the ongoing function of discourse. Ombudsing is rooted in relations and in relational paradoxes and the field is ever-changing. But a theory of social practices in institutional contexts may also be valuable in this study.

### **Institutionalization and habitualization - freezing relations of power**

Ombudsing exists in the institutional arena. As mentioned earlier in this chapter, the theoretical lens for this study is social construction. The theory of social construction looks closely at human interactions in the realm of institutions. Social constructionism also provides theories of institutionalization. Berger and Luckmann posit a theory of institutionalization as follows: “Institutionalization occurs whenever there is a reciprocal typification of habitualized actions by types of actors” (p. 54). Further, they write:

Institutions generally manifest themselves in collectivities containing considerable numbers of people. It is theoretically important, however, to emphasize that the institutionalizing process of reciprocal typification would occur even if two individuals began to interact de novo. (p. 54)

This suggests the foundational basis of relations in the institutionalizing process. It is interesting that they posit that institutionalization can occur even with the interaction of just two individuals. It is as if they are suggesting that a relationship between two people is enough of a context for the formation of what we will see below as a discourse. Berger and Luckmann (1966) also talk about institutionalization as ‘habitualization.’ They state:

Habitualization carries with it the important psychological gain that choices are narrowed... the background of habitualized activity opens up a foreground for deliberation and innovation (which demand a higher level of attention)... Institutions further imply historicity and control. (p. 54)

Striving to stay separate from traditional structures and habitualized discourses of hierarchical power relations may allow greater safety for visitors to the ombuds' office. This is a critical aspect of the functioning of an ombuds. Whether through creating a separate discursive space, or relying on key principles to construct the practice, it is this separation that helps legitimize the work of the ombudsperson to re-construct discourses and it is the separation which helps create safety for visitors.

Foucault talks about the 'freezing of relations of power' and states (1988):

Relations of power are not in themselves forms of repression. But what happens is that, in society, in most societies, organizations are created to freeze the relations of power, hold those relations in a state of asymmetry, so that a certain number of persons get an advantage, socially, economically, politically, institutionally, etc. And this totally freezes the situation. That's what one calls power in the strict sense of the term: it's a specific type of power relation that has been institutionalized, frozen, immobilized, to the profit of some and to the detriment of others. (p. 1)

Interactions may be frozen in written discourses such as codified, hierarchical job descriptions policies and procedures, salaries, prohibitions on speech, and surveillance, for example.

Interaction may also be frozen in discursive patterns between individuals and within larger institutional entities such as departments. Mindfulness of renegotiating habitualized or frozen interaction may allow differentiated relational interactions for the ombudsperson. In fact, the

ombudsperson may be among those whose roles are positioned to observe, identify and comment on habitualized or frozen interactions. A role created to be separate from habitualized relations may hold possibility for renegotiating frozen processes. In the ombuds office, practitioners can consider the impacts of these complex relations and take social relations and relational theory into account.

### **Governance and governmentality**

Governance describes a form of power relations. Corporate governance, non-profit and university and other institutional governance systems are ubiquitous. Ombudsing offices are frequently situated within or in relation to systems of governance. The original models of the ombuds office arose from forms of traditional government: first from a monarchy in 1713, and then from a parliamentary government in 1809. Systems of governance may be found across sectors. Foucault distinguishes modern practices of governance from the pre-modern. These may be found across social relations both in the public sphere but also, historically in families, religion and other cultural areas (Foucault, 1991). The origins of the word governance have ancient roots. According to Millar and Abraham (2006):

The root of the term “governance” originates in the Greek word *kybernan* and refers to the function of “steersmanship.” Beer (2004: 853) explained “at sea the long ships battled with rain, wind and tides – matters no way predictable. However, if the man operating the rudder kept his eye on a distant lighthouse, he could manipulate the tiller, adjusting continuously in real-time towards the light.” Operating the rudder was the function of the *kybernan*. This word transliterates into English as *cybernetes*. In Latin *kybernan* is transformed into *gubernator*, which in English is translated “governor.” (p. 5)

Steering is a common metaphor still used in reference to the governing of countries, as is the terminology of the ‘ship of state’. Those who govern are responsible for steering the ship. This task of ‘steering the ship’ is required for many other social institutions in addition to central government. Therefore we can argue that the task of good governing is a matter of how well the ship is being steered.

Fasensfest (2010) distinguishes government, governing and governance as follows: “Government: the office, authority or function of governing. Governing: having control or rule over oneself. Governance: the activity of governing” (p. 771). With this description, Fasensfest provides clarifying distinctions between the three related words. Antecedents to the ombuds idea were rooted in constructs of leadership (Kracke, 1976). The modern ombuds idea emerged from context of national governance, first in a monarchy, then in a parliamentary system. Today it may be found within and in relation to systems of corporate, academic and in other institutional settings. While the newer ombuds models may diverge in some ways from the classical models, they often still provide a safeguard for voices of ordinary people within complex power relations of the governed and the governing.

### **Parresia**

One reason that ombudsing exists is to give voice to ordinary citizens and institutional constituents who may not otherwise feel able to speak up. Foucault examined the idea of parresia, or frank and fearless speech, and illustrated through historical references the importance for good governance of the availability for opportunities for parresia (Foucault, 2011). In pre-modern systems this sometimes meant that the person who spoke the truth freely risked his or her life. In the modern world the risk of paying the ultimate price is less common but there can still be fear of retribution for speaking up in the workplace, for example (Detert & Edmondson,



2005). The ombuds office was created to provide a safe space for citizens to lodge complaints (Gwynn, 1968). Mitigating the peril of speaking up is a key theme in the creation of the ombuds office.

It can be hard to find places to speak up, let alone, to speak truth to power. In 1644, the British poet and statesman, John Milton, delivered a polemic to the British Parliament. It is known as the *Areopagita* and was written “for the Liberty of Unlicenc’d printing, to the Parliament of England” (Milton, 1886). Today, this speech may be considered a seminal document in the history of free speech. It is a rich tract of impassioned consideration for free speech and Milton tells the parliament:

... when complaints are freely heard, deeply considered and speedily reformed, then is the utmost bound of civill liberty attain’d, that wise men looke for... For he who freely magnifies what hath been nobly done, and fears not to declare as freely what might be done better, gives ye the best covenant of his fidelity; and that his loyalest affection and his hope waits on your proceedings. (p. 1)

Milton is speaking truth to power, and he speaks of the importance of being able to complain. He speaks of the importance of speaking up. His presentation may be considered a form of *parresia*, or frank and fearless speech and also a plea for the recognition of the right for others to be allowed to do the same.

Foucault describes *parresia* as follows (2001):

*Parresia* is a verbal activity in which a speaker expresses his personal relationship to truth, and risks his life because he recognizes truth-telling as a duty to improve or help other people (as well as himself). In *parresia*, the speaker uses his freedom and chooses frankness instead of persuasion, truth instead of falsehood or silence, the risk of death

instead of life and security, criticism instead of flattery, and moral duty instead of self-interest and moral apathy. (p. 19-20)

As Foucault notes, truth telling can be dangerous. There can be the danger of retaliation or other serious consequences. The ordinary citizen runs a risk in saying that there is something wrong with the way he or she is being governed, because those who govern are in a position to punish them for speaking up. And yet the principle of justice requires the powerful to correct mistakes in how policy is being administered. Listening to the voices of those who exercise *parresia* is thus part of good governing, or steering the ship in a straight direction.

This impulse can be said to have given impetus to the development of ombudsing. In some offices, ombudsing can provide a place for citizens and other populations to exercise *parresia*, to express complaints and concerns about administrative error, systemic abuse and the freezing of power relations. In the classical ombuds models, most offices aim to provide a safe place for confidential complaints (Gwynn, 1968). Today, many ombuds offices, across sectors, provide a space, a discursive space, in which people can facilitate and re-negotiate discourses between the governed and the governing. Many of the newer offices provide a place where *parresia* and frank speech may also occur within formalized channels that provide now more often psychological safety (rather than physical protection) through the safeguarding of confidentiality and protection from retaliation. In addition, in both the classical and newer models, systemic reporting may provide upward feedback to the governing systems, enabling the decisions of governing to be made more justly (or the ship to be steered in a straighter direction), while protecting identifying characteristics of the visitors. Ombudspersons may be able to provide a safe discursive space for *parresia* and for the construction and reconstruction of free dialogue. In addition, since ombudspersons are generally situated independently between the

governed and governing, they may have a helpful ability to identify and navigate institutional discourses to the benefit of ordinary citizens. Narrative mediation, for example, is a particular navigating practice that holds promise for facilitating discursive shifts through re-storying conflict and helping to unfreeze habitualized discourses. In the next chapter we see that participants in the study cited a variety of practices including complaint resolution and conflict resolution. As one participant put it: “I guess it’s both conflict resolution and complaint handling on the one side.” Another participant noted: “We help the staff member explore options, and usually in that exploration of options there is an informal conflict resolution component.” There was thus a strong mandate in the participants’ responses for an emphasis on conflict resolution processes in ombudsing. There are, however, different ways to approach conflict resolution.

### **Narrative mediation**

One promising means of navigating discursive channels is the practice of narrative mediation. Many ombudspersons across sectors are positioned to help mediate disputes. Even classical practitioners who may not be mandated to resolve conflicts, are likely to have to navigate discourses. Narrative mediation has much promise for navigating discourses, because it grows from a direct consideration of the play of discourse in conflict situations. The practice emerged from narrative family therapy, which allowed for a range of multicultural worldviews. Narrative mediation has at its core discourse theory and is premised on ideas such as recursive patterns of language (Winslade & Monk, 2008).

Narrative mediation looks at ways in which people position themselves discursively and stems from a field of narrative practices which allow for and facilitate dialogues from all populations. It operates from a philosophical belief that conflict is socially constructed, and therefore stories can be mutually re-constructed in a discursive space of cooperation (Winslade

& Monk, 2008). Narrative mediation makes room in this space for recognizing the presence of cultural narratives, and allowing for the emergence of multiple perspectives and worldviews.

According to Winslade & Monk, there are nine hallmarks of narrative mediation:

1. Assume that people live their lives through stories
2. Avoid essentialist assumptions
3. Engage in double listening
4. Build an externalizing conversation
5. View the problem story as a restraint
6. Listen for discursive positioning
7. Identify openings to an alternative story
8. Re-author the relationship story
9. Document progress. (p. 3)

The hallmarks of narrative mediation provide ways of navigating discursive spaces in the reconstruction of stories by taking into account new possibilities and valuing differences. While there may be various means to identifying discursive institutional channels, narrative mediation provides a particularly respectful and hopeful approach. While I am not studying narrative mediation in particular here, it can be recognized as a practice approach that shares many key assumptions with the ideas and concepts about ombudsing referred to above. It therefore has specific value as a tool that ombuds can utilize to assist them navigate discursive channels.

### **3.6 Gaps in the ombudsing literature**

As ombudsing grows around the world and spreads across sectors, the literature has not kept pace. While early books on ombudsing are illuminative in description and analysis, many of them are out of print and difficult to obtain. Most of the historical literature has a strong

emphasis on the classical model. Two recent books provide helpful insight to the field and also provide valuable pragmatic approaches to organizational ombudsing (Howard, 2010; Ziegenfuss & O'Rourke, 2011). Some scholarly papers provide useful research and information on specific countries, practices and issues (Newhart, 2007; LeBaron, 2009), but there are many gaps in the literature on ombudsing. For example, the demands on ombudsing as it takes shape in new sectors and contexts needs to be studied. More reflection is needed on how the designation of classical and other identifying categories serve the best interests of the field. Professional associations fill in some of the gaps and provide a range of information and trainings, but some association papers appear to be focused on issues related to members. It is hard to find studies as comprehensive as some of the early foundational books, most of which are out of print. There are few modern books and studies in English. There is very little literature on ombudsing across sectors, though there are common themes, ideas and practices. From studying the field, I think that more research on themes across ombudsing and ways of strengthening cross-sector practices would be valuable, as well as thoughts on protecting the integrity of the idea.

### **3.7 Focus of this study**

One of the theoretical lenses for the study is the foundational role of discourse and the recognition and growth of discursive themes and concepts in the construction of a professional discourse. Within this discourse I want to explore the idea of mapping out some specific discursive spaces which ombudsing can inhabit. Today, many ombuds offices, across sectors, provide a space, a discursive space, in which people can facilitate and re-negotiate discourses between the governed and the governing. I arrived at this conclusion from an analysis of the data I collected, as I will show, but I began with a curiosity about how practicing ombuds might talk about their work.

As ombudsing continues to emerge worldwide, the dialogues and perspectives of practitioners are pivotal to shaping and transferring the role and the idea. Fourteen practicing ombudspersons participated in this study. The next chapter looks the methodology for the collection of data, followed by an analysis of the discourses present in participants' responses in chapter six. These participants represent a variety of practice settings. The interviews were confidential and anonymous. I was interested in locating the themes and discourses that might give rise to the concepts ombuds use to describe their work and to the key values and principles that ombuds hold. The following chapter maps out a methodology and chapter six explores the responses of ombudsing practitioners in my interviews with them. While scholarly works and writings are an important part of ombudsing, the practitioner work in the field is key to advancing the notion of ombudsing.

### **3.8 Conclusion**

The office of the ombudsperson humanizes bureaucracy and can give relief to many citizens and individuals in the face of officialdom. Government practices populate our lives both in the traditional government model and within other organizations and systems. Fair and just governance, whether in the halls of public offices or private universities, requires the development of pathways that enable citizens to speak up about concerns and complaints within systems of governance and power relations. The ombuds model provides just such a pathway. Safeguarding the institution of the ombuds office, strengthens its ability to provide a mechanism of protection for the individual with a grievance. Identifying and paying close attention to key aspects of the discourses aids in the growth and credibility of the office. In the next two chapters we look at the research methodology for the study and discourses from the field.

# Chapter 4:

## Research design and discourse analysis

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### 4.1 Methodology overview

As my thesis question indicates, I was interested in getting a better understanding of the field directly from people who practice ombudsing. I suspected that people who are practicing in the field would be likely to have not just a theoretical understanding of the idea, but to have a day-to-day experience of ombudsing and view of the complexities in practice. My assumption was that inquiring into such complexities would be likely to yield a sense of the emergent and dynamic aspects of ombudsing and help shift away from a static picture that could be produced by an account of how it is structured in advance of its practice. In this chapter I look at the method for obtaining the perspectives of practicing ombudspersons through interviews.

This study is a qualitative social science dissertation. A method is a means of approach for an inquiry, a way to increase learning and understanding, and in this case a means toward better understanding the practice of ombudsing. I used the approach of semi-structured active interviewing to explore the role of ombudsing through interviews with practicing ombudspersons around the world and across sectors. Centering social practices and relational discourses, I employed aspects of discourse analysis to interpret the data.

In conveying some of the methodological approaches to the study, I present four purposes for this chapter. These are to: (1) describe the research design and my approach to the study; (2) articulate the methodology undertaken in the study; (3) describe the procedures for data collection; and (4) outline the aspects of discourse analysis which were used to analyze the data.

This chapter contains the research design and methodology for this study; it also represents values and ethical choices that were made in the course of scholarship.

#### **4.2 Reflections on method**

The word ‘method’ was formed by the combination of two Greek words: ‘meta or meth’ which means ‘with, after, beyond or change’; and ‘hodos’ which means ‘way, road or path’ (Green, 2007). Heraclitus wrote: “hodos ano kato mia kai oute” translated as “the way up and the way down are one and the same” (Harris, 1994). This methodology represents a way into the subject; a way of understanding. I approached practicing ombudspersons to try to more clearly understand their perspectives on ombudsing. But a method is not a static approach. Reflexivity requires movement in and out of understanding and analysis, and sometimes the way up is the way down.

#### **4.3 Research design**

This qualitative research study was informed by a research tradition of international exploration in the early writings of the field and an active interviewing approach. Thus, the purpose behind the research design was twofold. First, it was built with an international scope and was based on a tradition in the field of ombudsing to learn first-hand, from practicing ombudspersons. Secondly, the design was influenced by social constructionist theories of the co-creation of meaning through the use of semi-structured active interviews. I approach this methodology with learning from three key areas from my review of the literature. First, in my study of ombudsing, I found that some of the most enlightening books directly documented perspectives from practicing ombudspersons around the world (Rowat, 1965; Caiden, 1983; Gregory & Giddings, 2000). Secondly, in my theoretical studies, I learned of social constructionist approaches to research (Holstein & Gubrium, 1995). Their account was helpful in



gaining a new, and more realistic view of the role of the researcher, and in becoming aware of the co-construction of meaning through relational practices. For me, a social constructionist approach to research opened up new horizons of understanding and possibilities for proceeding and making decisions. I became aware that the collection of data is unlikely to be pure and sterile, but a social constructionist approach informs decisions about proceeding and collecting data. This approach is much more likely to be a co-construction of meaning and understanding. The impact of the learning from my review of the literature of ombudsing and the theories of social and relational construction was to integrate that learning in my research design. This is examined in more detail below.

### **International scope and the voices of practitioners**

In some of the foundational literature of ombudsing, there was a recognition of the importance of obtaining and presenting information directly from practitioners around the world (Rowat, 1965; Caiden, 1983; Gregory & Giddings, 2000). One of the primary research goals for this study was to find participants around the world in different sectors who would participate in interviews. For the purposes of this study, the field was assumed to be international in scope, rather than more local and parochial. The aim was to capture the thoughts and experiences of ombuds in different places in order to maintain a focus on what the role of ombudsing itself might produce rather than to explore in greater depth how ombudsing might fit into a particular local discursive context.

### **Active interviewing**

This study is centered on the critical role that social relations and discourse play in the co-construction of meaning. It, therefore, made sense to use semi-structured interviews for data collection. Interviewing is a common research tool for social scientists. Holstein and Gubrium

(1995) write of the value of social constructionist approaches. They describe traditional approaches in this manner:

The image of social scientific prospector casts the interview as a search-and-discovery mission, with the interviewer bent on finding what is already there inside variably cooperative respondents. The challenge lies in extracting information as directly as possible. Highly refined interview technologies streamline, standardize, and sanitize the process, but, despite their methodological sophistication, they persistently ignore the most fundamental of epistemological questions: Where does this knowledge come from, and how is it derived? Social researchers generate massive data by asking people to talk about their lives; results, findings, or knowledge come from conversations. Although these conversations may be variously configured as highly structured, standardized, quantitatively oriented surveys, as semiformal guided interviews, or as free flowing exchanges, all interviews are interactional events. (p. 2)

In response to Holstein's and Gubrium's concerns, my goal was to be cognizant of the interactive nature of interviews. Given the interactional and relational nature of interviewing, my research design for this study factors in my own role as interviewer in constructing meaning and discourse. This means acknowledging that the data is not cold and purely objective, but rather seen through the lens of my studies of ombudsing and my relational experiences in studying ombudsing.

At the heart of this study of ombudsing is a concern about better understanding power relations and pathways to facilitate voice and *parresia* for ordinary citizens. In order to avoid creating imaginative constructions of the other, this study is designed so that practicing ombudspersons can present their very real experiences of ombudsing. The case studies in chapter one also present real cases of those who visit the ombudsing office.

The research design was built with an international scope in mind and was based on a value in the field of ombudsing of learning first-hand, from practicing ombudspersons. Secondly, the design was influenced by social constructionist theories of the co-creation of meaning through the use of semi-structured active interviews. Finally, the design was intended to pay attention to dangers of colonizing tendencies in Western research practice with the hope of designing a more sensitive approach. I also strove to carry these aspects further into the research by integrating these into interviewing process and data analysis. I did this by checking and acknowledging my reflexive positioning and relational influences. I endeavored to open discursive space for the differential between what was said and what I heard. For example while I had read extensively about ombudsing, I learned a great deal about the range of practices. The hope in the research design was to design a method that would meaningfully interpret and benefit the ombudsing community and, ultimately, those served by this community through additional research on the nature of ombudsing.

#### **4.4 Research methodology**

A qualitative methodology was used for this study to create interview questions and interpret interview data. From a social constructionist point of view, this is a social science study that constructs information, rather than discovering it, through direct contact with practitioners. I collected data through semi-structured active interviews, which took into account the interactive and relational role of the interviewer. Holstein and Gubrium (1995) argue that interviews are interactional, and thus my research was designed with an awareness of the co-creation of meaning. In chapter one I noted my positioning in this study and acknowledge my role in endeavoring to understand and reflect on the interviews with my own interests, relations and biases. As Holstein and Gubrium further note, a social constructionist approach:

... considers the process of meaning production to be as important for social research as the meaning that is produced... In other words, we think that understanding how the meaning making process unfolds in the interview is as critical as apprehending what is substantively asked and conveyed. (p. 4)

The application of discourse analysis, further takes into account a social constructionist approach to interpreting meaning.

The participants in the study were practicing ombudspersons around the world in a variety of different sectors and types of practice. I surmised that if the interviews were not anonymous, the participants might feel especially cautious in the words they chose and their ideas of representing their institutions. In order to facilitate more open dialogue, the research study was designed so that the interviews were anonymous and confidential. This is described in more detail in the ethical procedures section of this chapter.

### **Participants, data collection and data analysis**

The population of participants was drawn from practicing ombudspersons in different countries. This section looks at some of the methodological issues involving participants, including the following: (1) participant recruitment; (2) participant data; (3) ethical procedures; (4) data collection; and (5) data analysis.

#### **Participant recruitment**

One of the primary goals of the study was to interview practicing ombudspersons on different continents, in different countries, and in different sectors. Participants were, therefore, approached according to these three criteria, rather than randomly. Prospective participants were identified through a variety of channels, namely via web pages on the internet, recommendations from local practitioners, and word of mouth. From thirty expressions of interest in participation,

twenty people eventually agreed to participate and these prospective participants were each emailed a standardized invitation request to participate in the study (Appendix 1). This invitation described the research study and provided contact information for myself and my advisor. While the goal was to find participants around the world, the invitation also noted the limitation of needing to interview in English. When participants agreed to participate, we set up an interview date and time, sent consent forms for signature and completed the interviews in person, via Skype or by phone. The study represents fifteen completed interviews. Twenty people agreed to participate in this study. I worked with one participant and had met two others at association conferences. The first individual contacted agreed to participate for a pilot interview for the purpose of developing the interview questions and my approach to the study. This individual provided very helpful commentary and reflections on the questions and process and helped shape the format for the ensuing fourteen completed interviews represented in the next chapter. Five other individuals agreed to participate, but due to scheduling and language constraints, those interviews were not completed. In addition, three people replied but were unable to participate and seven people did not respond.

### **Participant data**

This study represents interviews with fourteen participants from four continents: Africa, Australasia, Europe and North America. Participants were working in: Spain, Sweden, Austria, England, Kenya, Australia, New Zealand, Canada, and the United States. Participating ombudspersons represented the following ombudsing areas of practice: parliamentary, health care, scientific research, industry, academia, equality and anti-discrimination and also national and international governmental and intergovernmental organizations.

### **Ethical procedures**

In preparation for the study I developed an ethics application with my advisor modeled on those commonly used by academic institutions for human research participants. This application took into account the logistical procedures for the research and spelled out the study's means of respecting those willing to participate, with particular attention to protecting confidentiality.

I addressed issues of confidentiality by numbering the interviews rather than using participants' names to identify transcripts. I endeavored to remove from transcribed interviews identifying information such as agency name, country name and attempted to purge any other information that might identify or hint at the participant's role. This was challenging, but important when the participant worked in a unique position that could be easily identified. Another challenge arose when a participant referred to a particular piece of legislation or used language that might give indication of their role in an identifiable context. I attempted to use generic terminology, in these cases and to remove the identifying language.

The ethics application is included in Appendix 1. Each participant received an ethical information sheet and interview consent form (Appendix 2), once they had agreed to participate. This consent form was designed in consultation with my advisor. Each participant returned a consent form before participating. Interview participants were contacted to review transcripts or excerpts from the transcripts used in the study.

## **Interviews**

The interviews were semi-structured, following the approach spelled out by Holstein and Gubrium (1995). I developed a set of interview questions, which I used for all but two interviews. In two cases I added additional questions. In one case, the participant was a long time practitioner, and I added more questions about the historical perspective. In the second case, it

was a new office with an unusual history, so I asked more questions about the unique attributes of the office. I also asked follow-up and clarifying questions. Holstein and Gubrium provided a helpful guide through the interviewing process. Their overview of the interviewing process increased my awareness of my positioning. For example, I have been studying international ombudsing for many years. Conversations with practicing ombudspersons, attendance at conferences and familiarity with a broad range of ombudsing literature all informed my questions and my general approach to the research task. While traditional methods may emphasize attempts to be neutral, my interpretation of the constructionist approach encouraged me to embrace and manage my own role in the interviews and to enrich, rather than constrain my interpretation of results. The interview questions are articulated in the next section.

### **Interview questions – Modern ombudsing**

I developed the interview questions early in the research project. They were influenced by my research proposal and my initial research questions. I found over time that there was some redundancy and overlap in some of my questions. I also found that some of my early questions remained the same – such as, how do ombudspersons define and describe ombudsing and what are the key concepts? Over the course of study, and in particular through exploration of the ombudsing literature, a deeper philosophical understanding of social theory and, especially the work of Foucault, and through dialogue with my advisor, my emphasis shifted slightly. I became increasingly aware of the role of government not only in public sector ombudsing, but also the role of governing practices and power relations in institutions across sectors. I also become aware of the foundational role of language in discourse theory. This shift led to some changes between my interview questions and the questions I formulated to ask of the data. Below, I present my interview questions. Later in this chapter I explain this differential in more detail.

## Interview Questions

### Part 1: General and genealogical:

- How do you define the idea of ombudsing?
  - When people ask you what you do, what sorts of things do you emphasize?
- What would you say are some key principles of ombudsing?
- Why do you consider those principles important?
- In which category would you place your practice: legislative/classical; executive/institutional; organizational/workplace; or other

### Part 2: Defining documents and construction

- How did your office come to be?
  - Was there a defining event that led to the setting up of your office in your context?
- Are you the first to serve in this role?
  - If you were the first what was that like, if not what difference does that make?
- How is the office supported in the institution?
- How big is your staff?
- Who do you report to and what is your reporting mechanism?
- Are there documents which define/design the ombuds office?
  - What sort of documents are they?
  - Is it possible to get a copy of those documents?
  - How do those documents affect your practices?
  - Can those documents be altered?

### Part 3: Parameters and uniqueness

- Could you describe any parameters around your practice?



- Are there things you are not allowed to do?
- Are there things you prefer not to do?
- Who determines and communicates those parameters?
- Do these parameters affect what is possible for the office to achieve?
- What is unique about your practice?
- What are some cultural/country aspects unique to your work?

#### Part 4: Daily practice and associations

- What skills and background do you bring to your practice?
- How would you like to see your practice develop?
- What are some of your intentions, hopes, growing edges and ideas around this function?
- While maintaining confidentiality, are there any stories you can share of people using services – stories that are typical, outstanding or both?
  - What factors influence the development of your practice?
- Do you belong to an association?
  - Which one?
  - How would you characterize your relationship to the Association?
  - Are there other things we haven't mentioned yet that shape your daily practice (Institutional position, Associations)
  - Are there any questions I am not asking that you think would be valuable to ask in research?
  - Is there anything else I haven't asked you about that you would like to share?

These were the essential interview questions used for the interviews. As mentioned above, these questions were originally formulated to directly address my original inquiry. As

noted above, over the course of study and learning, I gained a deeper understanding of discourse theory. My application of discourse theory integrated the original questions within a slightly different perspective of ombudsing against the backdrop of governance, institutionalization and discourse theory. Although I had not asked direct questions about these topics, it was still clear that participants' responses were imbued with implications that were pertinent to these more theoretical issues.

### **Data collection**

Preparation for the interviews included a practice pilot interview with an academic ombudsperson who kindly agreed to participate. This practice run was informative in a number of ways. It allowed me to experience an interview and test the questions. The participant also helped provide feedback on the process. Each of the fourteen interviews was completed in person, by Skype or by telephone. The audio portion of each of the interviews was recorded with electronic recording devices and transcribed into a text document. In transcribing the interviews I removed names and endeavored to remove identifying characteristics. I generally removed such interjections as um's and er's. I let grammatical errors remain in the text. I used numbers in filenames to identify the interviews. Major nonverbal communications such as laughs and pauses were included in brackets [...] but I avoided inclusion of nonverbal aspects that would interrupt the readability of the text. I transcribed most of the interviews on my own. I also received help transcribing some of the interviews with a transcription service under the agreement of confidentiality.

### **4.5 Method of analysis - Discourse analysis**

This study centers relations, social practices and discourses as befits an investigation that is founded in social constructionist thinking. For the process of data analysis this meant that an

analytical approach for examining the interviews which also centered social relations and discourse was paramount. In order to study discourses in ombudsing, I used critical discourse analysis (Fairclough, 2003) as a starting point to examine the data. I found over time, however, that while critical discourse analysis provides a well thought-out means of understanding discourses and orders of discourse, for my research, I needed to take into account the dynamic issues of the more fluid dialogue that took place not only in the interviews, but in the relations of ombudspersons in institutional discourses. Discourses are not static, but shift and change.

As a starting point, I considered critical discourse analysis, which allows a researcher to analyze patterns and identify themes that are operating in a discursive context – in this case in the discourse of ombudsing. I applied discourse analysis to this study, because ombudsing is generally situated in a context of power relations. Because democracy, fairness and justice are often critical part of the overarching issues of ombudsing, it could be said that it takes place within identifiable orders of discourse such as those that govern the fields of politics and law. However, the research and interview questions were more geared towards a dynamic understanding of ombudsing. Discourse analysis was also a preferred approach to conversation analysis because the study did not look at the construction of power in a naturalistic conversation, but rather within an interview with the researcher about institutional discourses. But I used some of the theoretical perspectives of discourse analysis such as the principle that discourse is foundational to social processes. In starting with a general theoretical lens of a social constructionist approach to institutions wherein the habitualized actions between individuals begin the process of institutionalization, language is the key means for this social construction. In addition, in taking a specific theoretical lens from Foucault's perspective on power relations and governmentality language and discourse are the key means of constructing these social relations.

According to Fairclough (2001) discourse is foundational to our relations. Discourse analysis helps shine light on discursive patterns.

Here, I was interested in the ways in which the work done by ombuds was being constructed in the accounts in language they gave, as they talked about their work, particularly the relations with others that they described and the patterns of relations that were becoming manifest in their talk. Bondarouk & Ruël (2004) note the role of researcher reflexivity and participation in such analysis, stating:

The design of the approach, in our view, is dependent on the researcher's worldview and the special goals of the projects, which vary from a fine-grained study of linguistic features (Van Dijk, 1985) to the dominant themes in the respondents' discourse. Either of these approaches, however, demands that researchers make a shift from seeing discourse as reflecting social reality to the ways in which accounts are constructed and the functions they perform. (p. 5)

Their interpretation notes the role of the researcher in co-constructing meaning from the analysis of the data. Researchers bring their relational experience to bear when interpreting the data.

Bondarouk and Ruel go on to say:

Given such diversity, what is the quality criterion for discourse analysis? We would say that first is that the discourse analysis “must be intelligible in its interpretations and explanations” (Titscher et al., 2000, p.164) that means trustworthiness of the study (Lincoln & Guba, 1985). The process of collecting, analysing, and explaining the data must be recognisable. Teun van Dijk suggests accessibility as a criterion of the quality: findings should be at least accessible and readable for the social group under

investigation. That is, in fact, a member check proposed by Lincoln and Guba (1985) for qualitative studies. (p. 5)

This study endeavors to apply discourse analysis mindfully with an awareness of the discursive position of the researcher, while providing data that qualifies as recognizable and accessible. Here the social group under investigation is primarily ombudspersons. Interviewing a number of them working in different countries enabled me to include a variety of practices, but it also meant that each interviewee served as a member check on each of the others. In other words, in an effort to incorporate triangulation into the research, gleaning multiple perspectives from separate participants allowed me to find some independently confirming characteristics in the data. Discourse analysis provides a valuable method of understanding the pivotal role discourses play in ombudsing and helps illuminate the work of ombudspersons within institutional settings.

I applied discourse analysis in the following manner. Through repeated readings in which I reviewed the interview data, I developed seven questions to ask of the data. These questions yielded some patterns that helped me organize the accounts given by the interviewees about their work thematically. Taken together they illustrate some important themes which arose and which govern the discourses that are active in the fields of work that ombuds occupy.

The degree process for this dissertation represents extensive study and learning. Some of the questions and thoughts I had three years ago, when I embarked on this degree have stayed with me. For example, “What is ombudsing and how is it described?” But much of my perspective has been enhanced by philosophical reflections intertwined with exposure to ideas such as social construction, the works of Foucault, discourse theory and discourse analysis.

In addition, over the course of the research, I became aware of the role of government and power relations. Gergen’s writing on social and relational construction and the role of

language (2009) also influenced my approach to the research. Another noticeable change from my original approach to the research is that now, discourse theory helps provides a better theoretical understanding both of why ombudsing is needed and how it may operate. Thus, I applied my learning to the methodology and analysis of the results through the development of seven questions which I applied to interpret the rich data from the interviews. I note these in the section below as seven key streams of discursive themes.

#### **4.6 Streams of discourse in ombudsing**

I developed seven questions that both honored elements of my early inquiry with the philosophical learning that I have been acquiring. These questions address the social problems of governance and the impact of governance on ombudsing. They became the questions through which I began to read participants' responses. As I read these responses with these questions in mind, key categories of practice, related to the influence of key discourses, began to emerge. The questions were:

1. What concepts do ombuds use to describe their work and the discourses they deploy?
2. How do ombuds think about what they are doing and the discourses that shape their work?
3. What are the problems of government in a democratic society and the power relations within which they are situated?
4. What problems do ordinary people have in their relations with government and related discourses?
5. How are ombuds discursively positioned?
6. Who do ombuds see themselves as serving in the power relations?
7. What are the key values and principles that ombuds hold onto and the discourses and discursive positions they embody?

The next chapter looks closely at what participants said and how I read their responses in relation to each of these questions. It analyzes the interview results against the backdrop of orders of discourse such as governance and democracy and the ombuds role in institutional power relations.

#### **4.7 Conclusion of the methodology**

In my reflections on approaching a method of inquiry I note that a method is not a static approach. I further note that reflexivity requires movement in and out of understanding and analysis, and sometimes the way up is the way down. My approach to the methodology represents time, reflection, and perhaps above all, learning and dialogue. Some of my early questions and thoughts on this study remained constant, but were informed, over time, by my learning and are represented in my approach to developing the methodology.

The purpose of this chapter was to describe the research design and methodology of this study. This qualitative study used semi-structured active interviews to address the research goals. This chapter also reviewed ethical and procedural approaches to data collection and the plan for data analysis. The following chapter will provide a consideration and discussion of these results.

# Chapter 5:

## Findings – Voices from the field

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### 5.1 Overview of the results - a Levinasian approach

In this chapter, the results of the data analysis are presented. In large measure, ombudsing seeks to help to facilitate pathways for voice in the face of officialdom and that was underlined in the data that follows. Ombuds officers around the world, across sectors, endeavor to facilitate voices of citizens. In this chapter we will listen to how practicing ombuds talk about this work. As noted, this study centers discourses which are foundational to social practices and relational interactions. So the results presented in this chapter are discourses in ombudsing.

Since this chapter presents and examines the discourses of practicing ombudspersons, the goal was to listen to their firsthand impressions and perspectives. The French philosopher Emmanuel Levinas wrote extensively on the concept of ‘the other.’ Levinas (1970) says:

The Other precisely reveals himself in his alterity not in a shock negating the I, but as the primordial phenomenon of gentleness. (p. 150)

This chapter endeavors to honor the knowledge and experience of practicing ombudspersons around the world by keeping much of the original dialogue in their own words and by respecting the power of learning by listening to ‘the other.’

In response to the interview questions, the participants outlined from a variety of angles the tasks, functions, practices and principles that are embodied in the modern practice of ombudsing, as they are experiencing it and conceptualizing it in the contexts of their work. This chapter is less concerned with the individual details of particular ombuds’ work, so much as with



the patterns and competing forces that animate the discourses of ombudsing as they were stated by these participants.

As we have seen in chapter three, Foucault has shown how discourses are implicated in relations of power in social relations. Ombudsing takes place against a backdrop of governance so, therefore, issues in relations between the governed and the governing may be expected to be found in the discourse of those interviewed. I also look at the discursive positions taken up by the practitioners and consider key values that practitioners describe. Finally, this chapter provides an overall reflection on these ombudsing discourses.

## **5.2 International ombudsing in practice**

The material transcribed from the research interviews represents the considered thoughts, reflections and experience of fourteen practicing international ombudspersons. As noted in chapter four, participating ombudspersons represented the following ombudsing areas of practice: parliamentary, health care, scientific research, industry, academia, equality and anti-discrimination and also national and international governmental and intergovernmental organizations. Some of the practitioners have national and international oversight in their work, some practice in industry settings such as finance and commerce and some work in public, private and social organizations. They are situated in cities and countries around the world and influenced by a variety of experiences and cultures. This study takes their interpretations seriously by examining their discourses through the lens of critical discourse analysis.

### **Interviews, discourse and relations**

In an examination of the ombudsing discourses from the interviews, I identified the following themes from the seven questions I developed to analyze the data:

1. Concepts ombuds use to describe their work and the discourses they deploy

2. How ombuds think about what they are doing and the discourses that shape their work
3. Problems of government in a democratic society and the power relations within which they are situated
4. Problems that ordinary people have in their relations with government and related discourses
5. The discursive positioning of ombuds and their responses to these
6. Who ombuds see themselves as serving in the power relations
7. Key values and principles that ombuds hold onto and the discourses and discursive positions they embody.

The next part of this chapter explores these seven discursive categories, derived from the responses of the research participants. They are then used to organize the major themes found in interviewee's responses to interview questions.

### **5.3 Discourses in ombudsing**

When discussing their work, some practitioners refer to the concept of 'grievances', some talk about 'dispute or conflict resolution', some talk about 'complaint handling' 'exploring options' and some mention 'righting wrongs'. Each of these expressions suggests subtle differences in the kind of work that ombudspersons are presented with and how they describe them. Interviewees' responses are marked by the letter I and a number. Here are some of the formulations they used.

#### **1) Concepts ombuds use to describe their work**

I-11: I define the idea of ombudsing as a very effective and indeed essential means in the modern world of helping people to resolve grievances and disputes.

It is interesting that this speaker talks about both grievances and disputes. It suggests that he or she distinguishes between the two. A dispute perhaps connotes a two-sided argument in which there may be valid viewpoints on both sides, whereas a grievance is more one-sided.

I-6: I guess I can only talk about my specific situation. I guess our main tasks are both conflict resolution and complaint handling; because there are no instruments available yet, that could assist people on an institutional level; that's my observation. One or the other university starts popping up now, one or the other institution is setting up its own complaint management office right now, but sometimes it cannot easily be detected.

Here, the distinction is between two-sided conflict resolution and one-sided complaints. It is likely that the complaints are coming from members of the public or ordinary people about the practices of government officers, for example, and not the other way round. But complaints do not sound as heavily weighted or as justified as grievances.

I-8: I guess there are a number of roles. The core of the role is to help customers resolve issues with their [financial institution], for us anyway – industry ombudsmen. The role is shifting a little bit from something that was once almost a layer below the courts in which you would write a judgment in effect, in which you would investigate and write up your findings, trying to make a decision as to whether ... as to who was in the right and whether there had been any wrong ... and so how to put that right.

This speaker is referencing two sides to an 'issue' but it is noticeable in this particular utterance is that it emphasizes the customers who have the issues for resolution. The role of the ombuds officer is also spoken of here as an adjudicative one. He or she investigates and decides who is right. The speaker provides thoughtful reflection on the evolution of the work and continues:

I-8: ... But it is shifting from that paper-based adjudicative function to one which has both that characteristic and the characteristics of dispute resolution and that is about trying to find the parties a way forward from time to time. So in fact in our more recent statistics in the past four weeks, about 63% of our cases were - we were able to resolve 63% of our cases by means of informal facilitation rather than having to take things through to a written judgment. To the rights and wrongs of the situation.

The speaker here expresses a preference for 'informal resolution' over a more formal process, which is written. Facilitation perhaps suggests more of an emphasis on conflict resolution than on handling grievances or complaints. But the speaker goes on to talk about complaint resolution as 'traditional', implying in the process the emergence of something more informal. Perhaps there is a suggestion here of shifting ground in the profession. Finally, he or she uses the phrase "to the rights and wrongs of the situation." It suggests again the adjudicative function in which the ombuds acts to decide who is right and who is wrong, a different function than assisting in conflict resolution.

The same speaker goes on to raise some different issues.

I-8: ... So there is that traditional complaint resolution and on top of that there is the ability to be able to detect whether a particular complaint or a series of complaints may be able to affect a wider range of people or customers so what are sometimes called systemic issues. So the ability to encourage the industry, require the industry, to increase those in lieu of some form of regulatory intervention. Then there are wrongs in terms of occasionally referring very serious issues to a regulator but by and large what you are trying to do is not only trying to help resolve complaints but prevent disputes in the future by providing people with information on how they can avoid the problem and you are

also trying to lift the performance of the sector in a number of different ways. Some of it is with respect to the way they sell or they market their product or the services they provide but some is also with respect to how they address complaints and resolve them internally. So I guess what I have talked about there is individual complaint resolution, systemic complaint resolution and about financial literacy and about raising standards in the industry.

The continuation of the utterance leads to a much broader vision of the role of ombudspersons. It contains the emergence of a new emphasis in the function of the ombudsperson – systemic complaint resolution and finally, even further, to having a brief to bring improvement to the standard of performance of the industry in general and of complaint resolution processes at earlier levels, so that issues do not need to reach the ombuds in future.

Here, another speaker talks about some of the issues that arise in the context of problem solving:

I-12: ... another half of the problems are problem solving. I could say sometimes 50-50, or sometimes 40% or 60%, but more or less it is always these kinds of problems: conflicts between people and conflicts with between students and professors. These kind of things.

Sometimes we can do a formal mediation. I mean, the two people sit in front, or more than one person sits in front. Another time, when the problems are quite old, the mediation per se is not possible is not possible to carry on, like a normal one in which you have the two people in front. And you have to be, like I used to say, like a partial mediation. I am with one person, I talk with them, and I am with the other person, I talk with them, and I try to communicate with both of them. But sometimes it is not possible

to have both people at the same time in the same physical space, and then it is a part to part mediation. It is not a proper mediation, but sometimes it works.

The speaker above delineates some of the issues that arise in taking a mediating approach. The next speaker describes the model as a resource for staff with workplace concerns.

I-3: So we are primarily in the model of the organizational ombudsman, which means, just to summarize, that we are a place where any staff member can voice a workplace concern, we help the staff member explore options, and usually in that exploration of options there is an informal conflict resolution component...a lot of the things we do are to help people identify options ... issues, we can sometimes operate as a conduit for information, and a large portion of our work sort of revolves around this notion of informal dispute resolution and mediation.

Here the speaker introduced a new concept – ‘to help people identify options.’ This may provide a broader category of activity; not merely complaint resolution or conflict resolution, but help understanding institutional discourses. The implication is of the existence of multiple courses of action available to citizens and the ombudsperson is taking up the empowering role of pointing these out, rather than acting on the citizen’s behalf, or simply adjudicating. The speaker becomes more specific stating that much of the work focuses on informal dispute resolution. The speaker also considers the tool of mediation stating:

I-3: Well I am also a certified mediator and you know this is my second ombuds job so I was the ombudsman at [agency x] and then I’ve been in [agency y] from [year] until now. And so that combination of mediation certification really comes in handy. And I have to say the course that I am taking with John Winslade has really influenced my thinking about the profession and about my interaction with visitors .... a lot of what we end up

doing is telling people about the value of third party intervention, the value of going to see an ombudsman so you know as my practice develops you know I'm trying to gain more skills. Some of the skills come from the narrative practice, some coaching and others come from mediation.

These comments speak to a perception of an increasing emphasis on methods of conflict resolution in general and also underline the importance of narrative mediation in this context. The speaker is reflecting on conflict resolution tools and the value of "third party intervention" and names narrative practice as useful skills to strengthen the practice.

I-9: The legislation states that we review the decisions of the university and we've had a few dozen cases go to judicial review. This means that students have challenged our decisions, believed them to be unreasonable and have taken the agency to the Courts and have asked the Court to overturn the decision. A senior appeal Court [*Country X*], has decided that what 'review' means is subject to our own wide discretion. We have flexibility in looking at a complaint. We can review the university's decision to see whether or not it was reasonable in all the circumstances and abided by the university's own regulations. Or (more rarely) we can investigate the complaint looking at the merits of the case. Some students are not happy that a review that confines itself to the reasonableness of the university's final decision. They believe they're entitled to a full investigation. That's not practical in terms of the volume cases that come to us or the (often) complex history of a complaint. And we are not a court of law.

In the text above, the legislation specifies the activities of the ombudsperson and at least to some extent structures the process they are obliged to follow. In this instance what is specified is involvement in the "review of decisions." This means "investigating" to determine whether a

decision meets a standard of rational interpretation that might be called “reasonable.” But the investigation seems to have practical limits on it too. Despite the legislative structuring it sounds like the role of the ombudsperson must be subject to interpretive decisions about what’s “practical” and “merited.” There is an issue here too in the ombudsing field. Classical ombudspersons are often mandated to investigate. But some organizational ombudspersons in the United States, generally do not undertake formal investigations.

In some of the interviews, participants talked about an increasing volume of cases, needing to evaluate, and being triage-based on small staffs and handling a wide scope of complaints.

I-6: Our office is working as an intermediary for people who do not have enough voice or the right channels to speak up for themselves.

This speaker expressly stakes out a position as an “intermediary” in relations between government and “people who do not have enough voice” and names the function of giving ordinary persons a voice. Such a description tilts the purpose of ombudsing practice toward benefits for the ordinary citizen perhaps even more broadly. Here the office appears to exist to facilitate the voice of the population who would otherwise not have a voice. The next participant adds further context to the function of an ombudsperson:

I-4: How do I define it? I mean I see it as confidential, independent and impartial office tasked with providing students with information about options, how to resolve conflict, sometimes mediating issues or to a much lesser extent, and then also tasked with monitoring the university and its sort of application of fairness in a sense, so, how the university is sort of fair to its students, so, through policies, through process, through interaction. That’s I think as distinct as I can get it.



The stress on the “confidential, independent and impartial” aspect of the office alludes to a position from which to interact with others in a university institution. It is supported by mention of services to students (giving “information about options”, teaching “how to resolve conflict” and “mediating issues”) and services to the university (“monitoring its application of fairness”).

The same speaker went further:

I-4: I sort of think that this office, and I thought about this, that if a university sees itself as an institution that's committed to academic freedom, it's committed to do exploration of new ideas, to pushing the boundaries, to being open, to being a place of safe interaction of all positions and opinions, to me the office fits within that academic mission because really, the ombuds office is an extension of what the university aspires to be. If the university aspires to be transparent and open and fair and committed to not only pushing ideas but looking at itself and growing and improving, then this office is just an extension of that concept. And I also think that that's personally how we better position ourselves within the institution. I think far too often the watchdog concept or the - it's almost like the school marm concept I think doesn't resonate at all and in fact I think it does a disservice to our offices.

The speaker above articulates ideas of the ombudsperson as a kind of guardian of academic freedom although hesitates about going as far as “watchdog” and surfaces the concern for safety: “a place of safe interaction of all positions and opinions.” Safety is a strong term and implies its opposite: danger. Presumably the speaker is not so much alluding to physical threat as to discursive threats to free opinion, the right to speak, and so on. He also brings up the ethical principle of administrative transparency. This concept also emerges in other interviews across

sectors as well, public and private, by those practicing as organizational ombudspersons and those who describe themselves as “classical practitioners.”

The speaker above continues the utterance, however with a rejection of some “classical principles” in another angle on the role.

I-4: I think there’s already enough baggage at some institutions that see the office as gotcha, that’s what our job is, is just to kind of sneak up from behind and say, “Oh, you did this wrong,” and I think that’s totally the wrong way to approach it. I think that if we’re all committed to doing the right thing, then this is just an extension of that. We’re committed to do the right thing, and I don’t think anybody would argue with that also.

Me: Yeah. In which category do you place your practice in a category and if so, would it be legislative classical, executive institutional, organizational workplace or another?

I-4: I mean I’m organizational. We don’t have - there’s no legislation as a university ombuds that you’re supported by - I certainly don’t adhere to any classical kind of principles or I mean if anything, it’s a hybrid because I also - I think the best strength that I have is institutional knowledge. I’ve been here for 10 years. I know a lot of people. I know a lot of administrators, and working those channels is how things get resolved.

Here, the speaker talks about the value of institutional knowledge almost in place of legislative fiat. The model of practice he refers to as “hybrid”, presumably meaning a mixture of classical and something else. He also introduces an idea that resonates with other interviews with the idea of institutional “channels” and contrasts this with a “gotcha” emphasis. The channels it seems are constructed out of institutional knowledge and on the basis of “knowing a lot of administrators.” In other words the structuring of the job is more performative, rather than completely structured in advance.

I-14: What I bring to the table, and others who have had a background similar to mine, is a very long and deep history within the public service in my country. So, I know how Government functions. I understand the provenance of policy, and the impact of policy on the people. And, as one of my predecessors once said, under the Ombudsman legislation, a very good first question is to ask about what went wrong -“Was this a reasonable thing to do?” [*Our country*] by reputation has an emphasis on transparency in its governance. We are number one or two, always, on the Transparency International’s index of openness and transparency. Under the Ombudsman Act our recommendations are, of course, not mandatory. They do not have the force of Law. That is part of the Ombudsman tradition.

The speaker above talks about a national commitment to transparency and “integrity institutions”, of which the Ombudsman is one. In other words, the role of the ombuds office is linked to a wider order of discourse in the national context. The speaker continues, articulating the key aspects in the process of this ombudsman role:

One of the things about the Ombudsman role is that we can really go behind the law, and see what is going on behind what was going on in front. It is an inquisitorial process, and you can look deeply and widely as to why something happened. Whether it was lawful or not. Why did it happen? What were the pre-conditions within the agency that allowed this to occur? And, that is not really about law so much, as about, you know, did they have a policy? If they did not, why not? If they did but nobody was observing it, why not? Or did somebody just, you know, make a terrible mistake.

The speaker continues, noting the ability to strengthen the office, if needed:

That is not to say that from time to time they cannot be updated and modernized. The [Official Act] has recently been the subject of a thorough review by our [Law Committee] and Parliament has not accepted many of the recommendations, because, they say, “If it ain’t broke, we do not need to fix it.”

The speaker above speaks to the legitimate channels for improving governance and also notes how the legislation can be updated and modernized. This speaks to how the role can be strengthened. In other words, it is never completely rigidly structured, but must constantly be revised in response to shifts in the orders of discourse in the national context. The assortment of texts above is representative of ombudspersons both in the classical and newer models, but there seems to be room for practices both of complaint investigation and conflict resolution, as well as of other practices. It appears that there are a variety of approaches and, as some of the participants noted, they may shift over time. However, it does not appear that there is a clear or unified articulation in the field about the differences and similarities between complaints, grievances, and disputes. Nonetheless, the practitioners across the board appear to be concerned to help facilitate the voices of ordinary citizens, students, and other populations to be heard.

## **2) How ombuds think about what they are doing**

This section is about the practices that the participants referred to, the kinds of concerns that they mentioned that they are typically presented with, and the ways they talk about these. I was interested in which discourses their choices of words pointed to. Did they, for example represent a more political discourse, a legal discourse, a management discourse, an interpersonal conflict discourse, or what? The discourse in the first example sounds somewhat like a legal discourse. The speaker is not a lawyer, but speaks within the legislative mandate in which the

ombudsman is working as an advocate for his or her “client” who is definitely the ordinary citizen.

I-7: Ok so I am a Long Term Care Ombudsman and we have the advocacy ombudsman model, so while I am impartial in terms of collecting facts and doing my investigation, once I’ve reached a conclusion, I am going to be working with my client as advocate to present to him or her what the law would say, what best practices would say and help generate options letting an individual make a decision so I am not a neutral or impartial about the ombudsing practice.

This speaker talks about aiding a client as an advocate to help find solutions within a discourse of rational logic and semi-neutrality, represented by the process observation of “collecting facts”, “doing an investigation”, “remaining impartial” as long as possible. The speaker further describes the distinct nature of this model and states:

I-7: We are kind of the advocacy ombudsman, advocacy model. I think the ABA has a classification for us. We are not strictly a classical ombudsman as a government ombudsman we are really kind of an advocate – advocacy model... And the thinking being there that our clients are rooted in systems where there is inherent imbalance of power and the thought was that as an advocate ombudsman we could help right that imbalance in power. By definition everybody that we serve is considered a vulnerable adult by [X] state law. Our philosophy is to walk side by side with our client and when we can we like to coach our client and bring forth their voice either to see if we can get the system to respond initially without us being directly involved or if we are together to have the client participate as much as possible so we either coach them to exercise their

voice where they are \_\_\_\_\_. Or to amplify their voice and in some cases we are their voice. So all dimensions of that ...

Long term care ombudsmen work with vulnerable populations. Perhaps this influences the choice of discourse. This kind of ombudsing might be said to promote fairness by speaking on behalf of the (often marginalized) elderly and disabled residents of nursing homes who are less likely to be in a position to speak for themselves. In other words, the context of the work shapes the role differently than in other contexts.

In a university context another ombudsperson speaks slightly differently.

I-5: And so my pitch was the office can't just be about case management. We can't just be reacting, and reacting and reacting to students who come in with a problem ... it's a very important piece - students need support to get through their challenges but at the same time we have to be working at the systems level, at the proactive and preventative level to fix practices and procedures that may be flawed, to build both students, staff and faculty, their competencies and capacities, to identify a fair process as well as to engage in conflict effectively. So we need that reactive and the proactive piece. We are doing very well I think on the reactive piece, more and more students are finding us and I am looking forward to building our office's capacity to work more at the systems level.

This is an example of looking at the role more through the lens of a management discourse. The participant addresses both the needs of students and the idea of giving upward feedback to the institution. It suggests an intermediary position between the governed students and the governing institution and it suggests thinking of the role in relation to the wider picture of good governance.

Such governance would not be achieved, for example, by simply “reacting” to complaints, which may not always be rationally justified. Nor can good governance be guaranteed without the “proactive” functioning of feedback loops that inform those who govern.

Another example of feedback for the institutions is presented here:

I-12: ... the university machine is not working fine. I used to define this like the machine has problems in the structure or in the functioning.

This is an insightful utterance about the system or the “university machine.” This is another area where feedback or trends, can be possibly collected while maintaining the confidentiality of the visitors. Then the information could be presented and hopefully addressed by the institution.

The next speaker talks about the role in action and notes some of the aspects that distinguish it from other roles.

I-2: Strengths and weaknesses are two sides. Strength is not having power. Role is more accessible, not intimidating because no power. You have to find acceptable ways to elicit cooperation ... be persuasive ... tap into something. This role puts you in respectful relationships with people. Different from a department chair ... Serving all constituencies of org - not having to serve as part of management.

He notes that the role “puts you in respectful relationships with people”. Further, he articulates the role as distinct from management and hence as not having power. Presumably this is a reference to the normal channels of power in an institution. The performative aspect of creating channels within which important things happen results here from personal facility to “elicit cooperation”, “be persuasive”, “tap into something”. He goes on to articulate the potential of the role, noting:

I-2: All that - neutral/independent/confidential ... in reality there are threats. But you have the flexibility of tailoring interventions, both individual or systemic. You can do more than run a repair shop or an emergency room. A single thing is you have to elicit cooperation from others. Challenges include not having formal power. Organizational inertia and resistance to change. Aspire to be an agent of change without power.

Now the safety/danger binary is spelled out a little more by saying that, "... in reality there are threats," although these are not specified. The speaker also articulates aspirations to do more than "run a repair shop or an emergency room." The hint is of a more noble ethical task than a simple technical one, although this task is not clearly specified. In the next text, the speaker talks about how remarkably well received the role has been in the country.

I-14: In the [*long*] history of this Office we have not had more than a handful of refusals to abide by our recommendations. We would then report to Parliament, and in all the cases action was then taken. Ours is a classical Parliamentary Ombudsman Model. It followed the original form created by Sweden and modernised by them in 1809. We are therefore mandated by an Act of Parliament and must be totally independent of the Government of the day, and/or any other agency that we oversight.

The ombudsperson's role is noted as having an effect and being favorably received, but it is suggested in the case above that this is in the context of the key role of independence of the parliamentary model. The discourses in the section above serve as examples of dominant discourses related to different relational configurations. These include management, conflict, political and possibly legal discourses.

### **3) Problems of government in a democratic society**



In the modern world, we may find problems of governing in a democratic society, that is, the struggles and difficulties that good government encounters and the ways that ombuds are called into relational problems in particular contexts. This may be different in different sectors or countries, or jurisdictions. These are not theoretical problems. They are very real problems of practical living for individuals.

I-10: It's a role that defies definition with great precision but in my view it's clear that it's a person who can't be taking the side of either side in a dispute but is an honest broker trying to get to the bottom of a problem in such a way as to ensure that a community member has their rights properly recognised and, at the same time, the public sector organization or the statutory authority subject to the jurisdiction of the ombudsman, is treated fairly in the same way as the citizen is treated fairly.

The speaker above talks about being positioned in the middle of the governing and the governed, between the community and the service providers. The concept used is that of the "honest broker" not just for the ordinary citizen, but for the public sector organization as well. It suggests a concern for the ethics of practice as well as the pragmatics. A broker is someone who facilitates the making of deals (suggesting a commercial discourse) but it is qualified with the word "honest" (suggesting the importance of an ethics of practice). This participant also remarks on how the role defies precise definition. But some endeavor to put care into defining the role as it moves forward, and offices are often careful about framing the role.

I-11: The university ombudsman is an office created by statute in *[place]*, so I operate in an organizational and legislative framework. The state government has passed an act of parliament that brings my office into being, so I have the approval of the state.

The speaker above talks about the political legitimization for the existence of the ombuds office. It was created by statute, a government act, indicating that there is the legitimating approval of the state. Such statutory legitimization presumably gives the ombudsman a bulwark against the influences of official criticism from those who hold positions of power.

I-11: The main one is the one I referred to earlier, that I can deal with issues raised by any member of the university community and I also can be contacted by members of the public who may have issues that they wish to consult me on about how the university operates. In that context, I also operate another piece of legislation called the Whistleblowers Protection Act, which gives protection to anybody within the university or outside who believes they have knowledge of malpractice but who fears that they might be punished in some way if they divulge that information. That's a very strong piece of legislation that has very major penalties. People can go to prison if they interfere with somebody who wants to deliver whistleblowing information.

The speaker above continues the utterance by talking of his work in relation to issues of retaliation and about fear of punishment. Here, the speaker talks about the consequences of whistleblowing legislation and again also refers to statutory protection. The speaker cites legislation that can be called upon to bulwark the position of the ordinary citizen who speaks truth to power and of the ombudsperson who facilitates such speaking. Earlier unspecified comments about “threats” and the need for “safety” are spelled out here, in one context at least. The danger of someone being a “whistleblower” about “malpractice” and receiving “punishment” for speaking up is mentioned. The ombudsperson has a “strong” function to serve in such situations.

I-3: the primary function of our office is for staff members to have a place that is sort of outside the management hierarchy where they can be assured of confidentiality to really be able to discuss their concerns so a lot of the things we do is to help people identify options ... issues ...

This ombudsperson talks about the location of structural power in the organization – “the management hierarchy” which suggests the power of the governing. This excerpt also speaks to organizational politics, but also implicitly speaks to the idea of the independence of the office – a place “outside” the hierarchy, that is, outside the normal flow of power relations in the organization. In the space created by such independence and confidentiality, a channel of freedom to “discuss concerns” is constituted. So independence and confidentiality are not just wise professional ethics. They also have political significance as arbiters of freedom.

I-5: For our graduate students I would say most of them are relationship issues so they become quite complex, the level of risk I think increases quite a bit for our graduate students. They work very closely with their supervisors, they feel often unsafe in coming forward, because they are wanting to get a good letter of reference in their graduate program. We don't have stats to confirm this, but I think we are seeing a lot of students who may not necessarily be international students but certainly are bi-cultural and are bumping up against issues with their supervisors or with their lab manager or their instructor where you can see that there have been real difficulties in communication, intentional or otherwise. So the graduate student cases generally take a lot longer to support them through. They come back many, many, many times.

The speaker above brings up a number of issues. At first, the issues are described as “relationship issues” but ideas of risk and lack of safety are raised. It becomes clearer that these “relationship

issues” are often not relations of equals but fit generally in the context of differential power relations – a supervisor and a graduate student. In addition, the speaker notes that these are not one-time issues that are solved and put to rest, but that students return repeatedly. The speaker continues with a discussion of risk and safety:

I-5: We’ve got a couple of cases that deal with safety issues, risk to the university. We have had situations where a few students have had restrictions placed on them, they can’t enter the university premises and things like that and we have communicated that to them and because they feel safe in coming here and not responding to other people so we seem to be able to keep open lines of communication with these folks. And then we will communicate those things to them ... you can maintain open lines of communication even though they’ve been asked not to be on the university campus ... That if we can provide a good process and a fair decision, if they don’t like it we still need to help the student take that decision and move forward instead of saying, “I’m sorry you failed, goodbye” saying, “Ok, hard decision, you failed the program, you can’t come back for a year, here’s some things you could do.” And give them a chance to look at planning for the future instead of ending the relationship at that negative decision so we’ve tried to talk that up with other units on campus saying, “If you could do that, it would really help the student accept that difficult decision.” So we do a lot of that, helping students see a difficult decision in different lights – a lot of perspective-shifting for the students. We don’t tell them anything different, we don’t say you are no longer withdrawn but we say, “You are withdrawn; take this as an opportunity to see what else you might want to do. What else can you do with that year that you can’t come back to campus? What kind of volunteer things are going to look good on your resume? Think about the opportunity you

have to do other things now.” So we try to help them transition forward, basically I think our goal is to help students move forward whatever they face.

In this utterance above, we hear about restrictions now placed on students. The speaker talks about trying to find fair processes, even when the outcomes are not desirable, for example, when the student has to leave the institution. The speaker also raises the idea of “perspective-shifting.” But in this case, while the students are no longer under the governance of the institution, a relation may remain, or the student may wish to re-establish a relation in the future. It is noticeable too that the ombuds role is added to by a reference to giving students personal assistance with how to handle a university decision. Here the role moves beyond making a decision to smoothing out the effects of a decision, perhaps with the aim of producing a less dissatisfied student. There is a hint here then of a different kind of danger (or risk). It is about the danger that lurks in the power of the disgruntled individual to make problems for others in an institution. The worst examples of such power have been expressed in school shootings. In less dramatic situations perhaps the reputation of a university in the community is at risk and the ombudsperson may contemplate that impact.

The next speaker talks about his experiences within a government ministry.

I-6: If you are working in an institution that is setting other standards, that is producing its own regulations, which probably sometimes just don't work out, we are the first ones to know because students complain to us. This also might apply to national laws made by the Ministry. Students are in either case affected on an individual basis at a given institution. Our office was a one-man show in 2001, we are now a team of seven people altogether. It was a long and winding road to reach that status that we have now. It was a long and winding road. We have our office costs paid by the government.

Communications, meetings, conferences, business trips and things like that: it's all covered by the Ministry, by the Republic of [*country*]. You can imagine that some people, who are involved in law-making or in looking into how laws affect individuals, that some of them don't really like us.

The speaker above addresses his/her role in relation to government in its law-making function. If a bad law is made, ordinary citizens are at risk of suffering. The speaker notes how the ombudsperson is likely to be in the front line in such situations as “the first ones to know” when students complain. The focus here is on how laws affect individuals in a discourse of government and on how the ombudsperson can be in a position to signal to those who govern that there is a problem. The speaker also notes the growth of the office, suggesting the value it provides.

In the discourses in this section above, we have seen examples of some of the struggles and difficulties that good government encounters and the ways that ombuds are called into these relational problems in particular contexts. We find ideas of statutory protection for populations. We start to see concerns about risk and lack of safety emerging in the dialogues. First, this appears from the impact of natural disasters, events initially beyond governance, but to which governance responds. Then we hear of students feeling risk and a prevalent lack of safety in their relations with supervisors, the impact of power relations.

#### **4) Problems that ordinary people have in their relations with government**

For some people there exist from time to time problems of relating to processes of government in a democratic society. This section considers populations of vulnerable people, including those who might be more susceptible than most to the workings of power. This section considers issues that ordinary people have in their dealings with those who govern, such as the

struggles and difficulties that ordinary people (rather than those in power) encounter and the ways that ombuds are called into these relational problems in particular contexts.

I-13: The Office of the Parliamentary Ombudsmen (JO) was established in connection with the adoption of the Instrument of Government that came into effect in 1809. The JO was to monitor the compliance of public authorities with the law. To put it simply, today their role is to receive and investigate complaints about public officials who are not doing their job properly. They investigate the complaint and then issue an opinion. There has been a gradual shift in focus from a punitive function previously to an advisory and consultative function.

The speaker above gives a helpful articulation of the origin of the modern Swedish Parliamentary Ombudsman office – often described as the classical model. The speaker succinctly describes the actions of the office when a complaint is made and notes the shift in practice.

I-10: In practice, the office serves the most vulnerable in the community these days and so we therefore have a real interest in the way that government programs are affecting for example indigenous people. It is really hard for us to get to indigenous people. Travel is very expensive in this country. It is all ‘ok’ if you are travelling between capital cities. The problem is if you try to go to the centre of (*country*), there is not a lot of flights as most regular visitors to those area are tourists so the airlines make their money out of that and just have lower priced fares on the major routes. Therefore it is very hard for us to spend time in remote areas with indigenous people who need ‘personal’ contact. Our role in this regard is not specifically referred to in legislation but we try to provide those sorts of services, which are expensive but which we do our best to provide. Because of the pressure and political stance that is going on about immigration in this country, things

happening in Asia, and people seeking to move out of countries where they are oppressed, we have got thousands of people coming here seeking asylum. So whilst the problem in this country is well monitored and we know more about who is coming here than some other countries the political climate at the moment is such that those who come by boat are vulnerable, but there is little 'political' sympathy for them. That is another area where we have to focus our attention because of legislative requirements and so those two areas, services to indigenous people in community and services in immigration are both very important from the ombudsman's point of view.

The text above talks about indigenous populations in relation to government and some of the issues involved in providing services. Reaching out to these populations involves high cost and geographical distance. It appears that these issues are heightened by a popular national (and international) discourse on immigration. This ombudsperson is stressing that it is not just incumbent on ombuds to work with individuals struggling with officialdom. What is stressed here is the need to be concerned about those who are at risk of not being attended to because they belong to a population who are generally disadvantaged and lacking a voice in the wider society. Another ombudsperson below picks up on another disadvantaged group and talks about using the office to investigate a general area of power relations, rather than just an individual complaint.

I-14: In addition to dealing with individual complaints we have a power to instigate, of our own motion, investigations into what we see as systemic maladministration issues. For example we have investigated general conditions in prisons. Another investigation dealt with prisoner transport. We had a bit of a focus for a while on the prisons area, because there were some practices that were less than wonderful, and it needed some attention. But, we are pretty much at the end of that focus, and we are broadening out. I



am currently looking at the Ministry of Education's policy on school closures. We have a bit of a rash of them down in our X city where, of course, the earthquake took place, and the Government is trying to rationalize schools. Some people have left the city, and relocated to other parts of the country. School rolls, therefore, have been affected. There are some very small schools where it would make sense for them to partner, or be absorbed by a neighbouring larger school.

The speaker in the text above talks about the ability to “instigate” investigation and address specific populations impacted by government policies. It considers the rights of those who are incarcerated. It also speaks indirectly to the trauma and impact of natural disaster. There are the immediate effects to citizen health and safety and also the ripple effects of natural disasters such as when school processes and other government services such as schools are impacted. Another participant speaks to a wide focus on societal and power relations, stating succinctly:

I-13: [Our mandate] is to counter-act discrimination and promote equality in all fields of social life. The [office] can provide legal advice and assistance to the targets of discrimination, including taking cases to court. The [office] is to also promote equality in other ways that will help to proactively prevent the occurrence of discrimination.

Given the [office] mandate, the task at hand is to achieve an impact in regard to changing society in the direction of greater equality. This means a combination of implementing the law, consulting with key actors that risk discriminating and/or can prevent discrimination (employers, unions, government agencies, local governments), raising awareness among discriminated groups concerning the right to non-discrimination and avenues of redress, and contributing to developing the knowledge base connecting

discrimination in individual cases to discriminatory structures. One of the dilemmas with our office is finding the right balance to make our tools most effective. Whether it's bringing a case to court, entering into a settlement, or writing a report, or a combination of these activities. The way I see it the goal is setting priorities in a manner that leads to the greatest impact.

Promoting equality and addressing discriminatory practices are purposes that require a critical analysis of the larger field of power relations in society if an ombudsperson is going to offer services that are useful in this domain. This utterance provides a clear view of the work and actions that can be followed to make “an impact.” The speaker talks about acting proactively to decrease discrimination. The speaker talks about the ‘dilemmas’ of finding “the right balance to make our tools more effective.” This point echoes the challenges and complex problem solving work of many ombuds offices. While the specifics of discourse that produce inequality in these areas are not specified the reference articulates discursive channels that might serve as the context for mitigating a range of inequalities and maximizing impact.

In many places the ombuds plays a key role in addressing complaints about service delivery and administrative processes.

I-5: I guess the key cornerstones for our clientele which are the students... confidentiality seems to be the most important ... the risk factor for them is so high that's what we have to consider, that whatever they talk to us about is confidential and then after that we confirm that we are independent, that we don't take sides, we are not neutral but we are impartial and that we will pursue as many informal pathways to support them in the resolution of their concern or their challenge.

The text above brings ideas of safety and risk again into explicit discussion. The speaker talks compellingly about the risk factor and explains how key principles espoused by ombudspersons such as confidentiality, independence and impartiality are intended to provide safety for the visitor. The speaker also talks about a willingness to try multiple avenues to address the concern or challenge. As comments on ideas such as confidentiality, emerge in these discourses, it becomes clear that these are not merely ethics of professional respect, but are critical in terms of protecting citizens from the dangers of power relations. People may need a safe space for *parresia*, for speaking frankly and fearlessly, in regard to their position in power relations. Thus the ombuds office can provide a legitimate and safe outlet.

This section above highlighted ideas that arose in the discourses of ombuds speaking about ordinary people who are governed. In this section I looked at how some issues, struggles and difficulties of relating to processes of government in a democratic society may arise from the perspective of those who do not have access to privilege in power relations. Concepts of risk and safety move to the forefront in these discourses. As ombudspersons talk about issues of risk that visitors face in relation to the power relations, it becomes clear that ombuds offices can serve a protective function by providing a legitimate and safe space for speaking truth to power.

##### **5) The discursive positioning of ombuds and their responses to these**

In this following section I look at the discursive positioning of the ombuds and look for evidence, if any, of the tensions and conflicts that ombuds feel. As noted in chapter three, discursive positioning may be described as building on Foucault's concept of subjective positioning. Bronwyn Davies and Rom Harré (1990) suggested the value of thinking in terms of "discursive positioning." It is a concept that points to the ways in which people take up positions in relation to discourse in the very moment of making an utterance in a conversation. At the same

time, speakers offer the other person(s) they are addressing a position (or a choice of positions) from which to respond. Positioning theory makes cultural influences visible in discourse in the very moment of the establishment of their influence. It also makes visible the ways in which people resist and refuse dominant discourse in the detail of conversational exchange (Winslade, 2006, p. 505).

The focus in this section looks at discursive positioning and places where ombudspersons may feel pulled by the governed or by the governing (governors). Finally, it considers some of the unique aspects of the office, such as providing a safe place for speaking up.

I-9: We were created by statute. My sense is that the [agency] was created at the wish of the Government who believed that the existing system for handling complaints at the time was outdated and in part feudal in its approach. It was basically ‘the Great and the Good’ being appointed by universities to look at complaints. But these people were not accountable to anybody. They were not consistent in their decisions and they were basically only symbols since other people did the work for them. Universities, with some reluctance, agreed to these people being replaced by an ombudsman-type body, but some heads of university at the time were reluctant to call it an ombudsman system. Now why that is I’m not sure, because I wasn’t around at the time, but my sense is that there were two concerns. First, they were concerned to preserve their freedom to make decisions about academic judgments, without being scrutinized by the [agency]. Secondly, they didn’t like the idea of an ombudsman having the power of initiating inquiries without there being a complaint. Some ombudsmen have that power. My view is that it’s only in the last couple of years that we’ve been able to describe what we have is an ombudsman system. Universities have agreed with this description and there’s no problem about it

because we don't look at narrow academic judgments and don't initiate reviews without a complaint. So we now have consent for the term.

The quotation above speaks to independence and accountability, but in the end, addresses the role of the ombudsman. It references the work involved in the development and formation of the role with attention to the use of the term ombudsman. Those in positions of governing seem to have been concerned to position the ombudsman in a narrow space and to limit the power of the ombudsperson. The debate has centered on the position of the ombudsperson with regard to the right to initiate inquiries. The implication is that the power of the ombudsperson has grown over time as trust has been built up. To that extent the speaker acknowledges that the discursive positioning of the ombudsperson has been fluid. What is of interest here is the basis of strength that has accrued to the role. Some of it is referenced back to the original defining document but some has also been achieved through persistent effort in conversation with those in authority. In other words power is not all structured in advance but is negotiated on an ongoing basis through processes of social construction.

I-1: ... the ombuds office is mentioned formally in one of our policies I believe it is the ethical conduct policy where the ombuds office is a place where people can go ... to report research misconduct. Which really then I'm just a conduit to our research integrity officer if there is research misconduct going on. And if the person coming to my office doesn't report that then I have a duty to report it. I haven't had to do that so far. We have several ways to report research misconduct and one is through an anonymous web site or an anonymous telephone call a 1-800 number that's a company that handles this kind of thing and so that's kind of one of the safest ways for a person who is really concerned about retaliation which technically shouldn't happen so yeah that's it was mostly having

to do with reporting research misconduct in terms of policy (agency X) has where misconduct is reported is listed in policy.

This speaker talks about various types of power. The speaker talks of policy, which may be described as a codification of discourse, and policies are often used to legitimize power. The speaker goes on to talk about being “just a conduit” which minimizes the role and abilities. In talking about a “duty to report” the speaker talks about the ability to initiate an activity and talks about other possible channels for safe reporting such as an anonymous line. There is an underlying current, however, of issues of risk and safety and the danger of retaliation toward those who want to speak up.

I-10: I see it as having many facets. I think it starts off as being a position in a sense between the community and the executive government and other arms of government. It’s a role that is not so much being an advocate for the community or members of the community but rather a person who is there in the middle as between government, not necessarily the elected members of Parliament, between the community and the service providers to the community in the public sector and statutory authorities, which might well be subject to the jurisdiction of the ombudsman.

The speaker here talks explicitly about the position of the ombudsperson as a person in the middle. The speaker also articulates the complexity of governing relations – not just high-level members of government but all the levels of service providers administering governing practices. This utterance starts to clarify what is meant by government – government as community and service providers. Members of parliament govern, but government service providers are key players in carrying out the administration of governance. This is related to the ideas of

bureaucracy, or power of the desk, noted in chapter three. Service providers at many institutional levels can wield power. The speaker also downplays the idea of serving as an advocate.

The section above considers tensions and conflicts that ombuds feel. The discourses highlighted point to areas of practice where ombudspersons feel pulled by the governed or by the governing (governors). One example of this is about the naming of the function, which was noted in the first quote of this section. Who decides what the office is called? This question brings into clearer relief those who decide whether there should or should not be an ombuds office, what it should be called, how it is set up. It also speaks to the education of people in an institution about the concept of the ombuds office and how this can make a difference in the social construction of power. Ombudsing is relatively new and often not well understood, even by those creating the office. There are tensions of understanding and decision-making in those areas.

Another example of being pulled is over the issue of reporting. If an ombudsperson is required to report certain situations, the power to make a decision about whether or not to report is contracted. In such circumstances we cannot so easily talk about ombuds having independence. On the other hand, ethically, mandatory reporting can be critical. The ombuds person has ethical pulls so may struggle with these tensions. The next speaker talks about how he or she is positioned in a university, particularly in relation to the university president.

I-4: I think that - you know, I meet with the president generally annually and I would think there's a fair degree of support for the value of the office. I mean I think again, what is important to administrators in this office? It keeps problems out of their office. So, I mean this is one of the things I always found interesting when we have these

discussions about, “Well, what resonates, how do we position ourselves to our value to the institution?” And I’m like, “Well, it’s time.”

The speaker continues:

If you look at the number of cases we deal with a year, okay, so let’s say 400 cases is an average. If you didn’t have an ombuds office, that’s 400 cases that wind up in other people’s office, generally dean’s offices and chair’s offices and VP’s offices and president’s offices. So, that resonates because that’s one of the things, it’s about resolving problems at a much lower level so that it doesn’t bump its way up to legal affairs or to the VP academic ... I mean I have very little interaction with legal affairs. I have very little interaction with the VP academic, mainly because they don’t need to. I could easily get an appointment with the VP academic tomorrow. I just call ... and he would happily meet me. But there really wouldn’t be a lot to talk about because problems very rarely escalate to that level. And it’s the same with legal. So, I think that’s kind of the value that I think resonates with an institution is that it’s a timesaver. And if you want to look at it in a monetary sense, it probably prevents a lot of litigation. There are many times where students have been all wired up and ready to take on something and a lot of times, I’m like, “Look, you can hire a lawyer if you really want to waste your money but there’s no need to because I think we can resolve this at a much lower level.”

The speaker above provides thoughtful reflection on the role the ombuds plays within the system and inherent tensions. The speaker talks about the case loads that ombuds work on providing valuable services to the institution and about the key role ombuds can play in resolving issues and avoiding the high costs of litigation. But what is required to minimize risk and establish independence? The next speaker addresses challenges and issues for creating independence.



I-2: How the office is set up. Inappropriate reporting or too low in organizations.

Interpretation of role ... Conflict avoidant ways. Trying to satisfy management – keeping them happy – not inquiring not challenging or not addressing systems. Too low in organization. Not making the case for the value of the office – susceptible to being cut. Ombudsmen unwillingness to publically criticize other ombuds who violate role or devalue function.

This speaker also speaks to the idea of handling the risk of co-option while maintaining credibility and continues on to further articulate the need for “vigilance” and independence.

I-2: Bring systemic issues to people’s attention. Can fall off into taking management’s perspective or having some identification with organization. Need vigilance in seeing differently from management.

In the next text, the speaker talks about the important role that culture plays in the practice.

I-3: Yeah, clearly culture becomes an issue you know as the world becomes more globalized issues of conflict resolution across cultures becomes really important. You know one of the interesting things that I have had conversations with in our office is there ... right now there is a lot of emphasis on having staff members be emotionally intelligent and one of the things that is very difficult to discuss within the [*organization*] context because it tries to be so secular is this notion of spirituality and how that influences the way we see the world and the way that we see conflicts and you know I don’t want to make it sound like that is something I spend a lot of time thinking about but it is aspects of culture and personality and our attitudes about a lot of the big questions that we grapple with do influence the way that we interact with people and you know one of the things to make it a little more specific.

Here the speaker brings up ideas of culture, emotional intelligence and spirituality, speaking to a broader positioning. The speaker cogently speaks to the different world views that people hold. One of the strengths of relational construction and constructionist practices such as narrative mediation is that they make room for constructing discourses that honor different world views.

In the texts above for this section, speakers are thinking and working in institutional settings in a global context. They describe in various but related means and approaches to discursively positioning themselves within those settings. By focusing on the key principle of independence, in general ombuds offices strive to be positioned in between the governed and the governing.

#### **6) Who ombuds see themselves as serving**

This section explores the idea of whom ombuds see themselves as serving. Ombudspersons are situated within institutional power relations. Their mandate may be spelled out in the discursive text of a charter, a government act, or in terms of reference, which explicitly state the populations to be served. Sometimes there is a brief memo that outlines the office. In all cases, ombudspersons may need to interpret the breadth of whom they serve.

I-10: Well I'm very committed to making sure that government programs deliver effective and efficient services in such a way as to ensure that community members benefit.

In the above quote, the speaker talks about focusing on improving government program delivery for community members. So it is a benefit for community members that takes priority over the benefit for those who govern. Another ombudsperson answers differently.

I-12: Every member of the university. Everyone. There is a difference in some states or in some universities, mainly the same for all the members of the university, mainly. But in

some states – like in [*country*], it's only the students. But in [*country*], to be used by all the members of the community – the staff, professors, students – everyone. Our university has 14,000 people.

The speaker above talks about the broad population served by that ombuds office - “everyone” in the university. In other words the benefits of the office are assumed to be distributed to everyone.

I-3: So we are primarily in the model of the organizational ombudsman, which means, just to summarize, that we are a place where any staff member can voice a workplace concern, we help the staff member explore options, and usually in that exploration of options there is an informal conflict resolution component.

Here the speaker states that they serve staff members who can bring workplace concerns to the ombuds office.

I-5: Our jurisdiction is solely for students. We basically don't turn anyone away even if they are outside our jurisdiction so parents come to us, faculty, staff. We tell them we can't take a formal complaint from them because our terms of reference are quite distinctly for students only but we will provide them with referrals and resources necessary so that they can find the help that they need.

The speaker above states clearly that they are designated to serve students. The speaker also notes, however, that they “don't turn anyone away” and lists other populations that may benefit. This suggests a willingness to extend the work to other related populations.

I-1: So I meet with people one-on-one. Oh, some of the parameters are that I am a (scientific) ombudsman so I only meet with our (scientific) staff and so that includes graduate students, post-doctoral faculty, there is a category called staff scientists who are not tenure track researchers and then faculty and then there is a little bit of a grey area,

because we do have people who fall outside the normal categories so people who are like biostatisticians, who are on kind of a staff scientist like track. I also meet with medical fellows, but I technically don't meet with, for example, research technicians and if they have an issue what I usually do ... Here's what I usually do and there's in theory and there's in practice I will meet with them one-on-one but I will not offer to facilitate a conversation for them but I'm happy to trouble shoot.

This speaker notes that they are primarily designated to serve a specific population within an institution - staff scientists. The ombudsperson may meet with other populations, but the primary population is that of staff scientists. The speaker notes a distinction between theory and practice in the field. In this distinction there are some "grey areas." In other words there some places where the process of social construction of the role may not be structured by legislative or regulatory fiat.

In the next section, the idea of psychological safety is surfaced in the interview.

Me: ... and it creates a psychological safety?

I-2: Oh yeah sure. I mean we do a lot of that. Giving legitimacy. Providing a groundwork that allows them to do that. Providing the support. Running interference. Oh yeah and that to me is rather straight-forward.

In this piece of text, the work of creating psychological safety for individuals coming to the office is extended into several different types of practice. "Giving legitimacy" is one of these, probably by allowing space for a person's voice to be heard. It is added to by "providing support" which goes beyond giving legitimacy into a more active role, which expresses a positive value of voice. Finally the practice of "running interference" is referred to. Presumably

what is interfered with in favor of the ordinary person is the expression of power. The central theme of creating psychological safety is thus elaborated into several methods of ensuring it.

I-2: You know was it Mary Rowe who did the article on all the different forms of power. Some people tend to think of power as a monolithic, one-dimensional phenomenon. But it's just not that. There are many different sorts of power that can be wielded within an organization and while it is true that we do not have formal decision-making power, nor formal authority, we can certainly have significant influence in an organization.

Me: Foucault talks about parrhesia as discourse without rhetoric, where less empowered can speak truth to power. Can ombudsing be seen as a place to give voice?

I-2: There are a surprising number of situations in which where people can say this or that and get away with it. I mean the thing is – there is a difference between how can I word it. Consider the difference between how did you word it? Speaking truth to power? OK there is a difference between speaking truth to power and insubordination. We have lots of insubordination. I don't know that we get a lot of speaking truth to power. And what the hell do you mean by speaking truth to power? Because that's an important question.

Me: So, just to help me understand. If you see something wrong, something ethically wrong, might that be a distinction versus so my boss is giving me... I'm having a hard time seeing the distinction.

I-2: you know we were talking in case review, I think it was case review the other day where this employee says, "I won't work for that person - that kind of thing." That's just insubordination and they get away with it. That case we are working on.

Me: And then they can get detailed or find a solution but it's never about speaking truth to power, well do you get cases in here where somebody came in here because they don't see an alternative but this might facilitate that possibility?

I-2: Yes, I think it happens. I do and I think there are examples of people in upper level positions who are actually open to hearing it and that's the other thing that the people who, pardon me, whine about differences in power do it with the assumption that more powerful people are always intent only in wielding and maintaining their power. I'm just not convinced that it's the case even though the power gets replicated and I understand that...

Me: I guess in reading about this and studying this, it kind of comes across, not exactly a mythical quality, but that this is a place to give voice to those who can't find another place to give voice. That is part of the reality check that I've been trying to understand. I think in studying ombudsing and this idea that this is a place to give voice.

I-2: yes – I think that it is.

The quotation above hones in on ideas of speaking up, and addresses the many situations where the issue is not speaking up or speaking truth to power but rather questionable behavior. It is like the other side of the coin and helps ground the theory. While parresia and the legitimization of speaking up are valuable and important means of providing feedback to the governing, in practice, lofty ethical practices are not always the reality. Often ombuds have to deal with just unglamorous, and perhaps questionable behavior. Given the right to parresia, citizens can abuse this right and use it to damage those in positions of authority. Such an analysis is consistent with Foucault's analysis of power in the modern world as dispersed rather than

concentrated. Nonetheless, even these situations can often be addressed and sometimes clarified in the ombuds office.

Ombudspersons are often situated in discourses between the governing and the governed, but questions arise from how they perceive their work. There are clearly often tensions that have to be negotiated as they decide how they operate. While they identify a population who uses the services of the office, they may have to decide whether to prioritize the needs of the visitor or the institution. In contrast with the official rhetoric of independence some of these statements clearly suggest the importance of prioritizing the visitor's perspective. But not always. Sometimes the voice of the "powerless" can itself become a mischievous voice of insubordination, of the usual flow of power being reversed.

#### **7) Key values and principles that ombuds hold onto**

This section examines how the concepts and practices mentioned above help ombuds do their work to carve out a position for themselves in the relationships of government. This includes principles that are emphasized in official documents, and are embodied in the transfer of the office to new contexts. This section also considers why these values and principles are important, how they are expressed on the ground, the aspirations they represent, the challenges these values or principles throw up. The first speaker runs through a list of these principles.

I-3: To one thing there is sort of the legislative mandate so those principles are made reference to in our terms of reference more importantly... as we get into practice they are really the principles that allow us to do our job effectively so you know it is not only adhering to the principles but making sure the perceptions of those principles, as far as we are concerned, and the perceptions when it comes to our visitors and stakeholders, so what I have found is that you need to have independence, you need to be outside the

management hierarchy in order to have flexibility and sort of fashioning solutions that are allowing us to do our job. Impartiality is the same, confidentiality is the same, and informality is also important, so you know while there is sort of a legal framework that we have to use to adhere to those principles it is ... I have found that adhering to them actually makes practical difference in our work. So I guess the principles are there for a reason and the longer that I practice, the more I uncover what those reasons are.

The speaker above lists values often identified by practicing ombudspersons such as independence, confidentiality and impartiality and the *perceptions* of these ideas. It is significant the order in which they come to mind. Independence from the hierarchy is mentioned first in the context of being allowed to do one's job. It allows the expression of another practical value: flexibility. The ethical principles of impartiality and confidentiality are then added but not expanded upon to the same extent. In the United States, the idea of informality is often cited as a principle (as it is here). This may be more a style of practice, or, on the other hand it may refer to a key method of facilitating the visitor's voice in contrast with the more formal genres of official speech. The next speaker also picks up on the principle of independence as foundational for ombudsing and refers to it as needing to be structured into the job from the beginning.

1-11: Yes, the original statute was amended in 2009 and brought up to date. That is the current operating statute; it's called the ombudsman statute. It defines the role and function of the ombudsman in relation to a range of tasks. Also, and this is an indication of independence, it indicates in detail that my office must be physically separate from the administrative offices of the university government. I have to be in a different building from the senior faculty of the university; visible independence.



This speaker talks about the statute that defines the ombuds role and function. We saw in chapter three a number of important approaches to the idea of independence, as stressed by Oosting (2009). This speaker highlights the idea of independence as a physical manifestation and uses the interesting phrase of “visible independence.” He highlights this idea by noting that, “The office must be physically separate from the administrative offices of the university government and a separate building from the senior faculty.” In other words the discourse principle must be actualized as a literal architectural, as well as symbolic, structure. Another speaker agrees without going as far as referring to building structures.

I-12: Yeah, definitely, definitely. You have to be independent, you have to be confidential, and this kind of – sometimes in some – some relations, it’s in university, are more or less specified. You know the ones I haven’t specified, but all assume that we have to cope with these principles.

Here, two concepts of independence and confidentiality are mentioned almost in the same breath, suggesting that the observing of confidentiality is necessary as a piece of positioning that enables independence. It is a practice of independence. The speaker above also extends the talk about the importance of being independent from the placement of offices to independence to relations within the university. The implication is that ombuds should avoid building close relations with others in the institution. The speaker also notes the need for confidentiality as closely linked with independence. For the next speaker independence is also critical but the lists around it are slightly different.

I-9: ... in building the scheme we set out what are its core principles building from the Rules. We have to have clarity of purpose, independence, we must be impartial between

the parties, we have to be proportionate in everything that we do. And we must also be accessible, flexible, transparent, efficient and effective.

According to the speaker above, the core principles include “clarity of purpose.” The speaker above talks about “core” principles of ombudsing which may be found consistently in the historical literature such as independence and impartiality, but this time articulates some that are not as frequently identified. For example, clarity of purpose, being proportionate, flexible and efficient are likely to provide value to the operations, but these are not consistently enumerated in the dominant ombudsing discourses across borders. Being proportionate suggests something about demonstrating respect in practice for both those in positions of authority and for the concerns of ordinary citizens (and keeping both groups onside). It is about performing a balancing act in responses to issues. The interviews were especially helpful as they indicated the richness of principles – some are constant, some are evolving worldwide.

I-8: Yes. We take – part of what we do are the six core ombudsman principles, which are around accessibility, accountability, efficiency, effectiveness – and now -- you know, whenever you say six there are always – there is always one or two you miss out so – impartiality, and I think it is fairness – I think it is the last one. But, on top of that, we have some internal values around respect, integrity, and adaptability.

While four core principles are often listed in United States organizational ombudsing, the speaker above articulates six core principles. And, in addition, the speaker raises other valuable operative principles: “respect, integrity, and adaptability.”

Independence serves as one of the essential key genealogical traces in over two hundred years of ombudsing. The importance of independence was mentioned in every interview for this study. It was pivotal to the parliamentary office created in 1809 and it is a pivotal principle today

in separating the ombuds office from the governing base of power. Perhaps being “proportionate,” if it were elaborated further, might also contain an allusion to positioning oneself between those who govern and those who are governed. It suggests more than an initial structuring of the role and alludes to the decisions that a person makes in the role also contributing to the social construction of the independence. But social constructs can be improved upon. Ideas of clarity of purpose, efficiency and effectiveness and other key factors may be worth further discussion as means to strengthen the office as it continues to grow.

The speaker below articulates the thought behind the practice:

I-9: In the last few years, as well as cherishing the special features of higher education (particularly the sovereignty of academic judgment) we have thought very carefully about how a generic ombudsman operates. We have reflected on the ways in which we need the same practices as generic ombudsmen and the ways in which we are different. Just to give you one example, a few years ago the agency did not publish decisions by name of university. We had an annual report in which we described a number of anonymous case studies. These were always very popular to read. People wanted to know how their own universities were doing. But this seemed to me to be not in tune with the rest of the ombudsman sector, certainly in [*country*] but also outside of [*country*], where colleagues published findings in terms of naming the university but not the complainants. And one of the problems that we had is that although universities are good about abiding by our adjudication recommendations, there’s an issue of trust for student complainants.

Students have been quite skeptical about whether or not we are an independent body, separate from universities. We are, but we’ve done research to show that quite a lot of students, too many, have believed in the past that we were ‘in the pockets’ of the

universities, which of course we're not. We thought carefully about this and consulted widely. We decided that as many of our ombudsman counterparts published decisions giving details of the performance of the regulated body, we should do the same. That is designed to reassure the public and student complainants that we're playing it absolutely impartially and independently. We changed our rules in to enable us to be transparent and make universities more accountable.

The quotation above speaks to the careful thought, the careful construction of the role in this setting. The speaker raises the very important issues of trust and skepticism around independence and the need to address that in order to build trust for the role. This idea is foundational to the success and legitimization of ombudsing. The speaker also notes the ability to address these issues and strengthen the office.

The section above helps to highlight pivotal ideas in the discourses on ombudsing. In the literature, core ideas of independence and integrity are key principles (Oosting, 2009). In the interviews these key principles are often stated. The necessity of "independence" arose in every interview. But here, the value of those principles in practice emerges. It is more than about professional ethical standards. It is also a matter of positioning in the relations between the governing and the governed. In addition, other principles surface as well such as clarity of purpose, accessibility and efficiency, providing a broader understanding to framing both this positioning and the practices which express it.

#### **5.4 Summary of the findings**

This chapter presents the results of the interviews, contemplating key discourses and themes in ombudsing in the words of the practitioners. If discourses are "practices which form the objects of which they speak" (Foucault, 1972, p.49) then the discourses in which the

practices are spoken about are critical to the forming of the roles and functions of ombudsing. The discourses represented in this chapter were derived from an examination of the data using seven questions to interrogate what participants had said. These were not the questions asked in the interviews but were generated later to ask myself what the interview responses might mean. What emerged in response to these questions were some themes that illuminate the role that discourses play in the social construction of the work of the ombudsperson – for example concepts that recurred through the interviews. But perhaps more importantly, there were some conceptualizations of the process of positioning oneself in relation to the discourses that flow through relations between ordinary citizens and those who govern them. These are less easily named as particular discourses and more easily described as discourse processes, or tools for thinking about and making sense of a range of discourses. The following is a brief summary of what arose.

**1) Concepts ombuds use to describe their work and the discourses they employ**

Ombudspersons use a variety of concepts to describe their approach to the work and some of these concepts included ideas of grievance, dispute and complaint resolution. Some practitioners also used terms of conflict resolution, exploring issues, exploring options and other practices. There is a variety in the descriptions. It was tempting to understand grievance resolution as restricted to the discourse of “classical practices” and conflict resolution as restricted to the discourse of “organizational or industry” practices. But as one participant articulated, “Our office is working as an intermediary for people who do not have enough voice or the right channels to speak up for themselves.” In other words what was more important was not the competition between the classical and organizational discourses but the value in either case of taking up the position of

intermediary in discursive relations between people who are embroiled in a power relation.

**2) How ombuds think about what they are doing and discourses that shape their work**

This section looked at other orders of discourse within which ombudsing is situated. The speakers echoed traces of legal, administrative and management discourses in describing their work. It may appear then that these discourses were determining of what could be said. But again what participants' comments seemed to illuminate more sharply was the significance of discursive channels through institutional practices. For example, two ombudspersons spoke specifically about these institutional channels. These may include administrative procedures, legal or managerial channels. The concept of channels is potentially important to the conceptualization of ombudsing, because it suggests identifying a territory of interaction where various things can happen. The section helped shed light on both how ombudspersons are reflecting on their work, and the means of navigating some of the institutional discourses along these channels.

**3) Problems of government in a democratic society and power relations**

This section examined ideas to better understand how the ombuds practitioner speaks to or within larger orders of discourse such as democracy, and problems of government. Some speakers noted that working in the middle, between the governed and the governing. In the responses in this section there are examples of some of the struggles and difficulties that good government encounters and the ways that ombuds are called into these relational problems in particular contexts. This is more a discursive field than it is a particular discourse in itself. There are ideas of statutory protection for populations in

ombuds acts and legislation that articulates the role of the ombuds. And critically, we start to see ideas of risk and lack of safety emerging in the dialogues.

#### **4) Problems that ordinary people have in their relations with government**

This section focused on what the participants said about the problems that ordinary people, rather than those in power, have in their relations with government. While there are democratic ideals, administration and bureaucracy on the ground have different and challenging manifestations. This is true whether in the democracy of public governance, or for democratic citizens working within institutional governance systems. This category considered populations of vulnerable people, including those who might be more susceptible than most to the workings of power and issues that ordinary people have in their dealings with those who govern such as the struggles and the ways that ombuds are called into these relational problems in particular contexts. In this category, ideas of risk, safety and vulnerable populations become more explicit in the discourses. This is a significant finding, as it helps surface what appears to be widespread fear of speaking up in institutions. Consciousness of risk may often in itself indicate the usual flow of power in a particular relation and the role of the ombudsperson in protecting the channel through which those at risk might have a chance to speak is an important function of democratic government.

#### **5) The discursive positioning of ombuds and responses**

This section looked at the discursive positioning of the ombuds and looked for evidence, if any, of the tensions and conflicts that ombuds feel. It looked at places where ombudspersons may feel pulled by the governed or by the governing (governors). Many offices and nearly all of the participants interviewed provide reports to the community

and top level of the institutions. These reports provide feedback to the governing on issues raised to the ombuds office. At the same time, they protect the confidentiality and anonymity of those raising the complaints and concerns. This section considered the discursive positioning of ombuds officers and some of the unique aspects of the office, such as providing a safe place for speaking up. In this section there is discussion of roles and abilities and the work of the ombuds practitioners striving to position themselves between or in the middle of the governed and the governing. There is an underlying current, rising in this section, of issues of risk and safety and the danger of retaliation of those who want to speak up. In this section we begin to see more clearly the need for the ombudsperson to position themselves independently and in a different way from other institutional positions to allow for greater safety in speaking up.

#### **6) Who ombuds see themselves as serving in the power relations**

This section explored the idea of whom ombuds sees themselves as serving.

Ombudspersons are situated within institutional power relations. Their mandate may be spelled out the discursive text of a charter, a government act or terms of reference which explicitly state the populations to be served. Sometimes there is a brief memo that outlines the office. In all cases, ombudspersons may need to interpret the breadth of whom they serve and there is always the need to make sense of official documents in daily practice. We learn that the participants in this study are conscious of serving a variety of populations, from the citizens within a country, to staff within an organization. Some serve all the students in a nation and some serve the students in a college, some serve staff scientists. While the mandates may be detailed in a charter or legislative act,



sometimes there is broad interpretation as to who may be served. In the end, one participant noted, “We don’t turn anyone away.”

#### **7) Key values and principles that ombuds hold.**

In this section we began to see more clearly the identified values and principles key to the development and practice of the ombuds role. This section examined how the concepts and practices mentioned in the other six categories help ombuds do their work to carve out a position for themselves in the relationships of government. As we saw, issues of fear and risk were articulated by ombuds in describing the concerns of visitors who come to their offices. In order to create a safe place for ordinary citizens, key values like striving for independence from the practice of power relations is vital to the existence of ombudsing. This section noted principles that need to be emphasized in official documents, and embodied in the transfer of the office to new contexts, including delineations of structural and functional independence. This section also considers why these values and principles are important because they help construct the practice in critical ways to provide safety for those who visit the office. These principles are expressed on the ground, in the aspirations toward good administration and toward providing the governed with the opportunity to have a voice which they represent, and the challenges these values or principles may engender.

### **5.5 Reflections on the interviews**

The interviews with practicing ombudspersons were rich in content and magnitude. Not all the information could be explicitly included, but the interviews were exceptionally educational. As I reflected on the research process, however, I felt that something was hard to convey in the written dissertation. I realize now, that it is the rich dimensionality of the

experiences. In contacting and interviewing the participants, I had the opportunity to reach out to many corners of the world. Through email, phone, in-person and Skype interviews I worked to communicate while mindful of my cultural background and to honor the cultural backgrounds and influences of those participating. Some aspects of the interviews are not easily conveyed. These include: our shared interests and concerns in the topics; the sounds of our voices constructing meaning through dialogue; laughter; body language and attempts to clarify and engage and understand. These interviews provided me with a rich research experience that I will treasure and hold onto; long after the dissertation is done.

## **5.6 Conclusion**

In summation, this chapter looked at discourses that were found in interviews with practicing ombudspersons. In the context of the social problem of governance and power relations, I found some discourses that were prominent in the relations that citizens have with government in the context of ombudsing practices. Risk and issues of safety were surfaced in the dangers of speaking up, in the dangers of speaking truth to power. In this chapter we saw similarities and divergences in how ombuds describe their work and whom they see themselves as serving. Interesting things surfaced in these discourses such as some sophisticated interplay of language, sometimes expressed in differences of nuance and idiom between countries. For example, in Commonwealth countries, participants talked about accessibility and good administration as key principles, in addition to independence and confidentiality. Ideas of spirituality and compassion were raised as culturally important in other countries and in the United States by some practitioners. While English was the dominant language for the study, there were ideas that may have shifted in translation. But while participants used words of dispute, grievance, conflict, issue and complaint resolution, we do not have clear articulation on

the similarities and differences and interpretations of these often closely related ideas. Another example of the interplay of language is with some of the principles. For example, independence and confidentiality are sometimes listed as separate principles, but confidentiality may allow for the practice of independence on the part of a visitor. Finally, we saw the themes of key values and principles arising again and again in defining the work and the positioning of the ombuds practitioners. Primary among these is the striving to create an independent position for the ombuds outside the traditional, habitualized and often problematic processes of those steering the boat. Confidentiality, impartiality and accessibility were other principles noted in practice. In many ways, the interviews reinforced the importance of some key principles that had been raised in the early literature on ombudsing. But regardless of the sector in which the participants practice, they referred cogently and consistently to the role of governance and the ombuds practice in relation to that role. Overall, the interviews gave illumination into the complex navigating of ombuds practitioners in institutional and societal discourses. In the next chapter we summarize and conclude this research study as a whole.

# Chapter 6:

## Conclusion - Navigating discursive channels

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### 6.1 Introduction to the conclusion

Ombudsing aims to provide a means to safely facilitate and legitimize the voice of ordinary people. From its traces in ancient history (Kracke, 1976) to its present form of practice, ombudsing has carried traces of the principles of good governance, and of providing a channel for legitimizing the voice for the ordinary citizen while providing valuable feedback to the governing. While ombudsing emanated from traditional systems of governance, governing is not limited to the public sphere. People struggle with the risks of power relations, day-to-day, in all sectors. Ombudsing has emerged in the social and private sectors, within corporate, university, non-profit and other governing systems. The growth of ombudsing in other sectors is not a superficial development. It is a very real attempt to legitimize the voice of those being governed. As Foucault notes (2000):

... the most intense point of a life, the point where its energy is concentrated, is where it comes against power, struggles with it, attempts to use its forces, and to evade its traps. (p. 162).

Foucault's quotation describes the experience of intensity when people risk interactions with power. It resonates with my experience and my motivation in writing this dissertation. I set out to better understand key aspects in the growth of international ombudsing by analyzing the literature and by interviewing practicing ombudspersons across sectors and across geographical borders. While much of the existing literature examined ombudsing from traditional political science or public administrative perspectives, this study sought to consider the ombudsperson in

relation to the social construction of systems of governance across the countries and sectors, through an interdisciplinary lens. From a theoretical basis of social constructionism, the study utilized a discourse analysis method to examine the responses of participants as they described their ombudsing practice. This approach made visible the ways in which the practices were being constructed within institutional discourses and in the context of power relations.

While there were notable differences in how the ombudspersons described their situations and their favored practices, there were also important shared principles and ideas that participants considered critical to the effective functioning of the role. It is my contention that the professional dialogue should pay attention to the voices of these practitioners and continue to develop conversation about the similarities and variations in practice to which that they speak to.

As a result of the analysis developed here, I also want to propose that the practice of ombudsing can benefit from using some relational constructionist concepts to make sense of what ombuds do. This includes first of all thinking about the field in which ombudsing happens as a field in which power relations are being worked out, as Michel Foucault has articulated. He showed how power in the modern world is commonly based on discourse. In the domain of relations in which ombuds seek to practice, power can be based on a variety of discourses but these situations most commonly amount to the power relations that are formed between, on the one hand, those who govern, administer the processes of government, make decisions, and implement policy and, on the other hand, the ordinary citizen whose life is affected by these actions. When this citizen feels wrongly treated, or believes that a policy is mistakenly applied or that a decision has been badly conceived, he or she often seeks some form of redress.

But the weight of force behind the voice of those who govern is often too strong for the ordinary person to compete with. Redress is not easily found and the voice of those with little

access to power is easily cast aside. Persons in such situations often feel helpless and without an effective voice. What is needed is a channel in which the voice of the ordinary person is constituted as an agentic voice. To carry any weight and to have his or her concerns heard and recognized, this person's speaking needs to be made legitimate, to be granted legitimacy. Legitimacy does not have to mean that a person with a concern to express is always right and justified but it does mean that one has the right to speak and be heard.

The office of the ombudsperson can be thought of as a site where such legitimacy is produced. As Foucault argues, it is through such a process of production that a citizen becomes not just a subjected subject but a subject with a voice, a right to speak. It is a site where a person who has a sense of being wronged can become recognized as a person with a grievance or a complaint, a person with a legitimate voice.

If we conceptualize the role of the ombudsperson in this way, we can start to think of the work that ombudspersons do as navigating power relations between the governed and the governing and setting a course among the sea of discourses in which these relations float. Foucault has argued that power is not so much held by individuals as it is constructed in relations between people. What we have seen is that ombudspersons who are doing their work ensure that the power that is constructed in relations between those who govern and those who are governed is at least a little more balanced. The flow of force is at least two-directional. This happens because the ombuds office exists as a channel in which such power relations are navigated differently than would be likely to happen without such intervention. Just how ombudspersons speak about doing this work is what this chapter will summarize and underline the key findings advanced by participants in this study. But this study has not been exhaustive and it is therefore

necessary to consider the limitations on what has been found and to make recommendations for further research.

## **6.2 Summary of the study**

This study examined the following foundational research question: What is the problematic for which the practice of ombudsing is constructed as the answer and how do practicing ombudspersons address it? The spread of ombudsing across sectors may be related to the existence of systems of governance throughout all sectors and is illuminated by Foucault's notion of governmentality – the pervasive manner in which we govern others and ourselves. There is a need for a safe space for ordinary citizens to bring concerns and a need for the governed to receive constructive feedback. The study looked at the subject from a theoretical position of social constructionism, which prioritizes the role of language and the material effects of language. In addition, the study adopted a Foucauldian perspective, considering both the pervasiveness of governmentality and the role of power relations. I inquired into the development of ombudsing through interviews with practicing ombudspersons and examined key ideas in the discourses through which they spoke about their work. Finally, this study explored the idea of discursive spaces and ways in which ombudspersons can navigate through these spaces in their work. Narrative mediation is a means of considering multiple viewpoints and is a particularly promising technological aid to navigation. This section summarizes five key themes which arose in the study. These include: governmentality, *parresia*, discursive spaces, discursive channels and narrative mediation.

### **Development of ombudsing**

The overall emphasis of this study was on the development of ombudsing. I have reviewed the history and Swedish origins of the practice, the international spread, the spread

across sectors, the role development and noted key concepts in ombudsing. These key concepts included include: independence, confidentiality, accessibility, neutrality and others.

### **Theoretical foundation and important concepts**

I looked at ombudsing through the lens of relational constructionism, which centers interpersonal relations and the co-construction of meaning through discourse. In the ombudsing literature and interviews with practitioners, important concepts surfaced. These included: the power relations between the governed and the governing, theories of governance and institutionalization. These important concepts also included the value of creating a safe place for *parresia*. Finally, narrative mediation was identified as a valuable process for navigating institutional and interpersonal discourses.

### **Particular theoretical ideas**

This study examined discourse theory and argued for the intentional focus on some key ideas of discourse such as discursive spaces and discursive channels. It is proposed that ombudspersons may be situated in such a way as to have a broad institutional perspective and therefore may benefit from thinking about their work as helping visitors to the office navigate discursive channels and as identifying new discursive spaces to improve administration and channels of communication.

***Governmentality.*** In a 1979 lecture at the College de France, Foucault examined the concept of “governmentality” (Foucault, 1991) as a part of an analysis of practices and procedures of governmentality. He examines the historical development of writings on what he calls “the art of government” and its pervasiveness in human society. He discusses four types of government, beginning with familiar ideas of sovereign governance and then discusses three other types of governance. He notes:



Government as a general problem seems to me to explode in the sixteenth century, posed by discussions of quite diverse questions. One has, for example the question of the *government of oneself*, that ritualization of the problem of personal conduct which is characteristic of the sixteenth century Stoic revival. There is the problem too of the *government of souls and lives*, the entire theme of Catholic and Protestant pastoral doctrine. There is the *government of children* and the great problematic of pedagogy, which emerges and develops during the sixteenth century. And, perhaps only as the last of these questions to be taken up, there is the *government of the state* by the prince.

(p. 87)

Then Foucault considers the following:

How to govern oneself, how to be governed, how to govern others, by whom the people will accept being governed, how to become the best possible governor... how to be ruled, how strictly by whom, to what end, by what methods, etc. There is a problematic of government in general. (p. 87-88)

In this lecture, Foucault identifies and analyzes key historical writings on power and government and considers the emergence of power and government. He coins the term “governmentality” and defines it as follows:

1. The ensemble formed by the institutions, procedures, analyses and reflections, the calculations and tactics that allow the exercise of this very specific albeit complex form of power which has as its target population, as its principle form of knowledge political economy and its essential technical means apparatuses of security.
2. The tendency which, over a long period and throughout the West, has steadily led towards the pre-eminence over all other forms (sovereignty, discipline, etc.) of this

type of power which may be termed government, resulting on the one hand, in the formation of a whole series of specific governmental apparatuses, and, on the other, in the development of a whole complex of savors.

3. The process, or rather the result of the process, through which the state of justice of the Middle Ages, transformed into the administrative state during the fifteenth and sixteenth centuries, gradually becomes 'governmentalized'. (p. 102-103)

Foucault helps to shift discourses of power away from a “general Theory of Power (with all the capital letters) or from explanations in terms of Domination in general... and in trying instead to bring out the history and analysis of procedures and technologies of governmentality.” (Foucault, 2008, p. 42) The ideas of governmentality are relevant to this study because they are woven into our daily power relations as people struggle with institutional practices of governmentality.

*Parresia.* In a series of lectures in 1983, Foucault further examined what he calls “the problem of the government of self and others” and further consideration of institutional practices. He introduces the notion of parresia or “free spokenness.” (Foucault, 2008) Parresia is a means of speaking the truth without use of rhetorical devices. The notion of parresia has roots in Ancient Greece with the emergence of democracy. Foucault analyzes what he calls “the pragmatics of the subject and techniques of the self” and considers the role of “truth telling” (p. 42). Specifically he looks at:

... how truth-telling, the obligation and possibilities of telling the truth in procedures of government can show how the individual is constituted as subject in the relationship to self and the relationship to others. This is what I would like to say something about this year: truth telling in procedures of government and the constitution of (an) individual as

subject for himself and for others... (and) this rather interesting notion of parresia. One of the original meanings of the Greek word parresia is to “say everything,” but in fact it is much more frequently translated as free-spokenness (franc-parler), free speech, etcetera. You recall that this notion of parresia, which was important in practices of spiritual direction, was a rich, ambiguous, and difficult notion, particularly insofar as it designated a virtue, a quality (some people have parresia and others do not); a duty (one must really be able to demonstrate parresia, especially in certain cases and situations); and a technique, a process (some people know how to use parresia and others do not)...

We saw that this art of oneself required a relationship to the other. In other words: one cannot attend to oneself, take care of oneself, without a relationship to another person.

And the role of this other is precisely to tell the truth, to tell the whole truth, or at any rate to tell all the truth that is necessary, and to tell it in a certain form which is precisely parresia, which once again is translated as free-spokenness (francparler). (p. 42-43)

In this series of lectures, Foucault deeply considers the development of parresia and its historical formation. He analyzes the role of parresia and democracy and notes that:

... the power exercised in parresia must never be the power of just one person. For there to be parresia, there must be a joust between different persons, it must not be monarchical or tyrannical power but there must be people who are the most influential, those in the front rank. (p. 176)

Embedded in the notion of parresia is that there is something to say, something which must be said, though “those in the front rank” may not wish to hear it. Also embedded in the notion of parresia are the risks and dangers of speaking up. Foucault talks at length about the risk of parresia:

You see the problem of risk appearing here, the problem of courage, and the problem of what will take place between the person who won the decision and the people who followed him. It is this game of risk danger, and courage which is indicated here, with, if you like, this parresiastic pact ... I tell you the truth; if you so wish, you will go along with it; but if you go along with it, bear in mind that you will show solidarity whatever the consequences may be, and that I will not be the sole person responsible for them.

(p. 176)

Parresia can be a valuable means of feedback and have the effect of strengthening democracy.

Foucault:

... Pericles refers, if you like, to the great circuit, the great trajectory of parresia I have been talking about, in which, on the basis of a democratic structure, a legitimate ascendancy exercised through a true discourse, and by someone with the courage to assert this true discourse, actually ensures that the city will take the best decisions for all. This then is what one will be able to call democracy. All in all, democracy is this game based on a democratic constitution, in the strict sense of the term, which defines an equal status for everyone. The circuit of parresia: ascendancy, true discourse, courage, and, as a result, formulation and acceptance of a general interest. This is the great circuit of democracy, the politeia/parresia connection. (p. 178)

Parresia is relevant to this study in the following ways. Citizens in public, private and social institutional settings, engaged in difficult power relations, may have something to say. It may be a complaint. It may be a grievance in policy matters. It may be a conflict or a concern. But facilitating a means of parresia can allow a person both to speak a truth, and provide

feedback to the governing. Given the risk, given the dangers of reprisal and retribution, a safe space for discourse is imperative.

*Discursive space and discursive channels.* One of the genealogical traces of ombudsing is the idea of independence. Ombudspersons strive to position themselves in ways that are independent from the forces of power. In some ways it may be said that they create a discursive space between the governed and the governing. The notion of discursive spaces provides hopeful possibilities for reconstructing and reconstituting dialogues, discourses and relational interactions. For the purposes of this study, the phrase “discursive space” is intentionally broad in order to frame it as an area of possibility. It may be said to be a combination of two fairly unbounded words. Nakayama and Krizek (1995) discuss the value of such “spacial metaphors.” Flores (1996) writes about deliberately creating discursive spaces through: “a rhetoric of difference which allows a marginalized group to reverse existing and external definitions and create their own definitions.” Ombudspersons may be able to identify such marginalized groups and create discursive spaces to enhance dialogue that includes them. As one participant noted: “In practice, the office serves the most vulnerable in the community these days and so we therefore have a real interest in the way that government programs are affecting for example indigenous people.” The voices of indigenous populations are often at risk of being marginalized and may be re-centered through ombudsing programs.

There may be much variety in the idea of discursive spaces – it is part of the utility of the concept to allow for infinite creations of dialogic possibility. But overall, discursive spaces may be described as a means of creating discursive room for non-dominant discourses as suggested above.

In helping to give voice to those who come to the ombuds office, the ombudsperson has to facilitate the grievance, complaint, conflict or concern within the institution. This can be approached in a number of ways and may accommodate the differences in ombudsing practices. For example those in the classical model of ombudsing are likely to investigate institutional practices upon receiving a complaint or grievance. University ombudspersons may be likely to help address and mitigate conflict. In either case, the ombudsperson with the visitor may need to identify and navigate institutional channels, such as administrative and legal channels. As one speaker noted, “I know a lot of administrators, and working those channels is how things get resolved.”

In addition, the ombudsperson may find utility in navigating diplomatic practices to resolving issues. Participants cited a variety of practices including complaint resolution and conflict resolution. As one participant put it, “I guess it’s both conflict resolution and complaint handling on the one side.” Another participant noted, “We help the staff member explore options, and usually in that exploration of options there is an informal conflict resolution component.” There was thus a strong mandate in the participants’ responses for an emphasis on conflict resolution processes in ombudsing. There are, however, different ways to approach conflict resolution. More than other approaches to conflict resolution, narrative mediation is explicitly founded in discourse theory and, therefore, seems well-suited to facilitating a course through conflicting stories.

***Narrative Mediation.*** The narrative approach to mediation (Winslade & Monk, 2008) provides a helpful means of formally and informally navigating discursive channels. It is a thoughtful means of navigating discursive differences. Rooted in intercultural narrative practices developed in New Zealand, the narrative approach to mediation takes a different approach from

the commonly used interest-based mediation, and follows a stream of storying conflict, helping participants move from stories of restraint to stories of hope. This process can be valuable for ombuds practitioners navigating complex institutional power relations and practices.

Winslade and Monk describe their work in the following manner (2002):

The narrative perspective involves a simple and yet profound departure from commonly held assumptions about the conflicts that embroil people. It proposes that people live their lives according to stories, rather than according to inner drives or interests. It privileges stories and the meanings within stories over facts and causes. In the stories, we seek to establish coherence for ourselves and produce lives, careers, relationships and communities. Therefore, when we work with people to overcome the divisiveness of a conflict, we find it more productive to work with the stories in which the conflict is embedded than to pursue objective reality.

Stories are, of course, socially and culturally constructed. Moreover, stories that come to dominate over other stories are complicit in the creation of power in social relations. Working from a narrative perspective places the cultural world, and power relations within it, at the centre of the process of mediation rather than as an afterthought on the outside. In this article, we shall describe the goals of narrative mediation, the relational context in which we seek to work with people, and the specific practices that grow from a narrative perspective. (p. 1)

They cite the goals of narrative mediation as follows:

In a problem-solving approach, the goal is the formulation of an agreement that solves the problem. This is the fabled win/win solution that satisfies the interests of the disputing parties (Fisher & Ury, 1981). Advocates of the transformative approach have

questioned the instrumentalism involved in a reliance on reaching agreements as the primary goal of mediation (Folger & Bush, 1994). They urge the inclusion of more intangible goals such as improved understanding or communication, making people better human beings, and social transformation through improved relationships.

From a narrative perspective, goals need to be formulated in terms of narrative trajectory and discursive shifts. We would suggest three goals for a narrative mediator to bear in mind: a) the creation of the relational conditions for the growth of an alternative story; b) building a story of relationship that is incompatible with the continuing dominance of the conflict; and c) opening space for people to make discursive shifts. (p. 2)

Narrative mediation is attractive as a method because it explicitly focuses on the kind of power relations that ombuds must take into account. Moreover it also intentionally honors differences in discourse and in world view. The narrative mediation approach is relevant to this study because it provides a practical means to navigate discursive channels.

### **6.3 Synthesis of findings**

The main empirical findings were examined in chapter five. This section below will synthesize the empirical findings to answer the study's thesis question and research questions. This section looks at the findings, drawn from the discourses of practicing ombudsperson. Their discourses are key to understanding how ombudsing is operationalized. The study found interesting patterns and themes arising from the interviews. Some key findings in the interviews were as follows:

#### **1. Styles of practice**

In commencing the study, I had questions about how ombudspersons approached their practice. The literature suggests that those who practice in the classical model investigate



complaints and grievances, while those in other practices stick to complaint resolution. The findings suggest that there are a range of approaches including grievance, complaint, dispute and conflict resolution. In addition, other descriptions of practice arose. Some ombudspersons assist with exploring options and discussion issues. One participant said, “We are a place where any staff member can voice a concern.” The approaches suggested greater breadth of practice, rather than simple division between the practices associated with the classical model and those associated with newer fields of practice. For example, even some participants whose practice may be described as “classical” are finding areas where their work may be described as dispute resolution in addition to complaint resolution. As one such participant noted: “I think a lot of what we are doing in the triage area, and a lot of what we are doing in early resolution is Dispute Resolution. I do not shy away from that description. Although our mandate prescribes our role as “investigating” matters, I do not see personally, why that should exclude our looking at alternative Dispute Resolution mechanisms. I think that some of our colleagues have been rather purist in the past in their interpretation of the Ombudsman’s role in this regard.”

One thing that remains unclear is how these often similar terms are defined and distinguished. I believe that the field as a whole needs to work on these distinctions without ruling out any mode of practice as unsuited to “pure” ombudsing. While actions in practice may diverge, for example classical ombudspersons generally investigate complaints, and some organizational ombudspersons address issues for conflict resolution, most ombudspersons provide a means to give voice to visitors. It is this purpose that unifies the field rather than any single mode of practice. As noted earlier one participant articulated succinctly, “Our office is working as an intermediary for people who do not have enough voice or the right channels to speak up for themselves.”

## 2. Issues of governance, democracy and safety

A critical finding in the interviews was the repeated reiteration of concern about the issue of safety. Themes began to surface regularly across the interviews related to issues of safety. Participants spoke of visitors as expressing a sense of risk, of fear, and they spoke of their own work as assisting vulnerable populations. They referred to fear of retaliation. This concern on the part of citizens is central both to the existence of the ombuds office and to the foundational ideas that shape the role. Participants identified some of the issues that come with power relations, such as “hierarchy management.” They also mentioned the very real fears of “...anybody within the university or outside who believes they have knowledge of malpractice but who fears that they might be punished in some way if they divulge that information.”

The interviews indicated the prevalence of such fear and sense of risk for those who have institutional concerns. For example, one participant noted:

For our graduate students I would say most of them are relationship issues so they become quite complex, the level of risk I think increases quite a bit for our graduate students. They work very closely with their supervisors, they feel often unsafe in coming forward, because they are wanting to get a good letter of reference in their graduate program.

This sense of risk suggests the importance of thinking in terms of *parresia*, of speaking freely in situations where there is danger in speaking up. By providing safety and legitimacy to complaints, grievances and concerns, ombudsing can help create a safe space for voice and can ensure that the link between *parresia* and democracy is maintained. It became clearer in the analysis of the data that these “relationship issues” are often not relations of equals but fall generally in the context of power relations. Shaping the office, therefore, in such a way as to

increase safety for visitors is a priority. The key principles in ombudsing (independence, confidentiality, and so on) need to be thought of as more than ethical niceties. They are a critical means, we might even call them technologies, for keeping open discursive channels, because they help provide a safe means to facilitate voice for ordinary citizens.

### **3. Key principles in ombudsing**

The literature of ombudsing suggested key ideas that have developed as cornerstones in the field of ombudsing. These concepts are key to increasing safety for those who come to the office. The primary principle is that of independence. This idea is articulated throughout the ombudsing literature. It also arose as a consistent theme in the interviews. Ombudspersons strive to maintain independence from the power relations. As one participant stated:

What I have found is that you need to have independence, you need to be outside the management hierarchy in order to have flexibility and sort of fashioning solutions that are allowing us to do our job. Impartiality is the same, confidentiality is the same, and informality is also important, so you know while there is sort of a legal framework that we have to use to adhere to those principles ... I have found that adhering to them actually makes practical difference in our work.

These principles are not merely personal ethics for the ombudsperson. They are critical because they help to create a safe space for citizens to have voice. Ombudspersons need to be positioned in between the governed and the governing in order to provide safety for speaking up.

Ombudspersons can also construct discursive channels by identifying new areas of discourse or they can help clarify existing channels such as administrative procedures, making it possible to navigate a way through the power relations.

But the interviews also illuminated some of the challenges in this area. One participant noted the pull between the definition of a safe place to raise concerns and pressures on the ombuds to report misconduct to the governing powers. The speaker stated:

... the ombuds office is mentioned formally in one of our policies I believe it is the ethical conduct policy where the ombuds office is a place where people can go ... to report research misconduct. Which really then I'm just a conduit to our research integrity officer if there is research misconduct going on. And if the person coming to my office doesn't report that then I have a duty to report it. I haven't had to do that so far. We have several ways to report research misconduct and one is through an anonymous web site or an anonymous telephone call a 1-800 number that's a company that handles this kind of thing and so that's kind of one of the safest ways for a person who is really concerned about retaliation which technically shouldn't happen so yeah that's it was mostly having to do with reporting research misconduct in terms of policy (agency X) has where misconduct is reported is listed in policy.

Another important principle which emerged was confidentiality. Confidentiality also is best understood in terms of increasing safety. If a person feels that they can confidentially raise complaints and concerns, the fear of retribution and reprisal can diminish. One participant noted:

I guess the key cornerstones for our clientele which are the students... confidentiality seems to be the most important ... the risk factor for them is so high that's what we have to consider, that whatever they talk to us about is confidential and then after that we confirm that we are independent, that we don't take sides, we are not neutral but we are impartial and that we will pursue as many informal pathways to support them in the resolution of their concern or their challenge.

Other valuable principles raised by practitioners included accessibility, efficiency and effectiveness. One participant articulated six core ombudsman principles and also added: “But, on top of that, we have some internal values around respect, integrity, and adaptability.”

These principles all constitute defining ideas. If the office is to address the complaints and concerns of citizens, these principles provide additional strength and leverage.

Giving voice to citizens is a foundational democratic idea. This category seemed vital to an understanding and practice of ombudsing. Terms such as confidentiality and neutrality came up frequently in the interviews. But as the interviews expanded around the world, other principles were also identified, such as accessibility. Nonetheless, it may be said that across the interviews and the literature, the primary defining principle remained independence. This was identified in all the interviews. As one practitioner put it:

I didn't really talk about independence because it's such a given... it can be harder to demonstrate... but it must be demonstrated.

Key to this category, however, is that the interviews showed the complexity of relations between independence and other principles on the ground. Ombudspersons are well served by vigilance and mindfulness in striving to maintain independence within institutional power relations. As another practitioner noted:

I guess the principles are there for a reason and the longer that I practice, the more I uncover what those reasons are.

#### **6.4 Limitations of the study and recommendations for future research**

The field of ombudsing is likely to continue on its trajectory of growth. Current issues and new streams of thought developing over time will benefit from more research. In the *Cratylus*, Plato notes:

Heraclitus is supposed to say that all things are in motion and nothing at rest; he compares them to the stream of a river, and says that you cannot go into the same water twice. (p. 97)

The dialogue about ombudsing is global and therefore extensive, multicultural and multifaceted at many levels. As noted in the ancient quote above, things are in continual states of flux. From a social constructionist perspective we might say that things are always in process of being constructed. The dialogue on ombudsing and institutional practices will, no doubt, continue to develop. This study has explored how a consideration of the expansion of systems of governance and institutional power relations may benefit the development of ombudsing. I have examined these matters through a review of the existing literature and through eliciting the discourses of practicing ombudspersons. As a consequence of this methodology, the study encountered a number of limitations, which need to be considered. These include the need for more extensive research across sectors to further understand some of the elements of discourse and practice. Research from the point of view of those who use the office would be particularly helpful. It may also be helpful to research the point of view of those in positions of governance and others who interact with the ombudsperson. Finally, it would be helpful to re-visit the framework of the field.

Further development in the theory of responding to conflict between the governed and the governing and more examination of ombudsing in new sectors would be beneficial. There is, in fact, considerable room for more research into the practice of ombudsing in general and fresh research perspectives which may prove valuable to the field of ombudsing are needed.

Research from the point of view of those who use the office would be particularly helpful. It may also be helpful to have research that examines ombudsing from the point of view

of those in positions of governance and other studies into those who interact with the ombudsperson.

Another important area for further exploration is how the ombudsperson can help identify systemic issues. One participant noted, “We can’t just be reacting, and reacting and reacting to students who come in with a problem.” Another participant said:

We have to be working at the systems level, at the proactive and preventative level to fix practices and procedures that may be flawed, to build both students, staff and faculty, their competencies and capacities, to identify a fair process as well as to engage in conflict effectively.

Finally, as ombudsing continues to expand, greater research on how the field is framed in its expansion would prove valuable. A significant implication of the study is that interdisciplinary ideas of governance, power relations and discourse help to frame a shift in the existing discourses on the subject of ombudsing. Continuing to develop this frame would enable new dialogues and perspectives on the field of ombudsing as a whole to emerge.

### **6.5 Navigating discursive channels**

In this study I have explored both theories of discourse in ombudsing and the specific concepts of discursive spaces and discursive channels. A longtime practicing ombudsperson says that people need a “safe harbor.” The ombuds office can ideally provide such a safe harbor from the swirling currents and pounding waves of discourse. Perhaps this concept is a meaningful goal of ombudsing. When a safe harbor is established, an ombudsperson can use it to help visitors navigate the discursive channels within an institution in order to resolve complaints, grievances, conflicts and concerns. The concept of discursive spaces could be developed to describe unexplored areas that can afford new possibilities for moving forward in complex relations.

Discursive spaces could also include places of silence. When provided with a safe place to raise a concern, a visitor may have the opportunity to work with an ombudsperson to help navigate through silence to reconstruct productive dialogue.

Ombudspersons navigate institutional discourses, which are both written and verbal. Many ombudspersons in the classical tradition are tasked with analyzing and following written discourses of policies and procedures, legal and administrative channels. Some ombudspersons may be well positioned to consider discursive spaces and discursive channels. For example, often times marginalized populations are outside of the dominating discourses. Ombudspersons may learn of discriminating policy issues and be able to identify ways of re-constructing institutional dialogues through policy recommendations or through dialogues to make new spaces for those on the margins. Much of the literature on discursive spaces is related to populations whose voices are often not in the dominating discourses (Flores, 1996; Svendby & Dowling, 2012). In this regard, one promising means of approaching a multiplicity of voices and viewpoints is through the practice of narrative mediation which allows for constructing new stories, both for individuals and for organizations (Winslade & Kure, 2010).

### **6.6 Reflections: Safe harbor and the ability to strengthen the role**

In describing a day's work in prudent navigation, Turpin and McEwan (1980) describe the ten key steps in celestial navigation. Azimuth observation is one of these key steps. Azimuth is a means of affixing points on the horizon for navigation through an analysis of angles. The word has French and Arabic roots (Klein, 1966).

This study, too, was an attempt to navigate a subject through a careful analysis of angles. The goal was to chart a course. And here in the conclusion, is a moment to reflect on key points in the voyage of discovery and learning. As noted above, a longtime ombuds practitioner



describes the ombuds office as a safe harbor. This idea carries the genealogical traces of over two hundred years of history and is worth consideration. Ombudsing can help provide a safe space for voice, a safe space for *parresia* and upward feedback to the governing. For this study, the idea of a safe harbor flows well with the metaphor of navigation. The office can provide a safe harbor for individuals as they work to navigate complex institutional discourses.

As it continues to grow, the practice of ombudsing can be strengthened. With more research and more discussion of practice, we can find ways to clarify and strengthen the role. One example of this is through careful setting up of the office and careful articulation of the role through works of legislation, terms of reference and charters. Recent literature provides many thoughtful and practical approaches to strengthening the role in concept and practice (Howard, 2010; Ziegenfuss & O'Rourke (2011). Resources such as these and other research papers and articles can help improve our understanding of the idea.

And, as one of the participants stated:

That is not to say that from time to time they cannot be updated and modernized. The [Official Act] has recently been the subject of a thorough review by our [Law Committee] and Parliament has not accepted many of the recommendations, because, they say, "If it ain't broke, we do not need to fix it."

If needed, the office can be strengthened, or, perhaps in some areas where it has been well-crafted, it may be effectively functional.

### **6.7 Conclusion of the study**

*The Ombudsman Act, at its heart, is really about process. And it is about human frailty and behavior. (Ombudsperson)*

At its heart, ombudsing is about process, or about human frailty and behavior as noted in the quotation above. It is also about improving relations between the governed and the governing. Whether in systems of public administration or within academic halls of university governance systems, the growth in ombudsing suggests the value of striving to provide a rare, often fair-minded mechanism of protection for the individual with a grievance. While there are other channels of complaint handling and grievance resolution, the careful construction of the ombuds idea provides both a safe place for the individual with a concern or complaint, and a means to confidentially provide feedback to those in power in governing systems. In this study I considered the literature and the voices of the some of the many ombudspersons around the world who are striving to give voice to populations in multiple systems of governance.

The spread of ombudsing around the world speaks to its value as a mechanism of protection for the individual with a grievance. This study explored the role of governance and power relations as a backdrop to the increase in ombudsing. Given that relations and the discourses between us are pivotal to our creation of meaning, I have sought to center social practices rather than structural positions or hierarchies.

Ombuds practitioners work within a number of institutional contexts to provide a safe place for *parresia*, for raising concerns and speaking truth to power. While there were some diverse descriptions of practice, which include grievance and complaint resolution as well as conflict and issue resolution, ombudspersons are often in a position to assist people to navigate institutional channels. Critically, they may be well positioned to identify new spaces for changes in discourse. The careful construction of the ombuds role can enhance this place of safety for citizens to speak up in public and private spheres.

As some of the participants noted, ombudspersons are well placed to navigate institutional channels of communication. But work needs to be done to identify methodologies and conceptual tools that can be useful in practice. Whether in the classical or other models of ombudsing, narrative mediation provides a culturally grounded approach to navigating and re-storying interpersonal and organizational discourses. Narrative mediation provides a helpful means to navigate conflicting and difficult discourses. The literature and research data support the idea that key principles such as independence, confidentiality and neutrality are critical cornerstones to the shaping of the role. In order to provide a safe space for *parresia*, a safe space for lodging complaints, grievances, concerns and conflict, certain aspects of the role must be intentionally constructed. Practices of independence, confidentiality, neutrality, accessibility and other defining principles, can help create the safety needed to mitigate fear, retaliation and other risks of speaking up.

Today, ombudsing continues to grow. The good work, care and concern of the practitioners are integral to the continued and successful growth of international ombudsing. Ombudspersons across the spectrum grapple with the complex issues of their populations. Through dedication to improving administrative practices and providing a means for safely lodging complaints and concerns, they are endeavoring to improve services and quality of life in our complex world.

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# Appendix 1

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## Proposal to Use Human Participants in Research

1. **DATA COLLECTION DATES:** From 10-2011 to 12-2012
2. **PARTICIPANTS** (approximate number and all applicable categories, these are legally protected categories):

Number: 5-15

- |   |  |   |
|---|--|---|
| <input type="checkbox"/> Female                   | <input type="checkbox"/> Male                          | <input type="checkbox"/> Students                 |
| <input type="checkbox"/> Children (17 or younger) | <input type="checkbox"/> Child Development Center      | <input type="checkbox"/> Patients in institutions |
| <input type="checkbox"/> Prisoners                | <input type="checkbox"/> Faculty or external reviewers |   |
| <input type="checkbox"/> Pregnant women           |  |   |

3. **ATTACHMENTS:** All relevant project materials and documents, including
  - Surveys, questionnaires, interview instruments
  - Informed Consent and Assent (if applicable) forms
  - Letters of approval on letterhead from cooperating agencies, schools, boards of education, etc.
  - Debriefing statement or explanation sheet if applicable
  - Participant recruitment materials (e.g., fliers, advertisements)

4. **AFFIRMATION OF COMPLIANCE:**

Note: Investigators or researchers are required to notify any substantive changes to protocol, unanticipated adverse events experienced by participants, and project completion. Consent forms and data must be kept at least three years.

*I agree to follow the procedures outlined herein and to ensure that the rights and welfare of human participants are properly protected. I will commence the study only after receiving approval and having complied with required modifications. I will promptly report additions, changes, or problems involving the rights or welfare of human participants. If the project continues for more than one year from the approval date, I will submit the required documentation.*

*I affirm the accuracy of this application and accept responsibility for the ethical conduct of this research, supervision of human participants, and maintenance of data and informed consent documentation as required.*



Signature of Investigator

E-mail Address

Date

---

Signature of Co-investigator

E-mail Address

Date

**APPROVAL OF FACULTY ADVISOR OR SPONSOR:**

*I affirm the accuracy of this application and accept responsibility for the ethical conduct of research, student supervision, and documentation maintenance.*

Dr. John Winslade

Cal State University San Bernardino; Associate

member of the Taos Institute +1 909 327 8217

---

Printed Name of Faculty Advisor

Affiliation

Phone

jwinslad@csusb.edu

23 Aug 2011

---

Signature of Faculty Advisor

E-mail Address

Date

**5. RECRUITMENT OF PARTICIPANTS:**

Describe sources of potential participants, how they will be selected and recruited, and how and where you will contact them. Include all relevant characteristics with regard to age, ethnicity, sex, institutional status (i.e., patients or prisoners), and general state of physical and mental health.

The following criteria will be considered in selecting participants:

- Global and multicultural representation
- Use the title “ombudsman” or variation
- Practicing a year or more
- Officers in public, private and social sectors.

The following steps will be used to invite participation:

- We will send out email invitation with note that we will follow up by phone
- If they are willing to participate, we will send them informed consent and info sheet, with a request to respond by email or phone by a specific date.
- Then we will follow up to arrange interview time and date

**6. DESCRIPTION OF THE PROJECT:**

Objectives of Study:

Against the background of Government and the French philosopher Michel Foucault’s idea of governmentality, ombudsing provides a rare, often fair-minded mechanism of protection for the individual with a grievance. In Foucault’s terms it embodies the principle of *parresia*. The research in the field is sparse and more inquiry may prove valuable to sharpen the conception of

the role and to develop the efficacy of the practice as it continues to spread. It is my aim to explore the forces that shape modern practice in this valuable office.

My research focuses specifically on addressing the following questions:

What are genealogical traces of the ombuds idea as it moved from Scandinavia around the world and through into modern practices and how and why do those traces matter?

There appears to be a paradox in the concept – the more carefully shaped the parameters of the office, the more efficacious the practice. So how, specifically, can setting careful parameters in the creation of the role within an institutional setting increase or decrease the possibilities and probabilities of effectiveness?

What is the value of legislation, terms of reference and charters for ombuds positions and how does the language in those documents exert an influence on the development of practice within a setting?

Which forces or processes of social construction can be identified as exerting a pull on the daily practice of modern ombuds officers, their institutional positions, and the defining discourses of professional associations?

#### c. Methodology

The primary methodology approach will be to collect data via a series of interviews. This will be augmented with: Ethnographical Research; Observation, Interviews, Analysis of Texts.

#### d. Data Collection

Data will be collected in person, via phone, via Skype and via the computer.  
Data will be stored in a password protected computer system and key protected files.

#### e. Data Analysis

Data will be analyzed manually with tools of qualitative data analysis, such as Discourse Analysis.

#### f. Dissemination

Information will be used for dissertation and subsequent publications.

### 7. CONFIDENTIALITY OF DATA:

Clearly indicate specific procedures (e.g., coding of responses, aggregate reporting, etc.) to protect the confidentiality of participants and safeguard identifiable records and data. If not possible, state why.

I will be documenting interview notes and transcribing them. Confidentiality will be respected. Names and identifying characteristics of ombuds client stories and ombuds officers will be removed from dissertation and publication. We will send a transcript back to the participant for review and verification. Interview data will be kept private between student and advisor. Notes will be stored on password protected computer, and in key protected files.

#### **8. RISKS AND BENEFITS:**

Describe in detail any immediate, short-term, or long-range risks that may arise for participants as a result of procedures associated with your study. Risks may be physical, psychological, social, legal, or economic; they would include side effects, risks of placebo, delay in customary treatment, etc. Indicate any precautions that will be taken to minimize risks. Also indicate any anticipated benefits to participants and/or society from the knowledge that may reasonably be expected to result from the study.

The subject of this dissertation is a somewhat young complex professional function. Therefore the research will approach the subject with care and delicacy. The research entails minimal risk. In some cases, interpretations of the role may be at odds with the intent of the function. There is a minimal risk to participants reputation in their jobs depending on what they say. Confidentiality of participants will be protected.

#### **9. INFORMED CONSENT:**

I will email potential participants a copy of the consent form with a return deadline and ask for their Agreement via email.

**INFORMED CONSENT**

We would like to invite you to take part in a research study. The study in which you are being asked to participate is designed to investigate modern ombudsing in practice. This study is being conducted by C. McKenna Lang under the supervision of Dr. John Winslade, Faculty, Taos Institute. What I would like to ask of you is to participate in an interview for 1-2 hours about your work as an ombuds officer.

**PURPOSE:**

The purpose of this interview is to study modern ombudsing in practice.

**DESCRIPTION:**

We would like to interview you, document the interview, analyze the results and incorporate selections of the interview in the final dissertation and subsequent publications.

**PARTICIPATION:**

We are asking you to participate in a voluntary interview to study modern ombudsing in practice. You are welcome to decline participation and you may discontinue participation at any time up until one month following the completion of the interview.

We would also like the opportunity to follow up with you by phone or email. and for you to give feedback on the interview results. This will be no more than 2 hours. (How much time?)

Careful not to promise what you cannot deliver.

**CONFIDENTIALITY OR ANONYMITY:**

We can maintain confidentiality in the research by not using your name and by ensuring that no identifying characteristics of you or your institution are disclosed.

Records and video/audio tapes if used, will be stored in a locked filing cabinet. Data will be stored on a password protected computer.

**DURATION:**

It is anticipated that the interview will take from 1-2 hours with periodic follow-up for the integrity of the research. It is anticipated that the total involvement of time will be no more than 4 between the commencement and completion of the research.

**BENEFITS:**

You may not benefit directly from this study but the profession might and you may make a valuable contribution to it. Modern ombudsing remains a somewhat unfamiliar profession to many. The research in the field is sparse and more inquiry may prove valuable to sharpen the conception of the role and to develop the efficacy of the practice as it continues to spread. The aim of the research is to explore the forces that shape modern practice in this valuable office.

**AUDIO:**

We would like to audiotape the interview in order to increase accuracy of documentation. (Please see attached audio form.)

CONTACT:

If you have any questions regarding the research, please feel free to contact  
C. McKenna Lang

RESULTS:

At the completion and approval of the dissertation, the dissertation will be available through the Taos Institute.

I consent to be interviewed and to give feedback on follow-up questions if necessary.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**INFORMED CONSENT FORM  
FOR HUMAN PARTICIPANTS**

As part of this research project, we will be making an audiotape recording of you during your participation in the experiment. Please indicate what uses of this audiotape you are willing to consent to by initialing below. You are free to initial any number of spaces from zero to all of the spaces, and your response will in no way affect your credit for participating. We will only use the audiotape in ways that you agree to. In any use of this audiotape, your name would not be identified. If you do not initial any of the spaces below, the /audiotape will be destroyed.

Please indicate the type of informed consent -  Audiotape

(AS APPLICABLE)

- The audiotape can be studied by the research team for use in the research project.

Please initial: \_\_\_\_\_

- The audiotape can be played to participants in other pieces of research.

Please initial: \_\_\_\_\_

- The audiotape can be used for academic publications.

Please initial: \_\_\_\_\_

- The audiotape can be played at meetings of researchers and/or professionals.

Please initial: \_\_\_\_\_

I have read the above description and give my consent for the use of the audiotape as indicated above.

The extra copy of this consent form is for your records.

SIGNATURE \_\_\_\_\_ DATE \_\_\_\_\_

Sample of participant recruitment email:

Dear \_\_\_\_\_

I would like to invite you to take part in a research study on Modern Ombudsing for a dissertation through the Taos Institute and Tilburg University Ph.D. Program.

The purpose of this study is to study modern ombudsing in practice. A significant component of this research will be from international ombudsing professionals working in the field. Your participation in this study would be to participate in an interview. Based on the responses of all participants, data gathered will be analyzed, and then summary information would be published in a dissertation as well as subsequent publications with the aim of improving knowledge of the ombudsing value and function.

Participation in the interview is completely voluntary, but we would request that you complete Informed consent forms (see attached) before the interview. Your participation and responses will be confidential and anonymous?

Your participation in this research study is extremely valuable. Your responses can help further understanding of the ombuds concept. If you have any questions, the researcher can be reached at [clang@antioch.edu](mailto:clang@antioch.edu).

I will follow up with you by phone and or email. Thank you in advance for your consideration of participating in this research.

Sincerely,

M. Lang

## Appendix 2

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### **INFORMED CONSENT**

We would like to invite you to take part in a research study. The study in which you are being asked to participate is designed to investigate modern ombudsing in practice. This study is being conducted by C. McKenna Lang under the supervision of Dr. John Winslade, Faculty, Taos Institute. What I would like to ask of you is to participate in an interview for 1-2 hours about your work as an ombuds officer.

#### **PURPOSE:**

The purpose of this interview is to study modern ombudsing in practice.

#### **DESCRIPTION:**

We would like to interview you, document the interview, analyze the results and incorporate selections of the interview in the final dissertation and subsequent publications.

#### **PARTICIPATION:**

We are asking you to participate in a voluntary interview to study modern ombudsing in practice. You are welcome to decline participation and you may discontinue participation at any time up until one month following the completion of the interview.

We would also like the opportunity to follow up with you by phone or email and for you to give feedback on the interview results. This will be no more than 2 hours.

#### **CONFIDENTIALITY OR ANONYMITY:**

We can maintain confidentiality in the research by not using your name and by ensuring that no identifying characteristics of you or your institution are disclosed.

Records and video/audio tapes if used, will be stored in a locked filing cabinet. Data will be stored on a password protected computer.

#### **DURATION:**

It is anticipated that the interview will take from 1-2 hours with periodic follow-up for the integrity of the research. It is anticipated that the total involvement of time will be no more than 4 between the commencement and completion of the research.

#### **BENEFITS:**

You may not benefit directly from this study but the profession might and you may make a valuable contribution to it. Modern ombudsing remains a somewhat unfamiliar profession to many. The research in the field is sparse and more inquiry may prove valuable to sharpen the conception of the role and to develop the efficacy of the practice as it continues to spread. The aim of the research is to explore the forces that shape modern practice in this valuable office.



AUDIO:

We would like to audiotape the interview in order to increase accuracy of documentation. (Please see attached audio form.)

CONTACT:

If you have any questions regarding the research, please feel free to contact C. McKenna Lang – [clang@antioch.edu](mailto:clang@antioch.edu), 206-268-4100

RESULTS:

At the completion and approval of the dissertation, the dissertation will be available through the Taos Institute.

I consent to be interviewed and to give feedback on follow-up questions if necessary.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**INFORMED CONSENT FORM  
FOR HUMAN PARTICIPANTS**

As part of this research project, we will be making an audiotape recording of you during your participation in the experiment. Please indicate what uses of this audiotape you are willing to consent to by initialing below. You are free to initial any number of spaces from zero to all of the spaces, and your response will in no way affect your credit for participating. We will only use the audiotape in ways that you agree to. In any use of this audiotape, your name would not be identified. If you do not initial any of the spaces below, the /audiotape will be destroyed.

Please indicate the type of informed consent -  Audiotape

(AS APPLICABLE)

- The audiotape can be studied by the research team for use in the research project.

Please initial: \_\_\_\_\_

- The audiotape transcription can be used for academic publications.

Please initial: \_\_\_\_\_

I have read the above description and give my consent for the use of the audiotape as indicated above.

The extra copy of this consent form is for your records.

SIGNATURE \_\_\_\_\_ DATE \_\_\_\_\_