

*Historical and contemporary roles of
ombud institutions: exploring the
evolution of ombud institutions and
their roles in various sectors."*

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Today

- Overview of the origin and global spread of the ombud institution
- Reasons for the diffusion of the ombud idea throughout the world
- Models, roles, and expectations of the ombud institution today

Swedish origins

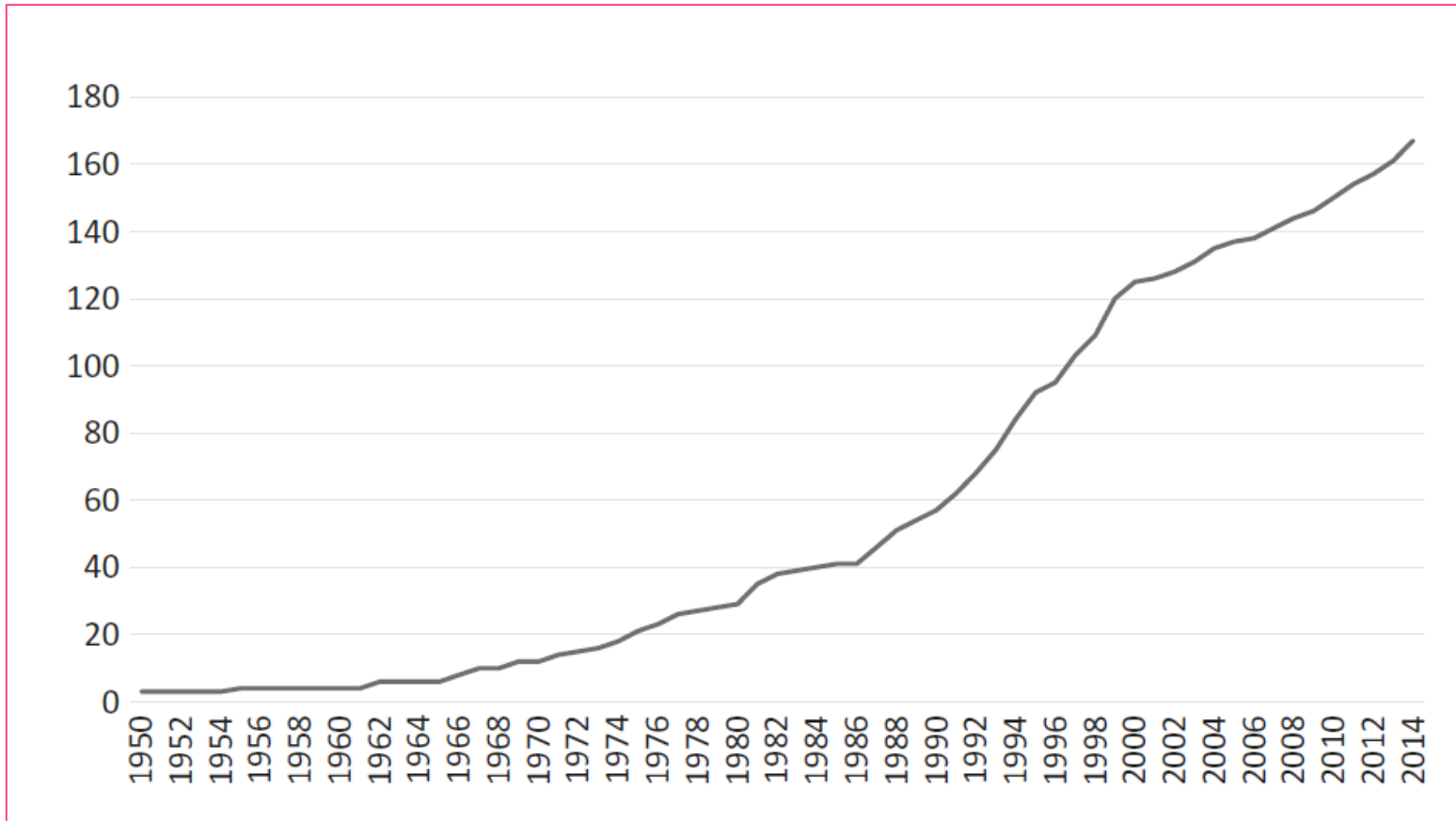
- The modern origins of the ombud institution begin in Sweden in 1809
- Swedish ombud conforms to the so called “rule of law model”
 - Prosecutorial powers
 - Jurisdiction of the judiciary
- Ombudsman = derives from Old Norse umboðsmaðr (umboð ‘commission’ and maðr ‘man’ as in ‘agent’) (Carl, 2018)

Possible precursors?

- Scholars have identified possible precursors in China, India, and Pakistan
- In Africa
 - Sokoto Caliphate – Walayatil Wazalim
 - Hausa States – Muhtasib
 - Parts of West Africa – Obas or Emirs

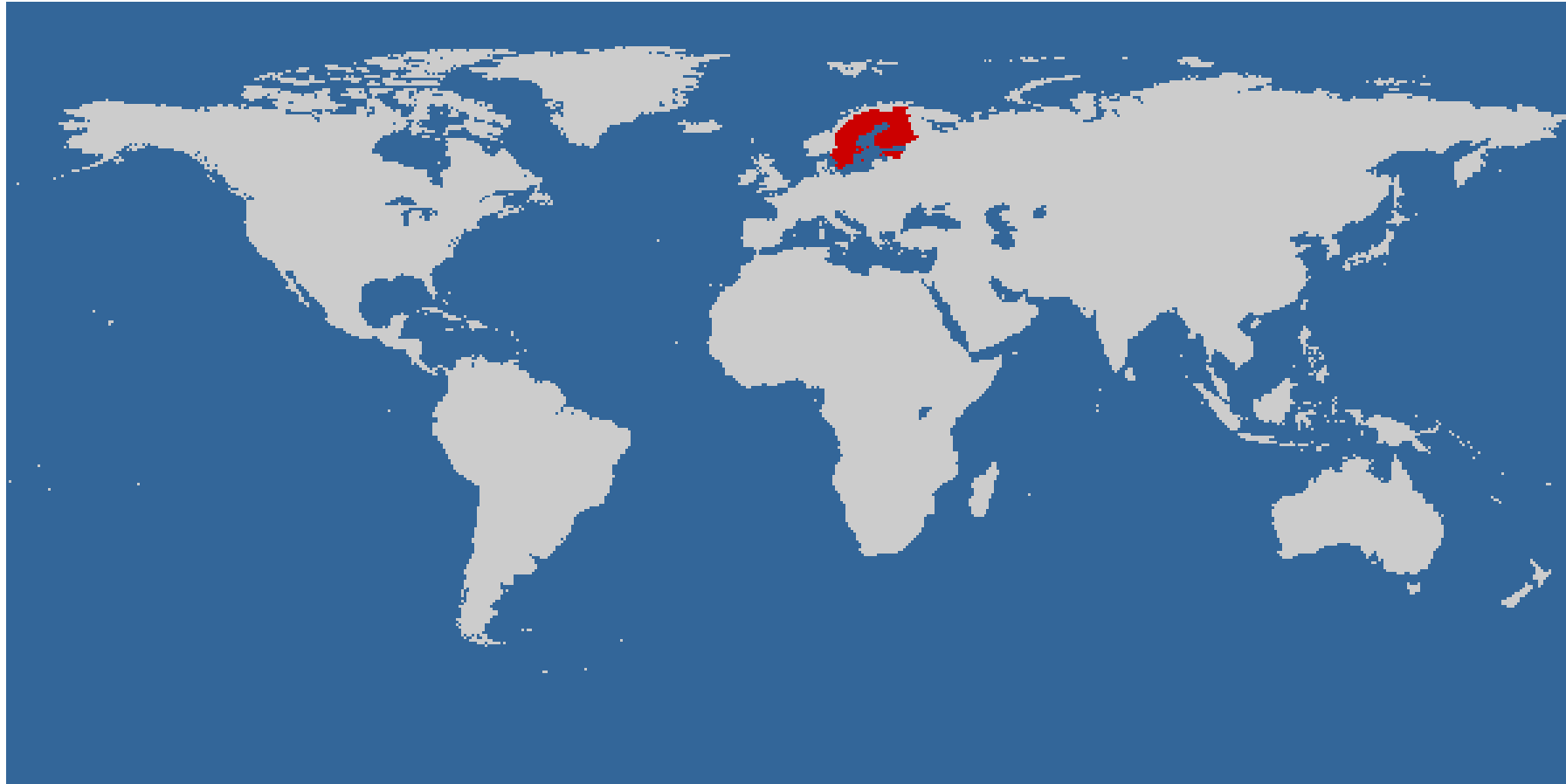
Ayeni (2018)

“Ombudsmania”



Erkilla (2020: 28)

1809 – 1953



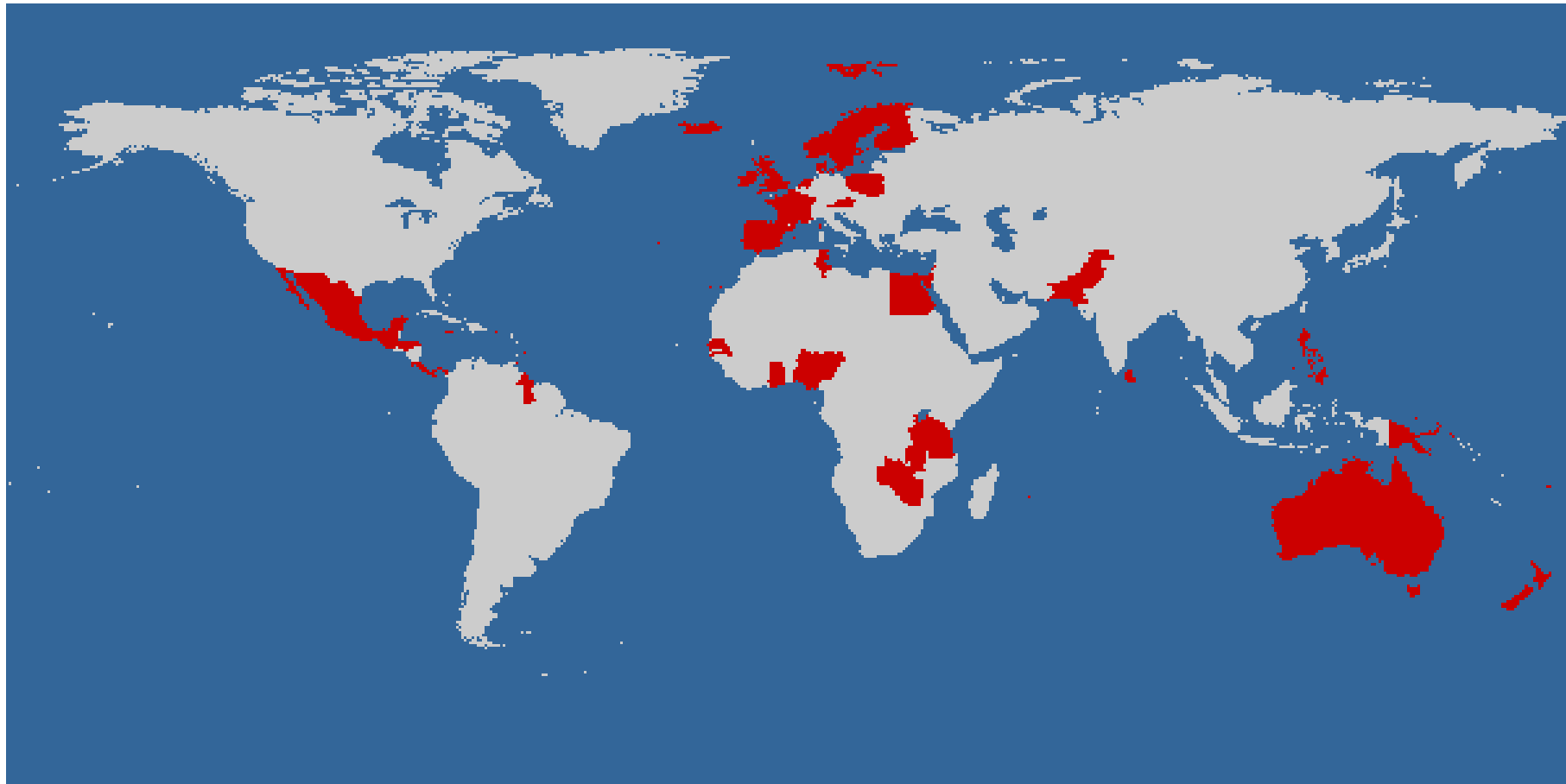
Drake (2013)

By 1969



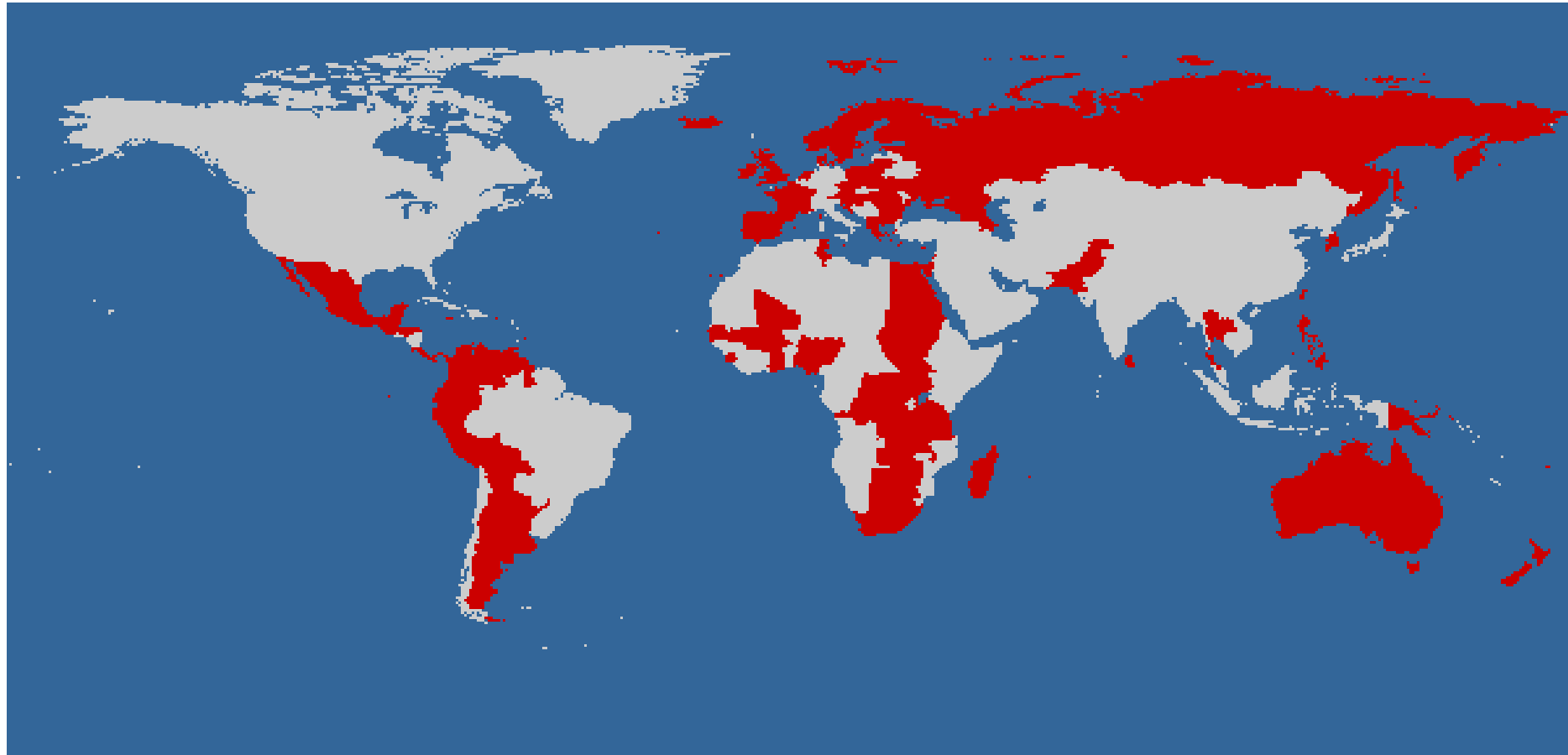
Drake (2013)

By 1989



Drake (2013)

By 1999



Drake (2013)

By 2013



Drake (2013)

Why did the ombud idea spread?

- Response to the growth in government activities and public administration and challenges of access to courts (esp. established democracies)
- Response to crisis or systemic upheaval (e.g. decolonisation, regime change, democratisation)
- Influence of individual policy advocates (e.g. Prof. Hurwitz, 1st Danish Ombud)
- Influence of international organisations (e.g. EU bodies, UN, World Bank, International Bar Association)

Waves of development

- **1st generation ombuds (rule of law ombuds)**
 - Focused on legality, prosecutorial powers, jurisdiction over judiciary (e.g. Sweden, Finland)
- **2nd generation ombuds (classical ombuds)**
 - Focused on extra-legal notion of maladministration, soft law powers of reporting and recommendation (e.g. Denmark)
- **3rd generation ombuds (human rights ombuds)**
 - Focused on human rights, often in the context of newly emergent or fragile democracies
- **4th generation ombuds (anti-corruption ombuds)**
 - More common in the developing world, emphasis on fighting corruption

(Remac, 2013)

Roles, models, and expectations

- Fire-fighter or fire-watcher (Harlow and Rawlings, 2021)
- Fire-prevention (Snell, 2009)
- Reactive, Variegated, Proactive (Stuhmcke, 2013)
- Expectations management (Gilad, 2008)
- Managerial actor (Gill et al, 2020)
- Access to justice for vulnerable people (Creutzfeldt et al, 2019)

Conclusion

- The ombud is one of the world's most successful legal transplants as well as having possible precursors in various national and cultural contexts around the world
- The growth in government, inaccessible courts, constitution building following imperial and authoritarian regimes, individual policy advocates and international institutions all had a role in this growth
- Three key trends in the historical development of ombud institutions
 - The “softening” of the rule of law model which facilitated expansion outwith Scandinavia
 - The growth of human rights as either an explicit or implicit focus of the ombud institution driven by international and national pressures
 - The diversification and growth of ombud functions (whether that is in remit or nature of activities)

References

- Ayeni, V.O., 2018. Fifty years of the ombudsman in Africa. In *Research Handbook on the Ombudsman* (pp. 212-235). Edward Elgar Publishing.
- Carl, S., 2018. The history and evolution of the ombudsman model. In *Research Handbook on the Ombudsman* (pp. 17-33). Edward Elgar Publishing.
- Creutzfeldt, N., Gill, C., Cornelis, M. and McPherson, R. (2021) *Access to Justice for Vulnerable and Energy-Poor Consumers: Just Energy?* Hart Publishing.
- Drake, Eric. 2013. Training provided by Queen Margaret University for the Ombudsman Association. (Unpublished).
- Erkkilä, T., 2020. *Ombudsman as a global institution: transnational governance and accountability*. Springer Nature.
- Gilad, S., 2008. Accountability or expectations management? The role of the ombudsman in financial regulation. *Law & Policy*, 30(2), pp.227-253.

References

- Gill, C., 2016. *Administrative justice and the control of bureaucratic decision-making: A study investigating how decision-makers in local authority education departments respond to the work of redress mechanisms* (Doctoral dissertation, University of Glasgow).
- Gill, C., Sapouna, M., Hirst, C. and Williams, J. (2019) Dysfunctional accountability in complaint systems: the effects of complaints on public service employees. *Public Law*(Oct), pp. 644-664.
- Harlow, C. and Rawlings, R., 2021. *Law and Administration* (4th ed). Cambridge University Press.
- Remac, M., 2013. Standards of Ombudsman Assessment: A New Normative Concept?. *Utrecht Law Review*, pp.62-78.
- Snell, R., 2007. Australian Ombudsman: A continual work in progress. *Australian Administrative Law*, pp.100-115.
- Stuhmcke, A., 2012. The evolution of the classical ombudsman: a view from the antipodes1. *International Journal of Public Law and Policy*, 2(1), pp.83-95.