



University of
Nottingham
UK | CHINA | MALAYSIA

***prison*HEALTH EXTERNAL SPEAKER (March 2021)**

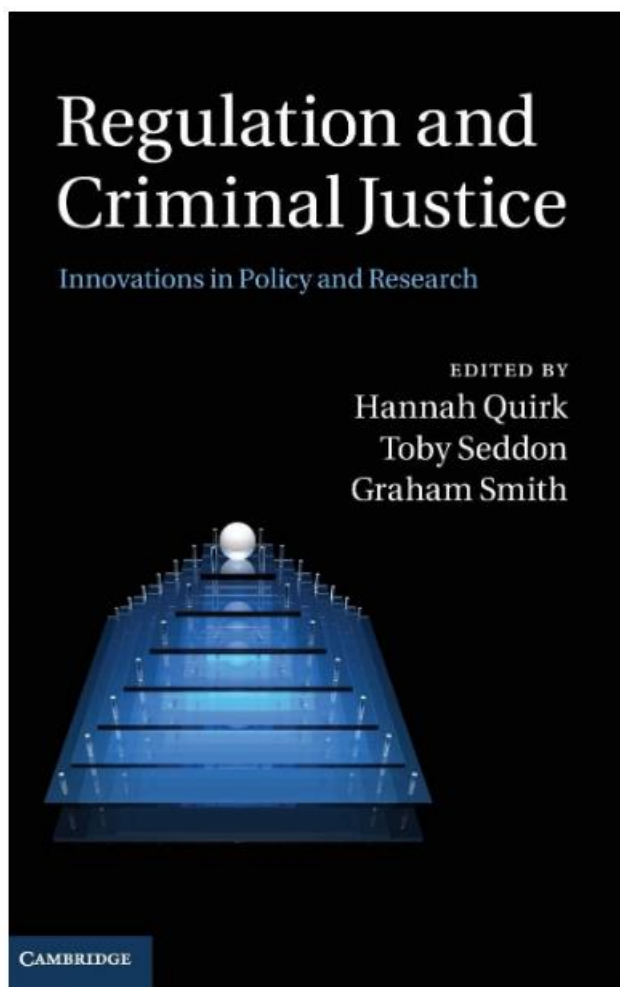
Professor Toby Seddon, UCL Social Research Institute

"Rethinking prison inspection: lessons from regulation studies"

Dr Tom Kemp

*prison*HEALTH

'Prisons, Health and Societies' is a new, multidisciplinary research group which exists to encourage high quality scholarship, engagement and knowledge transfer regarding all aspects of mental and physical health, in and around prisons and detention sites. The *prison*HEALTH arm is directed by Dr Philippa Tomczak and Dr Catherine Appleton. We were joined by Prof Toby Seddon of UCL Social Research Institute who presented a paper "Rethinking prison inspection: lessons from regulation studies".



Toby Seddon is Professor of Social Science and Head of the UCL Social Research Institute. He conducts historical and inter-disciplinary social science research on drug policy and drug law reform. Toby talked to the *prison*HEALTH group about his previous work that brought concepts from regulation studies to bear on the criminal justice system.

The talk provided an overview of his chapter from the book *Regulation and Criminal Justice* (Quirk et al., 2010) which was a response to a chapter by then Chief Inspector of Prisons, Anne Owers. The chapter helpfully makes two interventions. Firstly, it articulates with clarity the connections between Inspection and notions of regulation and

accountability. Secondly, it argues that connections could fruitfully be made if the empirically supported conclusions of regulation studies in other settings could lead to experimentation in regulatory and inspection practices of criminal justice institutions.

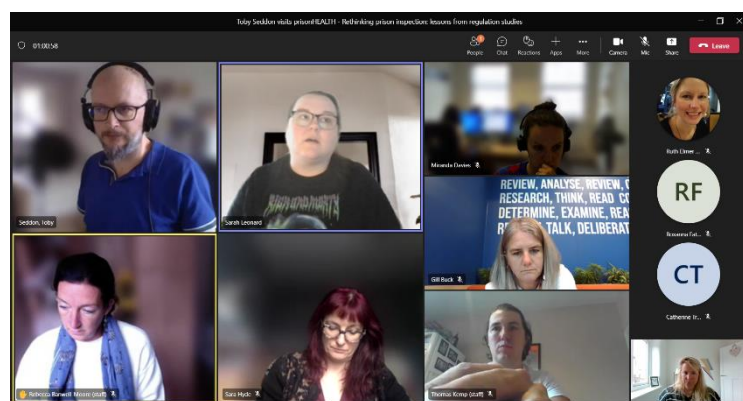
The concept of regulation is given varying degrees of scope in the literature – varying from a ‘narrow’ definition as the processes of ensuring adherence to rules and standards, towards an ‘expansive’ view that incorporates all attempts to steer ‘the flow of events and behavior’ (Braithwaite et al., 2007). Toby endorsed Black’s (2002) view of regulation as ‘the sustained and focused attempt to alter the behaviour of others according to defined standards or purposes with the intention of producing a broadly identified outcome or outcomes, which may involve mechanisms of standard-setting, information-gathering and behaviour’. Inspections perform a regulatory function but are not the only regulatory actors.

Regulation has, therefore, an emphasis on guiding future action and behaviour even though its evidence base is inevitably past action. Accountability, on the other hand, is more backward-looking: it requires giving account of actions in the past and, possibly, sustaining consequences for failure to adhere to standards. Toby argued that while some have tried to distinguish sharply between regulation and accountability, this distinction is hard to maintain, and they should be thought of as lying on a continuum.



While acknowledging a particular urgency in prison settings to ‘prevent torture and other mistreatment of prisoners’, Toby thought that bringing some of the conceptual and empirical results from studies of regulation in other settings would be a helpful starting point. For example, the phenomenon of *regulatory ritualism* identified in Braithwaite’s (2007) study of nursing home regulation seems likely to have salience in criminal justice contexts. This is when an array of specific rules leads managers to focus on achieving specific metrical outcomes rather than grasping the underlying principles that the rules are intended to support. This leads to what is called the *paradox of accountability* in which, empirical studies indicate, a small number of well-crafted standards and metrics is much more effective at creating consistent inspection regimes and better service outcomes than regulatory systems with large numbers of rules covering the

minutiae of practice. Toby foregrounded Braithwaite's idea of regulatory pyramids where routine issues would be dealt with in a collegiate manner and serious failures would be escalated to



bodies that had powers to e.g. close prisons or dismiss employees. The top levels of this pyramid of sanctions seem to be missing or are relatively inaccessible in criminal justice contexts. Finally, the idea of building on strengths of services and responding with praise and plans of how to expand good

performance through an escalating pyramid of supports, was just as important, if not more so, than focusing on failings to achieve standards.

Key elements that arose from the discussion included recognition that ideas about what is needed to reduce harms of prison have been around a while: reducing prison populations, proper access to drug addiction treatments and appropriate healthcare according to need and setting were noted as starting points. These require engagement with politics and power. Here Toby noted how official channels of regulation may not always be the most effective at bringing about change and that networked power – bringing together differently positioned groups to exert public, media and other pressure - is needed if meaningful change is to come about.

Black J and Kingsford Smith D (2002) Critical reflections on regulation [Plus a reply by Dimity Kingsford Smith.]. *Australasian Journal of Legal Philosophy* 27(2002): 1–46.

Braithwaite J, Makkai T and Braithwaite VA (2007) *Regulating Aged Care: Ritualism and the New Pyramid*. Cheltenham, UK ; Northampton, MA: Edward Elgar.

Quirk H, Seddon T and Smith G (eds) (2010) *Regulation and Criminal Justice: Innovations in Policy and Research*. Cambridge ; New York: Cambridge University Press.

JOIN OUR TEAM

We welcome new applications from academic researchers – particularly early career researchers across sectors and scholars with lived experience of the criminal justice system. To apply, please email a summary (max one side of A4) of your interest in the subject and what you think you could bring to the [Prisons Health](#)