

Investigating prison suicides: The politics of independent oversight

Punishment & Society
2022, Vol. 24(3) 477–497
© The Author(s) 2021



Article reuse guidelines:
sagepub.com/journals-permissions
DOI: 10.1177/1462474521993002
journals.sagepub.com/home/pun



Dominic Aitken 

University of Bath, UK

Abstract

This article examines the institutional arrangements in place to investigate prison suicides in England and Wales, focusing on inquiries by the Prisons & Probation Ombudsman and coroners' inquests. The first half of the article is empirical, and draws on a set of elite interviews with Prisons & Probation Ombudsman investigators, senior coroners and other professionals involved in prison oversight. The latter half of the article is theoretical, and interprets prison suicide investigations as an example of broader trends of counter-democracy and depoliticisation. I provide a general theoretical overview of these concepts, and argue that Prisons & Probation Ombudsman investigations and coroners' inquests operate according to a technocratic logic of independence, neutrality and rationality. The article concludes that prison suicide investigations are narrowly concerned with the factual details and administrative minutiae of individual cases, at the expense of more open ended, less manageable questions about the politics of punishment.

Keywords

counter-democracy, depoliticisation, politics of punishment, prison suicide, technocracy

'There is really nothing more to say – except why. But since *why* is difficult to handle, one must take refuge in *how*.' (Morrison, 1970)

Whenever prisoners die unexpectedly, a private tragedy becomes a public inquiry. In England and Wales, all deaths in custody, whatever the cause, are subject to at

Corresponding author:

Dominic Aitken, Department of Social & Policy Sciences, University of Bath, Bath BA2 7AY, UK.
Email: da779@bath.ac.uk

least one formal investigation by the state. Prison suicides, the focus of this article, are reviewed first by the Prisons & Probation Ombudsman (PPO), then proceed to a coroner's inquest held in front of a jury (Tomczak, 2018). Whatever else they do, suicides in prison prompt a great deal of bureaucratic administration, and illustrate how '[w]hen someone dies a small drama is set in motion' (Bradbury, 1999, p. 46). The cast includes a coroner, police officers, civil servants, medical experts and inquest lawyers, all of whom are enlisted after the fact to give meaning to a rare, shocking event. Guided by principles of independence, neutrality and rationality, their work is an attempt to build consensus in a situation potentially riven by conflict, accusation and pain.

The primary purpose of death investigations is to find facts about the exact circumstances of a person's demise. The production of facts, like the construction of official statistics, is an important activity for liberal states. Whereas collective life in a democracy 'makes all issues an object of public evaluation and all values a matter of opinion and consent' (Urbinati, 2010, p. 65), the precision and specificity of facts lends them an epistemological authority that is beyond dispute. As Mary Poovey argues in *A History of the Modern Fact* (1998), facts are 'observed particulars' that conform to a scientific model of 'noninterpretive descriptions' of the world (1998: xv). In their ideal form, they offer us an objective representation of social reality, 'a standpoint on the world from which we have access to the world as it is in itself, in no way mediated by either our human interests or even our mental structure' (Nussbaum, 2001, p. 884). To produce facts about a death in custody, then, is to find common ground that can unite divided groups.

In practice, producing facts is a demanding task. Reconstructing the circumstances of a sudden, and possibly unwitnessed, death in prison is intrinsically difficult. Custodial sites are by default closed worlds, prone to secrecy and hard for outsiders to penetrate. They are spaces that combine coercive power with intricate structures of bureaucratic authority (Crewe, 2011), and where staff have a large amount of discretion in how they carry out their work (Liebling, 2000). Moreover, those who manage prisons have a basic interest in avoiding scandal and minimising sources of criticism (Carlen, 2001). All of these factors are obstacles to comprehensive external oversight (Behan and Kirkham, 2016: 446). Nonetheless, formal inquiries into deaths in custody open prisons up to an unusually high degree of scrutiny, shedding light on working practices and confidential records that are ordinarily hidden from view. Since the dead cannot speak, all remaining traces of the end of their life are identified and pored over by independent investigators. Paperwork, CCTV footage, roll counts, medication doses, phone calls, cell alarms, radio transmissions, emergency service arrivals, spatial dimensions of the death scene, cut-down details, resuscitation efforts, the body itself: all of these fragments are gathered together as evidence and treated as a mystery to be explained.

Deciphering the meaning of these clues is the work of professionals and experts, who are called upon to produce objective knowledge about the end of life. In principle, the individualistic nature of death investigations allows them to be searching and thorough. Specific decisions can be placed in context and witness

testimonies can be examined in detail. While in some cases formal inquiries will vindicate prison staff and demonstrate the value of the high-consequence work they do, death investigations can also reveal uncomfortable truths about the reality of imprisonment. These range from failures of record keeping by operational staff (Prisons & Probation Ombudsman, 2015) through to serious errors of judgement by key decision makers. Death investigations thus pose a risk to those who run prisons, as they threaten to expose a variety of administrative shortcomings and problematic working practices. Given the inadequacies of prison suicide prevention identified in previous decades (e.g. HM Inspectorate of Prisons, 1999), there is much to be said for transparent investigative procedures, led by independent professionals and experts, which prioritise fact-finding and operate on a case by case basis.

Without wishing to deny the many virtues of prison suicide investigations, it is notable that the development of increasingly intricate mechanisms of prison oversight has coincided with an expanding prison population and, in recent years, exceptionally high levels of suffering behind bars. Both the number and rate of prison suicides increased significantly in the middle years of the 2010s, for instance, as did several other indicators of prison safety, such as self-harm incidents and assaults (Institute for Government, 2019: 163–176). In the year leading up to December 2016, there were an unprecedented 354 deaths in prison in England and Wales, 119 of which were recorded as self-inflicted (Ministry of Justice, 2017). In 2016, the rate of self-inflicted deaths was 1.45 per 1,000 prisoners, more than double the rate of 0.70 recorded in December 2012. The causes of these systemic problems are of course debatable, and likely to include a complex mixture of political, economic, cultural, institutional, demographic and other factors. Yet when it comes to investigating any individual case, the focus is primarily on rules and records that can be objectively verified. Background policy choices, resource allocation decisions and cultural matters are taken for granted and largely excluded from the parameters of the inquiry. To return to the Toni Morrison epigraph above, drilling narrowly into the *how* of each specific death tends to obscure the broader, more contentious question of *why*.

Why do prison suicide investigations take this particular form, and what do these institutional arrangements tell us about the politics of punishment? To answer these questions, I analyse the aftermath of self-inflicted deaths in prison in England and Wales, focusing on PPO investigations and coroners' inquests. The first half of the article is empirical, and draws on a set of elite interviews with PPO investigators, senior coroners, inquest lawyers and other professionals involved in prison oversight. The interviews all took place in the academic year 2016–2017 as part of my doctoral research on responses to deaths in custody, during which I interviewed two senior investigators from the PPO, two former PPO investigators, six coroners and ten inquest lawyers, all located in England. In addition to those who directly investigate deaths in custody, I also interviewed four professionals from HM Inspectorate of Prisons, two Independent Monitoring Board volunteers, four members of the Ministerial Council on Deaths

in Custody, as well as professionals working in academia, penal reform and other relevant fields. The average length of these qualitative, semi-structured interviews was one hour, and all participants quoted in this article have been given a pseudonym.

I begin by explaining how the PPO conducts its death investigations, paying particular attention to its status as an independent oversight body, as well as its commitment to ensuring that prisons follow rules and adhere to their own policies. In the next section, I examine coroners' inquests, a centuries-old inquisitorial process that determines 'in what circumstances' a person died (Matthews, 2014). Although PPO reviews and coronial investigations have distinct histories and purposes, they are both committed to a set of core procedural values and have similarly narrow investigative remits. Throughout the article, I focus on the form of prison suicide investigations, and reflect on the consequences of institutional arrangements that are characterised by independence, neutrality and rationality.

The latter half of the article is theoretical, and interprets prison suicide investigations as an example of broader trends of counter-democracy (Rosanvallon, 2008, 2011) and depoliticisation (Burnham, 2001; Flinders and Buller, 2006; Flinders and Wood, 2014). I provide a general theoretical overview of these concepts, and posit that the logic of PPO investigations and coroners' inquests is technocratic insofar as both processes foreground values of independence, neutrality and rationality. Prison suicide investigations are by no means the only examples of the influence of counter-democracy, depoliticisation and technocracy in the criminal justice field, nor necessarily the most important. My argument is simply that these are significant characteristics of the current institutional arrangements, and that they imply a particular vision of how political problems ought to be understood and addressed.

I conclude that prison suicide investigations are narrowly concerned with the factual details and administrative minutiae of individual deaths, and that they tend therefore to avoid more open ended, less manageable questions about the politics of punishment. Specifically, I suggest that there are limitations to models of accountability that operate on a detailed, case by case basis, especially during periods when there are wide-ranging problems affecting the prison system as a whole. Such general problems are greater than the sum of individual prisoners' distress or the actions of particular members of prison staff. The problem of prison suicide is also at least partly a more general *political* question about what prisons are for, why they are used so extensively, who is sent there, how they are resourced and run, what conditions people are held in, and so on. Throughout the article, the argument I develop is primarily analytical, but the underlying normative claim is that, since prisons are public institutions that intentionally subject confined people to various forms of hardship and suffering, problems within them ought to be openly contested in traditional political settings. It is for this reason that we ought to pay closer attention to broader developments of counter-democracy, depoliticisation and technocracy. The ultimate intention of this article, then, is to

look at the familiar issue of responses to prison suicide through an unfamiliar political lens.

The Prisons & Probation Ombudsman

Since 2004, the PPO has been responsible for investigating all deaths in prison, as well as deaths in several other forms of state custody. The Prisons Ombudsman, as it was originally called, was set up in 1994 in the aftermath of the landmark Woolf Report (1991) into the 1990 Strangeways prison riots. Its purpose was to investigate prisoner complaints and allegations of maladministration, a function that continues to this day. The PPO's work is now split into two broad areas: complaint investigations and death investigations (Prisons & Probation Ombudsman, 2019).

As an independent oversight body, the PPO is sponsored by the Ministry of Justice, but is substantially independent in how it operates and the judgements it reaches in individual cases (Prisons & Probation Ombudsman, 2017). There have been repeated calls to put the ombudsman's role on a statutory footing to bolster its status as an independent authority (e.g. Prisons & Probation Ombudsman, 2019: 9), but so far none has been successful. PPO investigations therefore 'do not have the force of law and are ultimately dependent on the goodwill of those we investigate' (Prisons & Probation Ombudsman, 2016b, p. 13). According to its many public outputs, the PPO's core values are independence, impartiality, respect, inclusion, dedication and fairness. These procedural values are common to many independent oversight bodies, but what do principles of independence and impartiality mean in practice, and how are they implemented by PPO investigators behind the scenes?

Independent oversight

For every death in prison, the PPO produces a Fatal Incident Report. These reports are archived online and provide a factual summary of the circumstances of a person's death. They are written chronologically, and document key events in the period leading up to the death. As part of its commitment to 'learning lessons' and preventing future deaths, PPO Fatal Incident Reports often include recommendations for further action to be taken by an establishment. There is, however, no formal mechanism for enforcing PPO recommendations, which can be issued to the same prison more than once (Tomczak, 2018). In addition to publishing reports on individual fatalities, the PPO also writes an annual review, produces thematic reports, and provides expert evidence on safer custody in policy circles.

Once the PPO have been notified of a death in prison, investigators attend the establishment within five days. Initial visits are an opportunity to meet the prison governor or director, speak to those who were 'first on scene', identify relevant witnesses (e.g. cellmates, friends, officers, chaplain), and make early efforts to

gather evidence. Describing the function of a first visit, a PPO employee Callum noted that their initial impressions are informed by ‘the prison view’ of the event:

[They] might say, ‘D’you know what, we stuffed up’, which would be interesting, or they might be saying, ‘We never saw this one coming’, or they might say, ‘No biggie, this was always gonna happen’. So I guess we get the overall flavour of what may or may not have happened. There may be a sort of, ‘Oh gosh, not again!’ kind of reaction as well. And a lot of it will be emotional because of the impact on the establishment.

He went on to explain the overall objectives of an investigation:

Simply set out what happened, and in so doing to address concerns of bereaved families; to assist the coroner [...]; to identify where things went wrong if that’s appropriate; and to identify areas of learning for the organisations within whose remit the deaths occurred.

Like other prison oversight bodies, the PPO is ‘fundamentally reactive’ (Shute, 2013: 499) and, ironically, highly dependent on the institution it regulates. PPO employees do not observe the events they investigate, and so they must rely on available prison records and staff testimonies. Recognising the need for ongoing cooperation from prison authorities, PPO interviewees explained that they are careful to avoid accusatory language in their reports and strive to formulate recommendations in the most precise, actionable way possible.

While independence is often cited as the primary characteristic of oversight bodies, to be effective they must also build and maintain a reputation as an authoritative source on imprisonment more generally. To this end, interviewees were quick to acknowledge the genuine difficulties faced by those who run prisons, and keen to stress their awareness that much vital work in prison goes unnoticed and unrewarded. Rachel, a PPO investigator with over a decade of experience, explained:

It is necessary to say that we only ever see the most acute cases. I’m absolutely convinced that so much good work goes on in prison but we unfortunately never see it.

Echoing this point, other interviewees made it clear that their role was not to ‘point the finger’, and stressed the PPO’s status as a non-partisan ‘fact-finding’ organisation, rather than a more ‘confrontational’ group like the charity INQUEST, which supports bereaved families whose loved ones have died in contact with the state (INQUEST, 2016). To be sure, there are many examples of critical PPO investigations (e.g. Prisons & Probation Ombudsman, 2016a, 2018). As former investigator Robbie explained, independence means that the PPO is ‘nobody’s friend’, and ‘if it’s not liked by people, that’s natural’. Nevertheless,

interviewees recognised that their investigative approach was broadly consensual, and that they tended to avoid commenting on policy questions or making observations about the culture of any prison in their reports.

The relatively narrow investigative function of the PPO was regarded as a strength by Rachel, who had seen the Fatal Incidents Team grow from an under-resourced group with ‘a massive backlog’ and ‘huge delays’ into a more professionalised and efficient public service whose voice is taken seriously across the prison estate. Effective independent oversight thus requires a working relationship with prison authorities, organisational efficiency, and an underlying reputation as a credible public voice on all matters relating to prisons. By delving narrowly into the factual circumstances of each prison death, the PPO performs a specialist type of case by case accountability, without entering into contentious, politicised debates about what prisons are for or how they ought to be run.

As civil servants, PPO interviewees were wary of making overtly political statements that would compromise their neutrality and credibility. But despite their professional aversion to partisanship, they readily acknowledged the significance of policy issues. All participants mentioned resources, staffing levels and other material factors as important determinants of the quality of prison life, and alluded to the variable moral climates and institutional cultures of different prisons (Liebling, 2011). Where they expressed ambivalence was when trying to trace the exact relationship between centralised political decision making about prisons and more local action inside particular establishments. While individual deaths may on occasion highlight the consequences of resource allocation decisions or low staffing levels, for instance, an investigation into a person’s suicide has little scope to address the causes of these background problems. Peter, who had been heavily involved with the PPO in its early years, described the practical barriers to ‘learning lessons’ in under-resourced prisons, and in so doing highlighted the difficulties of implementing best practice:

I don’t believe in running things by investigation. I think it’s perverse. I’ve spent my life conducting investigations. You don’t want to be listening to the same story time and time again. [...] One of the lessons is you shouldn’t have people banged up all the time. Fine. I’m a governor. I haven’t got enough staff. They’re gonna be banged up all the time. So have we learned the lesson? Well, it’s a lesson that I cannot put into practice. So the idea of learning lessons, how could anyone quarrel with that?

These comments express a fundamental tension between the rule-following ethos that characterises independent oversight bodies like the PPO, and the operational realities of running a coercive institution with limited resources. Stated in the abstract, few would dispute that prisons should ‘learn lessons’, and it is uncontroversial to expect them to ‘comply with their own policies’ or ‘implement best practice’. But these innocuous principles are far more easily asserted than realised. Prison governors have a limited degree of control over events in their establishments, and their power is constrained by factors from without, not least policy

choices and resource allocation decisions made by the centralised, hierarchical Ministry of Justice. Problems arising from these background conditions are overtly political, however, and therefore outside the scope of PPO investigations.

Following rules

As an independent oversight body that does not claim to represent a particular group or advance partisan interests, the PPO is committed to ensuring that prisons follow rules and comply with their own guidelines. To hold prisons to account, in these terms, is to establish clear guidelines for professional conduct, and transparent procedures for investigating such conduct after the fact (Shute, 2013).

In interviews, PPO employees generally approved of the formal processes that prison staff use to monitor at-risk individuals, especially the Assessment, Care in Custody and Teamwork (ACCT) framework (Ministry of Justice, 2011). They noted that the ACCT policy sets out well-defined expectations for prison staff, predicated on a model of multidisciplinary care for vulnerable individuals. Indeed, according to Rachel, Fatal Incident Reports often amounted to the PPO 'reminding people of their own policy'. Her former colleague Robbie agreed, saying, 'We recognise it's difficult, but we have standards and expectations'. Callum described how 'we're regularly told that in a busy operating environment you can't be so procedurally specific and constrained', but insisted that:

If they have a problem with their policies, that's for them to resolve within the organisation. ACCT procedurally makes every sense. In the abstract it tries to get at the truth. It's self-evident that it's trying to do the right thing.

The rule-following ethos of PPO investigations protects the organisation from accusations of partisanship that would compromise its status as an independent outsider. Prisons are bound to adhere to official policies and procedures, and the PPO's role as a third party is merely to monitor prison compliance. Independent oversight predicated on rule-following therefore avoids the type of conflict and contestation that characterises democratic politics, in which partisan groups compete for power by openly espousing different values and interests. For this reason, prison authorities seldom dispute the findings of the PPO, as they are written in accordance with official prison policies and expressed in a consensual, non-accusatory style. Often, however, prison authorities are reluctant or unwilling to put findings into practice. As Callum put it, 'We do not find that acceptance of our recommendations is an issue. We do find that implementation is much less transparent'.

The PPO, like many other ombudsmen schemes, has no power to enforce its recommendations (Kirkham et al., 2008). Key findings are often repeated in Fatal Incident Reports, bulletins and public statements about 'a rising toll of despair' (Prisons & Probation Ombudsman, 2016b: 8). As Ian Loader has noted about reviews into police custody deaths, 'The repetitious character of the reports

confirms the presence of the consensus; the fact that repetition is required is deemed to be the result of a lack of resources, political will or bureaucratic inertia' (2020, p. 407). But an independent oversight body like the PPO must steer clear of any overtly political claims. While investigators may, during interviews, acknowledge that overall levels of prison safety are affected by value-laden policy decisions and contestable economic trade-offs, in public they are limited to articulating a model of prison oversight that is entirely rules-based and non-partisan. Thus the form of PPO investigations – independent, case by case reviews – prohibits them from discussing anything other than those factors strictly relevant to each individual death.

Coroners' inquests

Once the PPO have completed their investigation, and provided there is no pending criminal prosecution, a death in custody is subject to a coroner's inquest. The following words from a senior coroner, Martin, provide the standard account of what an inquest is for. The essence of his claim is simple: given the seriousness of a death in custody, there ought to be an exhaustive investigation that resolves certain basic questions once and for all. A formal process – in this case a legal inquiry – can help bring about closure for a bereaved family whose loved one died in a coercive institution:

I think inquests are an opportunity for the family to do two things: to find answers to questions, and then secondly to obtain the closure of a formal process. And you do often see at the start of an inquest a family with all sorts of issues. They don't understand why this or that happened, they're not happy about this. But then they hear witnesses give their evidence and you can almost see the anger subside a little bit as the understanding goes up. Then right at the end of the inquest, you've got a family who were quite angry at the beginning, you can almost see an understanding, almost an acceptance and a relief it's over, and they've gone away with that sense of closure.

According to this view, there is an implicit connection between the form of an inquest and its effect on bereaved families. The legalistic, detailed style of inquiry, held in public and in front of a jury, provides an opportunity to delve into the particular circumstances that preceded a death in custody. Unusually for the common law system of England and Wales, a coroner oversees an inquisitorial process (Matthews, 2014). Whereas criminal trials are predicated on a model of conflict between two opponents who contest the truth in front of a disinterested judge, inquests are structured to build consensus. The involvement of lawyers is in principle only to assist the coroner. When the inquiry is complete, juries can reach conclusions that implicitly criticise particular actors, and coroners are obligated to issue Prevention of Future Death reports in certain circumstances. However, inquests cannot formally apportion blame, nor are coroners empowered to mete out retributive justice (McArdle, 2016).

As the only legal forum that deals exclusively with death, inquests serve a 'therapeutic' function (Freckelton, 2007). At its best, an inquest is a cathartic exercise that helps a grieving family come to terms with a loss that was at first shrouded in mystery. Since inquests take place over a matter of days or weeks, and often begin months after the death, as the inquiry progresses, any residual feelings of anger or confusion are tempered. Where someone has ended their life in prison, information is typically in short supply, and as a result families can be suspicious about the circumstances of their loved one's death. Instead of rumours circulating about a sudden or 'unnatural' death, an inquest helps all participants to reach some agreement about what actually occurred.

'A neutral, fact-finding inquiry'

Inquests are preoccupied with facts above all else (Bray, 2010). However, coroners' inquests do not simply discover existing facts. In reality, they also produce them, since factual determinations rely on concepts and categories that are not entirely scientific (Green, 1992). The most important facts to be determined at inquest are who the deceased was, when, where and how they died. Describing the strict parameters of the investigation, Geoffrey, a senior coroner, explained:

It's sometimes said that we're a neutral, fact-finding inquiry. So some families come to an inquest with great expectations. They don't quite expect the coroner to end the inquest with 'Send him down!' but they think that there's going to be rather more blaming and naming. [. . .] [The purpose of our inquest] is to determine the name, the identity of the deceased, how, when and where she died, and then the particulars needed to register the death. That's the limit of our authority.

In theoretical terms, uncovering facts is what constitutes the inquiry, while producing facts is what legitimates it. All interested persons are in principle cooperating in pursuit of the same goal, which is to identify in what circumstances a person died. But in practice, several interviewees recognised an adversarial element in the proceedings, which often puts the deceased's family at a distinct disadvantage (Coles and Shaw, 2007). Phillip, a senior coroner, described his misgivings about power imbalances between state authorities and bereaved families in the inquest system:

You see there isn't a level playing field, this is the trouble. If somebody dies in prison, I can tell you now that [HM Prison Service] will be automatically represented by the Government Legal Department [. . .] who will instruct counsel, instruct a barrister. If a prison officer is implicated in some way, then they go to the Prison Officers' Association who will appoint legal representation for them. If the issues we are talking about are medical, and they often are, then doctors subscribe to their defence unions, so they get represented. So everybody and their cat is represented but the poor old family, who probably have more to gain from the inquest than anyone else.

Numerous interviews with coroners and inquest lawyers highlighted the issue of inequality of arms (Bach, 2017). ‘The worst thing’, one senior coroner noted, is when ‘a poor family is forced to try and represent themselves’ alongside ‘a slick London barrister representing [HM Prison Service] and perhaps another slick London barrister representing individual prison officers’. He concluded, ‘It’s such an unequal context that it really isn’t satisfactory’. These accounts complicate the notion that inquests are entirely inquisitorial proceedings concerned with fact-finding and consensus-building. Instead, interviewees portrayed inquests as partially adversarial, especially when a death may have revealed inadequate action on the part of the state or a private security company responsible for running a prison.

The right to life

Following the passage of the Human Rights Act 1998, and after several landmark judgments in the House of Lords, the requirements of an Article 2 (right to life) compliant inquest have become more exacting. Previously, in so-called *Jamieson* inquests (*R v HM Coroner for North Humberside and Scunthorpe ex parte Jamieson*, 1995), a suicide in prison or other state facility was required to address only a small number of issues: who the deceased was, where, when and how they died. The question of ‘how’ they died was interpreted narrowly, meaning ‘by what means’ they died. Since the *Middleton* case (*R (Middleton) v West Somerset Coroner*, 2004), however, the meaning of ‘how’ a person died has expanded from ‘by what means’ to a broader, interpretive formulation of ‘in what circumstances’. The distinction between ‘by what means’ and ‘in what circumstances’ has opened up a wider range of issues that may now be considered relevant to the death. Describing what sorts of issues are now explored that might not have been before, a senior coroner, Martin, explained:

So yes we’ve got admission to prison and the processes that they go through on induction during the course of their care. But then there might be in an Article 2 case a question about the police station before they went to prison, what assessments were carried out there. There might be a question about before they went into custody at the police station, they were seen by the local mental health trust. So the actual chain of events, the chronology will reach back further than what it would have done before.

A coroner’s court is now the legal forum where the state’s duties to respect the right to life are carried out (Freckelton and McGregor, 2014). A series of cases in the European Court of Human Rights has established what is required for a satisfactory investigation (Martynowicz, 2011). Each of these terms is explored in more depth in the jurisprudence, but the main requirements are that the state conducts an independent, effective, reasonably prompt, transparent investigation that allows the next of kin to participate to the extent necessary to safeguard their

interests (*Edwards v United Kingdom*, 2002; *Jordan v United Kingdom*, 2003; *R (Amin) v Secretary of State for the Home Department*, 2004). The increasing legal complexity of inquests means that coroners now process cases in far greater detail than before (Baker, 2016), and as a locally funded and delivered service, some coroners' areas are particularly stretched, especially those with several large prisons in them. The following exchange with Geoffrey, a senior coroner, gives a sense of the practical difficulties faced in conducting large numbers of Article 2 inquests:

So in prison deaths, for instance, the complexity has vastly increased. I can remember when I first became a coroner, one would deal with a death in custody hopefully very thoroughly, certainly within a week. But now an unnatural death in custody, if there's controversy, can take weeks, and goes into minute detail.

The individualised nature of inquests, and their orientation towards factual detail, can be a valuable source of insight in particular cases. However, the preoccupation with administrative minutiae means that inquests have become evermore process-driven and technical. In this sense, coroners' inquests, like PPO investigations, drill narrowly into the *how* of each death they review, and leave unanswered a range of broader, more contentious questions about *why*.

Counter-democracy: The politics of independent oversight bodies

How can we explain the growth of independent oversight bodies that regulate, scrutinise and investigate state institutions like prisons, and why does their impartiality appeal so strongly to modern sensibilities? In this section, I interpret prison suicide investigations as an example of what the historian Pierre Rosanvallon calls 'counter-democracy' (Rosanvallon, 2008). Counter-democracy emerged in the shadow of the growing scale and complexity of government, most notably in the latter half of the twentieth century. As state power spread into evermore areas of social and economic life, and as citizens adopted increasingly individualistic and consumerist values, calls for greater government transparency grew accordingly. The result is a newly reflexive form of democratic legitimacy that operates through particularist, case by case judgement (Rosanvallon, 2011). These developments have chipped away at states' general authority to rule and limited the wide-ranging sovereign power they previously enjoyed.

The logic of counter-democracy dictates that the state must be formally held to account at all times, and that it must consistently demonstrate its commitment to the principle of open government (Rosanvallon, 2008). The emergence of counter-democracy was fuelled by a long-term decline in deference to elite authority and citizens' increasing awareness of their rights vis-à-vis the state (Rosanvallon, 2011: 67–68). By the close of the twentieth century, many public institutions and

established professions had been hit by a succession of scandals and sought to regain the public's trust (Flinders, 2012; Hay, 2007). In these circumstances, older notions of governmental autonomy and professional self-regulation were replaced by a new agenda of modernisation and democratic reform (Moran, 2003).

Independent oversight bodies, or government 'watchdogs', are a paradigmatic example of counter-democracy in action. The basic function of independent oversight is to secure and demonstrate accountability through transparent, rules-based procedures. The creation of formal structures of independent oversight is an attempt to institutionalise distrust, and can be thought of as a form of surveillance on the state (Rosanvallon, 2008). In an era of low trust in political institutions (Boswell, 2018), states themselves have tried to shore up their weakened authority and restore some public credibility, especially in contentious policy areas such as the economy, health and migration. It is little surprise, then, that independent oversight bodies have proliferated in an era of anti-politics (Loader, 2008), marked by pervasive apathy, cynicism and withdrawal from civic life.

More precisely, it is no coincidence that counter-democratic bodies flourished in the New Labour era of 'post-ideological', third way politics that emphasised modernisation, new public management and evidence-based policymaking (Parsons, 2002). Subjecting state power to independent oversight can be portrayed as a consensual 'win-win' process (Mair, 2013: 93), as everyone can be said to benefit from transparent, rules-based government. Unlike the conflict and contestation that characterise distributive, 'win-lose' politics, counter-democratic bodies seek consensus through the 'legitimacy of impartiality' (Rosanvallon, 2011). They do not derive their legitimacy from direct popular consent, nor do they represent a particular group or interest. Instead, they claim to serve the wider public interest in accountable government through their independence, rationality and expertise.

Writing about contemporary forms of legitimacy in criminal justice, including ombudsmen schemes, Ian Loader and Richard Sparks argue, 'The legitimacy of such institutions, and their capacity to watch the few on behalf of the many, flows from the idea that no single interest is able to appropriate them' (2013, p. 116). The non-majoritarian status of independent oversight bodies is part of their democratic appeal: they instantiate the values of constitutional democracy (government *for* the people), rather than popular democracy (government *by* the people) (Mair, 2002). Instead of vying for political office by openly espousing partisan ideological commitments, independent oversight bodies safeguard the quality of democratic decision making for the people as a whole (Loader and Sparks, 2013: 117). As such, their legitimacy derives 'from the procedures they use to reach their decisions' (Rosanvallon, 2011, p. 92).

One of the most important characteristics of independent oversight bodies is that, in general, they do not have the power to create policy or allocate resources (Kirkham et al., 2008: 510). These positive powers are traditionally reserved for elected governments, and so counter-democratic bodies can only exert influence in a negative, reactive way (Rosanvallon, 2008: 23). Independent oversight bodies exercise power narrowly, using vigilance, denunciation and evaluation to hold

government to account (Rosanvallon, 2008: 13). They have no general authority to rule, and instead respond to particular allegations of maladministration, underpinned by a model of 'the people as judge' (Rosanvallon, 2008: 16). Developing the idea of the people as judge, political theorist Nadia Urbinati explains, 'Judicial action is characterised by an unpolitical kind of impartiality and is a check on a specific behaviour that translates into a specific decision. It is an action that operates case by case, and is not collective like democratic forms of political intervention by citizens' (2010, p. 81).

By looking more closely at a particular example of a counter-democratic independent oversight body, we can begin to see how these abstract principles take on a more concrete institutional form. An ombudsman, such as the PPO, is an independent third party that investigates individual complaints or allegations of maladministration against government bodies (Buck et al., 2011; Seneviratne, 2002). Ombudsmen were once seen as a controversial innovation, but they are now embedded in the state and a routine aspect of administrative justice (Kirkham, 2016: 106). In the context of prisons, the PPO embodies cool rationality in an area that is fraught with the heated emotions of criminal justice (Loader and Sparks, 2010: 108–114). The PPO's voice on matters of punishment is carefully crafted to be rational, unbiased and evidence-based, which enables it to subject prisons to a specific, measured form of public criticism.

The PPO increasingly works in conjunction with a range of other prison oversight bodies. Processes of monitoring, inspection and investigation are performed by the Independent Monitoring Board, HM Inspectorate of Prisons and the PPO, respectively (Bennett, 2014; Hardwick, 2016; Shute, 2013). In addition to this '[dense pattern] of regulatory oversight' (Hood et al., 1999, p. 117), custodial sites have a plethora of internal policies and auditing systems, as well as standardised rules, best practice guidelines and legal instruments that specify how they should be run. Investigations into deaths in custody are one part of a broader repertoire of evaluative standards and regulatory oversight to which prisons are subject (Behan and Kirkham, 2016).

Prisons are thus increasingly overseen by a set of counter-democratic organisations whose authority rests on their status as non-partisan actors. Independent oversight bodies cast judgement in particular cases and discipline prisons when they fail to follow their own rules, but they provide no all-encompassing political vision of how to change prisons, nor can they provide a positive case for how scarce resources ought to be allocated. Instead, they offer

a sort of *counter-policy*, which relies on monitoring, opposition, and limitation of government powers [...] Reactive in essence, these strategies and actions cannot sustain or structure collective projects. The distinctive feature of this sort of unpolitical counter-democracy is that it combines democratic *activity* with non-political *effects*. (Rosanvallon, 2008, p. 23)

Depoliticisation: The politics of technocratic government

Prison suicide investigations, as I have theorised them thus far, foreground values of independence, neutrality and rationality, and in the previous section I argued that the form of these inquiries is recognisably counter-democratic. In this final section, I want to suggest that prison suicide investigations can also be interpreted as examples of depoliticisation, and that their technocratic style is in keeping with broader trends in the politics of punishment (Loader, 2010; Loader and Sparks, 2017; Shamma, 2016). Depoliticisation, a term that has been discussed extensively in political science with regards to economic policymaking, refers to efforts to dial down the ideological content of political questions. According to an influential early statement of the idea, ‘depoliticisation as a governing strategy is the process of placing at one remove the political character of decision making’ (Burnham, 2001, p. 128). In so doing, it recasts value-laden policy questions as technical challenges to be resolved outside of political arenas by independent professionals and experts (Flinders, 2012). This strategy offers governing elites a way out of polarising debate over intractable policy questions, such as how prisons should be run and how states should keep their citizens safe (Loader, 2006, 2008). Like technocracy, depoliticisation attempts to rationalise government decision making and limit spaces of open ideological contestation.

What is the underlying rationale of depoliticisation, and why might it appeal to governing elites in respect of a political problem like deaths in custody? Depoliticisation rests on a ‘bad faith model of politics’ (Flinders, 2012: 91), which sees rent-seeking behaviour and perverse incentives as structural features of representative democratic systems. Administrators working in independent, non-political environments are less likely to be affected by fickle political emotions and are more likely to take the most rational course of action in any given situation (Loader, 2010). Insulating difficult policy questions from political pressures is thus a form of ‘discipline’ that secures certain desired outcomes (Roberts, 2009). Unlike populism, which purports to open up new political space through its superficial embrace of conflict and contestation (Müller, 2017), depoliticisation attempts to narrow political horizons and minimise ideological conflict (Flinders and Wood, 2014). It puts a premium on closed, consensual processes rather than open, oppositional debate (Mair, 2013). Not only is depoliticised decision making better suited to finding the right answers to difficult questions, the theory goes, it also takes some of the heat and ‘irrationality’ out of democratic processes (Stone, 2012: 7).

Given the contentious nature of deaths in custody, especially when there is evidence of rising numbers and rates of suicide across the entire prison system, depoliticisation may be an attractive prospect for governing elites. Depoliticisation has historically been instigated by political actors in respect of long-standing problems, such as economic growth and monetary policy (Burnham, 2001). As a form of statecraft (Flinders and Wood, 2014), it allows incumbent governments to distance themselves from controversial outcomes in public institutions and deflect attention from the powers they have at their disposal. Efforts to avoid blame,

manage risks and transfer difficult questions elsewhere, a process some scholars call 'arena-shifting' (Flinders and Buller, 2006: 296), can be observed whenever there is an initial report that someone has died in custody. Rather than make any comment on the case or acknowledge patterns of policy failure across the prison estate, the Ministry of Justice releases a statement announcing that the death will be independently investigated by the PPO and by a coroner's inquest, turning attention away from those responsible for running prisons and onto depoliticised bodies comprised of independent professionals.

Depoliticisation shares many of its theoretical premises with technocracy (Loader and Sparks, 2017), the idea that political action ought to be guided to a significant extent by accredited professionals who claim to be ideologically non-partisan. According to one sceptical account, 'The basic political premise of techno-politics is that the classic question regarding competing claims to rule has been decisively answered. Instead of Plato's philosopher king we get his emasculated modern descendant: the rational bureaucrat' (Kenneally, 2009, p. 58). The power that technocracy gives to politically 'neutral' actors conceals processes of decision making behind a veil of expertise, and in so doing complicates the relationship between ruler and ruled. Accountability suffers in these circumstances, as political elites reinforce the idea that they cannot be trusted to govern, either by denying their capacity to act or voluntarily giving it away (Hay, 2007).

In its most general form, technocracy is not necessarily committed to any particular political programme or substantive policy goals. Indeed, its proponents would likely disavow the notion that they are 'ideological' (Loader and Sparks, 2017: 106) and express commitment to instrumental rationality over utopian visions of the good society (Olson, 2015). The reason for its flexibility is that technocracy is predicated on a set of meta-values about how political decisions ought to be made (Centeno, 1993). These are often implicit, but it is clear that technocracy emphasises the importance of rationality, expertise, neutrality, evidence, efficiency and pragmatic utilitarianism (Gilley, 2017: 13). These qualities are strikingly similar to the procedural values that animate independent oversight bodies like the PPO and judicial forums such as coroners' inquests.

Technocracy, in short, is an ideology of means, not ends (Centeno, 1993: 312). Along with depoliticisation, it offers a narrow view of how political problems should be understood and responded to, and for this reason it tends towards recommending technical changes that can be verified by external regulators and independent professionals. Where traditional democratic politics offers collectivism, partisanship and generality, depoliticisation and technocracy offer individualism, independence and particularism. These are important qualities in case by case reviews of deaths in custody, but they are limited in their ability to ask more open ended, less manageable questions about the politics of punishment.

Conclusion

At the heart of all prison suicide investigations is the search for objective knowledge about the circumstances of a single death. In pursuit of this aim, both PPO investigations and coroners' inquests prioritise independence, neutrality and rationality, as embodied by rule-following, fact-finding professionals. These institutional arrangements subject prisons to a specific type of case by case accountability that can be theorised as examples of counter-democracy and depoliticisation. As I have argued in this article, the consensual, technocratic form of death investigations contrasts with their contentious, painful subject matter. Independent oversight bodies do not address general political questions about power, values, interests and resources. Instead, they focus narrowly on the *how* of each death, rather than the broader question of *why*.


Deaths in custody are low-frequency, high-consequence events. For this reason, they provoke professional soul-searching in ways that few other occurrences do (Barry, 2017; Liebling, 2017). When individuals harm themselves severely or end their lives in confinement, the harsh reality of punishment is laid bare. The corrosive, psychological hardship of imprisonment is turned into visible, embodied pain that is examined, scrutinised and objectified by professionals and experts. As I have argued in this article, procedures of independent oversight are capable of rationally explaining the end of life in individual cases, but they avoid more difficult questions about the meaning of pain in punishment and open-ended normative discussions of whether such extreme suffering can be justified.

Part of the reason why these questions are not asked is that they cannot be managed away: their answers do not lie in paper trails, policy documents or any other verifiable material. They cannot simply be adjudicated upon by a third party, whether an ombudsman or a coroner, to resolve them once and for all. Questions about pain, justice and moral desert are contestable by their very nature, and are not reducible to factual details, administrative minutiae or rational procedures. They are, in a word, political problems, that require us to think about prisons both in terms of legitimate means and ultimate ends: not only *how* we punish, but *why*.

Acknowledgements

I would like to thank Vanessa Barker, Mary Bosworth, Alison Lamont, Ian Loader, Lucia Zedner and the anonymous reviewers for their comments on earlier drafts of this article.

ORCID iD

Dominic Aitken  <https://orcid.org/0000-0001-7745-0286>

References

Bach W (2017) *The right to justice: The final report of the Bach Commission*. Available at: www.fabians.org.uk/wp-content/uploads/2017/09/Bach-Commission_Right-to-Justice-Report-WEB.pdf (accessed 20 August 2020).

- Baker D (2016) Deaths after police contact in England and Wales: The effects of article 2 of the European convention on human rights on coronial practice. *International Journal of Law in Context* 12(2): 162–177.
- Barry C (2017) You just get on with the job’: Prison officers’ experiences of deaths in custody in the Irish prison service. *Prison Service Journal* 230: 53–60.
- Behan C and Kirkham R (2016) Monitoring, inspection and complaints adjudication in prison: The limits of prison accountability frameworks. *The Howard Journal of Crime and Justice* 55(4): 432–454.
- Bennett J (2014) Resisting the audit explosion: The art of prison inspection. *The Howard Journal of Criminal Justice* 53(5): 449–467.
- Boswell C (2018) *Manufacturing Political Trust: Targets and Performance Measurement in Public Policy*. Cambridge, UK: Cambridge University Press.
- Bradbury M (1999) *Representations of Death: A Social Psychological Perspective*. Abingdon, UK: Routledge.
- Bray R (2010) Death scene jurisprudence: The social life of coronial facts. *Griffith Law Review* 19(3): 567–592.
- Buck T, Kirkham R and Thompson B (2011) *The Ombudsman Enterprise and Administrative Justice*. Farnham, UK: Ashgate.
- Burnham P (2001) New labour and the politics of depoliticisation. *The British Journal of Politics and International Relations* 3(2): 127–149.
- Carlen P (2001) Death and the triumph of governance? Lessons from the Scottish women’s prison. *Punishment & Society* 3(4): 459–471.
- Centeno M (1993) The new leviathan: The dynamics and limits of technocracy. *Theory and Society* 22(3): 307–335.
- Coles D and Shaw H (2007) *Unlocking the truth: Families’ experience of the investigation of deaths in custody*. Available at: www.inquest.org.uk/Handlers/Download.ashx?IDMF=d700d323-2931-467a-882e-59e13bd2cf81 (accessed 20 August 2020).
- Crewe B (2011) Depth, weight, tightness: Revisiting the pains of imprisonment. *Punishment & Society* 13(5): 509–529.
- Flinders M (2012) *Defending Politics: Why Democracy Matters in the 21st Century*. Oxford, UK: Oxford University Press.
- Flinders M and Buller J (2006) Depoliticisation: Principles, tactics and tools. *British Politics* 1(3): 293–318.
- Flinders M and Wood M (2014) Depoliticisation, governance and the state. *Policy & Politics* 42(2): 135–149.
- Freckelton I (2007) Death investigation, the coroner and therapeutic jurisprudence. *Journal of Law and Medicine* 15(2): 242–253.
- Freckelton I and McGregor S (2014) Coronial law and practice: A human rights perspective. *Journal of Law and Medicine* 21(3): 584–601.
- Gilley B (2017) Technocracy and democracy as spheres of justice in public policy. *Policy Sciences* 50(1): 9–22.
- Green J (1992) The medico-legal production of fatal accidents. *Sociology of Health and Illness* 14(3): 373–389.
- Hardwick N (2016) Inspecting the prison. In: Jewkes Y, Bennett J and Crewe B (eds) *Handbook on Prisons* (2nd ed). Abingdon, UK: Routledge.
- Hay C (2007) *Why We Hate Politics*. Cambridge, UK: Polity.

- HM Inspectorate of Prisons (1999) *Suicide is everyone's concern: A thematic review by HM chief inspector of prisons for England and Wales*. Available at: www.justiceinspectorates.gov.uk/hmiprison/wp-content/uploads/sites/4/2014/07/suicide-is-everyones-concern-1999-rps.pdf (accessed 20 August 2020).
- Hood C, James O, Jones G, et al. (1999) *Regulation inside Government: Waste-Watchers, Quality Police, and Sleazebusters*. Oxford, UK: Oxford University Press.
- INQUEST (2016) *The INQUEST handbook: A guide for bereaved families, friends and advisors*. Available at: www.april.org.uk/content/pages/documents/1508163552.pdf (accessed 20 August 2020).
- Institute for Government (2019) *Performance tracker 2019: A data-driven analysis of the performance of public services*. Available at: www.instituteforgovernment.org.uk/sites/default/files/publications/performance-tracker-2019_0.pdf (accessed 08 December 2020).
- Kennelly I (2009) Technocracy and populism. *The New Atlantis* 24: 46–60.
- Kirkham R (2016) The ombudsman, tribunals and administrative justice section: A 2020 vision for the ombudsman sector. *Journal of Social Welfare and Family Law* 38(1): 103–114.
- Kirkham R, Thompson B and Buck T (2008) When putting things right goes wrong: Enforcing the recommendations of the ombudsman. *Public Law* 52: 510–530.
- Liebling A (2000) Prison officers, policing and the use of discretion. *Theoretical Criminology* 4(3): 333–357.
- Liebling A (2011) Moral performance, inhuman and degrading treatment and prison pain. *Punishment & Society* 13(5): 530–550.
- Liebling A (2017) The meaning of ending life in prison. *Journal of Correctional Health Care* 23(1): 20–31.
- Loader I (2006) Fall of the 'platonic guardians': Liberalism, criminology and political responses to crime in England and Wales. *The British Journal of Criminology* 46(4): 561–586.
- Loader I (2008) The anti-politics of crime. *Theoretical Criminology* 12(3): 339–410.
- Loader I (2010) Is it NICE? The appeal, limits and promise of translating a health innovation into criminal justice. *Current Legal Problems* 63(1): 72–91.
- Loader I (2020) A question of sacrifice: The deep structure of deaths in police custody. *Social & Legal Studies* 29(3): 401–420.
- Loader I and Sparks R (2010) *Public Criminology?* Abingdon, UK: Routledge.
- Loader I and Sparks R (2013) Unfinished business: Legitimacy, crime control, and democratic politics. In: Tankebe J and Liebling A (eds) *Legitimacy and Criminal Justice: An International Exploration*. Oxford, UK: Oxford University Press.
- Loader I and Sparks R (2017) Penal populism and epistemic crime control. In: Liebling A, Maruna S and McAra L (eds) *The Oxford Handbook of Criminology* (6th ed). Oxford, UK: Oxford University Press.
- Mair P (2002) Populist democracy vs party democracy. In: Meny Y and Surel Y (eds) *Democracies and the Populist Challenge*. Basingstoke, UK: Palgrave Macmillan.
- Mair P (2013) *Ruling the Void: The Hollowing of Western Democracy*. London, UK: Verso.
- Martynowicz A (2011) Oversight of prison conditions and investigations of deaths in custody: International human rights standards and the practice in Ireland. *The Prison Journal* 91(1): 81–102.

- Matthews P (2014) *Jervis on Coroners* (13th ed). London, UK: Sweet & Maxwell.
- McArdle I (2016) The role and scope of an inquest. In: Cross C and Garnham N (eds) *The Inquest Book: The Law of Coroners and Inquests*. Oxford, UK: Hart.
- Ministry of Justice (2011) *PSI 64/2011: Management of prisoners at risk of harm to self, to others and from others (safer custody)*. Available at: www.justice.gov.uk/downloads/offenders/psipso/psi-2011/psi-64-2011-safer-custody.doc (accessed 20 August 2020).
- Ministry of Justice (2017) *Safety in custody quarterly bulletin: September 2016*. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/595797/safety-in-custody-quarterly-bulletin.pdf (accessed 8 December 2020).
- Moran M (2003) *The British Regulatory State: High Modernism and Hyper-Innovation*. Oxford, UK: Oxford University Press.
- Morrison T (1970) *The Bluest Eye*. New York, NY: Holt, Rinehart and Winston.
- Müller J (2017) *What is Populism?* London, UK: Penguin.
- Nussbaum M (2001) Political objectivity. *New Literary History* 32(4): 883–906.
- Olson R (2015) *Scientism and Technocracy in the Twentieth Century: The Legacy of Scientific Management*. Lanham, MD: Lexington Books.
- Parsons W (2002) From muddling through to muddling up – Evidence based policy making and the modernisation of British government. *Public Policy and Administration* 17(3): 43–60.
- Poovey M (1998) *A History of the Modern Fact: Problems of Knowledge in the Sciences of Wealth and Society*. Chicago, IL: University of Chicago Press.
- Prisons & Probation Ombudsman (2015) *Learning from PPO investigations: Self-inflicted deaths of prisoners on ACCT*. Available at: https://s3-eu-west-2.amazonaws.com/ppo-prod-storage-1g9rkjhjkjmgw/uploads/2014/07/ACCT_thematic_final_web.pdf (accessed 20 August 2020).
- Prisons & Probation Ombudsman (2016a) *Independent investigation into the death of Mr Mark Smith, a prisoner at HMP Thameside on 6 September 2015*. Available at: <https://s3-eu-west-2.amazonaws.com/ppo-prod-storage-1g9rkjhjkjmgw/uploads/2017/01/L141-15-Death-of-Mr-Mark-Smith-Thameside-06-09-2015-SID-31-40.pdf> (accessed 20 August 2020).
- Prisons & Probation Ombudsman (2016b) *Prisons & probation ombudsman annual report 2015–16*. Available at: www.ppo.gov.uk/app/uploads/2016/09/PPO_Annual-Report-201516_WEB_Final.pdf (accessed 20 August 2020).
- Prisons & Probation Ombudsman (2017) *Terms of reference*. Available at: <https://s3-eu-west-2.amazonaws.com/ppo-prod-storage-1g9rkjhjkjmgw/uploads/2017/04/PPO-Terms-of-reference-2017.pdf> (accessed 20 August 2020).
- Prisons & Probation Ombudsman (2018) *Independent investigation into the death of Mr Osvaldas Pagirys, a prisoner at HMP Wandsworth on 14 November 2016*. Available at: https://s3-eu-west-2.amazonaws.com/ppo-prod-storage-1g9rkjhjkjmgw/uploads/2018/02/M248-16_Death-of-Mr-Osvaldas-Pagirys_HMP-Wandsworth_14.11.16_SID_18-21.pdf (accessed 20 August 2020).
- Prisons & Probation Ombudsman (2019) *Prisons & probation ombudsman annual report 2018–19*. Available at: https://s3-eu-west-2.amazonaws.com/ppo-prod-storage-1g9rkjhjkjmgw/uploads/2019/10/PPO_Annual-Report-2018-19_WEB-final-1.pdf (accessed 20 August 2020).

- Roberts A (2009) *The Logic of Discipline: Global Capitalism and the Architecture of Government*. Oxford, UK: Oxford University Press.
- Rosanvallon P (2008) *Counter-Democracy: Politics in an Age of Distrust*. Cambridge, UK: Cambridge University Press.
- Rosanvallon P (2011) *Democratic Legitimacy: Impartiality, Reflexivity, Proximity*. Cambridge, UK: Cambridge University Press.
- Seneviratne M (2002) *Ombudsmen: Public Services and Administrative Justice*. London, UK: Butterworths.
- Shammas V (2016) Who's afraid of penal populism? Technocracy and 'the people' in the sociology of punishment. *Contemporary Justice Review* 19(3): 325–346.
- Shute S (2013) On the outside looking in: Reflections on the role of inspection in driving up quality in the criminal justice system. *The Modern Law Review* 76(3): 494–528.
- Stone D (2012) *Policy Paradox: The Art of Political Decision Making* (3rd ed). New York, NY: WW Norton & Company.
- Tomczak P (2018) *Prison Suicide: What Happens Afterwards?* Bristol, UK: Bristol University Press.
- Urbinati N (2010) Unpolitical democracy. *Political Theory* 38(1): 65–92.
- Woolf H (1991) *Prison Disturbances 1990: Report of the Inquiry*. London, UK: HMSO.

Table of cases

- Edwards v United Kingdom* 46477/99 (2002) ECHR 303.
- Jordan v United Kingdom* 24746/94 (2003) 37 EHRR 2.
- R v HM Coroner for North Humberside and Scunthorpe ex parte Jamieson* (1995) QB 1.
- R (Amin) v Secretary of State for the Home Department* (2004) UKHL 51.
- R (Middleton) v West Somerset Coroner* (2004) UKHL 10.

Dominic Aitken is a Lecturer in Criminology in the Department of Social & Policy Sciences, University of Bath.