

The Ethics and Practice of Electronically Monitoring Offenders

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How can a person with no knowledge of the future understand the meaning of the present? If we do not know what future the present is leading us toward, how can we say whether the present is good or bad, whether it deserves our concurrence, or our suspicion, or our hatred? (Milan Kundera Immortality, 2002 143-4)

There must have been a time, somewhere near the beginning, when we could have said 'No'. (Tom Stoppard 1966 Rosencrantz and Guildenstern are Dead)

A General Observation

Changes in punishment are almost certain not to arise from a simple one dimensional effect. The forms of punishment employed by a society at any one moment are shaped by a variety of interests and intentions. They arise in response to what must often be antagonistic considerations, including the framework of law, what is technologically possible, what seems desirable or necessary in the light of the apparent problem of crime, what society is willing to accept and pay for. Why one method of punishment loses favour over time and gives way to another is a complex question because penal methods evolve within a larger social and cultural context. (John Beattie (1986), Crime and the Courts in England 1660 -1800, Oxford University Press, p470).

Aim

To make a positive ethical case for the incorporation of EM into rehabilitative and restorative practices with offenders...
...because the alternative - EM superseding rehabilitation - is worse.

Electronic Monitoring in Scotland

Available to High, Sheriff and Stipendiary Courts since May 2002
delivered by Reliance Monitoring Services
RLOs = restrictions to a place (curfews) - restrictions from a place (exclusions)
Over 2600 RLOs made in Scotland between 2002- 2005
The 1335 orders last year was a 65% increase on the 807 the previous year
mostly used on 16-25 year olds ((57%)
mostly 3-6months in length (59%)
+
97 EM requirements in probation orders 2004- 2005
EM in DTTOs, 7 ISM projects for juveniles and 3 EM bail pilots (not official stats yet)
200,000+ EM curfews made in England and Wales since tagging went national in 1999
Largest proportion on HDC (early release from prison)
EM community penalties and bail for both adults and juveniles
+ 3 GPS satellite tracking pilots (inc for juveniles)

Brief History

USA Ralph Schwitzgebel - Harvard psychologist, 1960s, - "walkie-talkie tracking"
 USA 1981/2 - Judge Love, Albuquerque (Spiderman comic)
 (but Florida quickly became and has remained most EM-committed state)
 Britain 1981/2: Tom Stacey and Offender 's Tag Association
 - a Tory deeply hostile to the use of imprisonment

England's Conservative Government thought EM would create the "ultimate" community penalty,
 New Labour rolled EM out nationally in 1999 and seems passionately committed to it
 EM sometimes used alone, sometimes with other penalties
 used as a high tariff measure..... initially

Probation Service and penal reform organisations strongly opposed to EM

Technically, it would not work to reform offenders or reduce crime
 (and it is not ethical to do things that don't work).
 Visual nature of tag = shaming and stigmatising
 draconian, Orwellian, depersonalising, dehumanising
 impersonal, non-humanistic, non-dialogical
 inevitable net widening no matter on whom it was targeted
 would intensify family conflicts
 Sartorially inappropriate for women (unless tag is wrist-worn)
 possible infringements of human rights

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Thin end of the wedge - it will presage worse technologies in the future.
 The lesser of two evils argument - that EM is better than prison - is not good enough
 EM must be a positive good
 EM is not a positive good, not compatible with social work or rehabilitation

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EM is rooted in the private sector - and privatisation is a bad thing

Early Home Office research did not dispel all these anxieties:

Technological reliability
 High compliance rates
 Net widening does indeed occur
 Offender satisfaction
 Third party (partner, kids) satisfaction
 Limited family tensions
 Huge savings on prison costs

For strategic reasons, in the early days in England, both opponents and supporters of EM portrayed it as an incapacitative (onerous and punitive) community penalty
 US promoters of EM - home detention, home confinement, house arrest, home as jail space,
 English Home Secretary: prison without bars, EM as a punitive stick to beat probation with.
 Opponents: electronic ball and chain, virtual prison, Big Brother - an impression of total control
 but
 EM-based measures (curfews/exclusion/ tracking) still allow choice/ require trust
 their viability depends on the *de facto* consent, cooperation and goodwill of offender.

The news media quickly picked up this "reality":
 the "real story" about EM - for the media - is largely under control not over control

and branded EM as a “soft option” - i.e., like probation, not the opposite of it (and sometimes EM does indeed fail).

Conservative Party - once EM's champions - now play the soft option card
paradox: EM - promoted as punishment - fell victim to “popular punitiveness”

Tho' distinctive and new, EM is more akin to other community supervision measures
- it does fall short of imprisonment - it is not incapacitative.

EM does not exert control in the same way as locks, bolts, bars and walls.

EM is a weak form of control - requires a high degree of personal responsibility -
compliance is a prudent choice - for this reason EM is NOT incompatible with
rehabilitation.

This compatibility is obscured because policy-maker rhetoric persistently links EM to
punitivism

and exaggerates the control EM is capable of exerting.

e.g. Home Office embedded EM in “punishment in the community “
and openly sought to displace/transform social work with offenders

Dick Whitfield (ACOP) (1997, 2001) was the first to grasp this :

- a) accommodate EM or probation will be marginalised
- b) EM is compatible with rehabilitation and can enhance it
- i) half day curfews are legitimate punishments/ forms of censure
- ii) advantages of EM's impersonality:

EM may have some potential for young people who have difficulties with authority. The
tag is completely impersonal: accepting it requires no personality clashes and no loss of
face. It enables one of the barriers to effective supervision to be sidestepped (Whitfield
2005: 127)

iii) EM can stabilise offenders to maximise benefits of rehab programmes

- c) the rehabilitative tradition is more robust than it seems
(the “what works” movement seemed promising then)

I agree with all of this except point c):

the humanistic / rehabilitative tradition is not in good shape - esp. in England

In Scotland the tone of the initial argument about EM was slightly different
after the pilots - a rational debate - how does EM square with what we are already doing?

Reliance Monitoring Services recruited social work staff as managers

Reliance staff promoted EM as consistent with rehabilitation/welfare/social work

but the argument has not been won, (esp. in respect of juvenile offenders)
media hostility to EM and Executive ambivalence (is EM more punishment or more
welfare?) don't help.

I think the argument has to be won - hence this seminar.

Starting point/core point:

EM has to be accommodated, owned and constrained by rehabilitative traditions -
otherwise it is indeed a potentially very dangerous development in criminal justice.

EM-curfew and exclusion requirements are not intrinsically rehabilitative

(except in sense of removing from peer group influence)

- but they can give meaning and substance to

the control element of “care and control” to which rehabilitation has always ostensibly
subscribed.

To make better sense of EM as a form of control
characterise it as a surveillant means of ensuring compliance

surveillance =
collection of data on, or observation of, individual(s) - face-to-face or remotely - with a view to

- a) understanding (elements of) behaviour patterns - individually, or in aggregate
- b) developing the capacity to intervene in some aspect of their lives (crime prevention, marketeering).

EM is surveillance because it entails:

- a) verifiable "control"-at-a-distance, in real-time (or approximation thereto)
- b) decision-making based on (or contributed to by) digital representation of a person
- c) focus on the trails and traces of the body's presence or absence - not (solely) the mind

A big question arises here about the ethics of surveillance more generally - public and private space CCTV, speed cameras, DNA data bases, store loyalty cards, ID cards

- are these signs of a "surveillance society" - even "a maximum surveillance society"? certainly profound questions are raised about democracy, freedom and privacy.

Sidestep this argument for now, note only that: there are malevolent (Big Brother) and benevolent (Guardian Angel) arguments about surveillance.

EM-surveillance as a form of control is not so onerous that it undermines rehabilitation
rehabilitation (realistically) = care, support, control and censure
restrictions on schedules and locations - which EM surveillance enables

- a) *can be* crime reductive
 - b) *can be* reassuring to / protective of crime victims
- so

EM restrictions on movement (curfew or exclusion - or tracking) enlarge the basis on which offenders can be induced to comply with community supervision.

This applies to juveniles as well as adults, with more provisos:

- a) home is not a haven/home can be criminogenic
- b) adolescent life is not usually home-centred,
- so restriction to home can be more punitive than for adults
- c) supporting adolescents through EM is essential

Typology of Compliance in Community Supervision

(NB - these can be, and usually are entwined)

Incentive-based

Compliance on the basis of an anticipated gain - literacy, numeracy, employability, assistance with housing, getting free of addiction, relaxation of an onerous condition.

Trust-based

Compliance on the basis of a promise (to be of good behaviour, to undergo behavioural change programme), made (implicitly) to a supervisor whose authority you respect by dint of the relationship you have made with them.

(NB relationships are necessary but not sufficient ingredients of effective community supervision).

Threat-based

Compliance on the basis of a penalty for non-compliance, something worse than you are already experiencing, probably prison.

Surveillance-based

Compliance on the basis of remote, (more or less) real-time monitoring and the construction of databases from which verifiable trails and traces can be retrieved.

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Incapacitation-based

“Compliance” on the basis of having “no choice” - the actual inhibition of the desire to offend, not just its prohibition; restraint rather than constraint (e.g. prison) (does not apply to any existing form of community supervision).

Why is it important to accommodate EM within rehabilitative/humanistic traditions?

To answer this, it is necessary to understand - in terms of four levels of explanation - why EM has come into being at this point in time, on the cusp of the 20th and 21st centuries.

1. Policy Reasons

To add more control into community supervision.

To improve public protection.

To reduce the use of imprisonment.

To reduce penal costs.

In England - to challenge the probation service using advanced technology to symbolise “modernisation”

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to rehabilitate/“responsibilise” offenders (Tom Stacey).

2. Managerialism

Conventionally understood as

pursuit of efficiency, economy, effectiveness, outsourcing/contracting-out (eg to private sector) de-professionalisation (“loss of discretion, devaluing of “expert knowledge”)

but it is also about

the more meticulous regulation (programming?) of organisational and individual behaviour.

The tight control and coordination of activity in space and time (locations and schedules).

Monitoring what, when and how activities are undertaken is integral to managerialism.

Managerialised cultures thus “seek out” technologies which facilitate monitoring.

Ergo; surveillance technologies and managerialism are inextricably entwined - there is an “elective affinity” (Max Weber’s term) between EM and managerial ideology.

3. Surveillance Culture

Watching, location monitoring and information gathering to prevent/pre-empt crime
e.g. CCTV and dataveillance - producing knowledge that aids risk management
we seem to have fewer public anxieties about surveillance than Orwell anticipated in
1948

+ Post 9/11 momentum towards more surveillance.

Fear and insecurity do legitimate surveillance. - CCTV reassures
but

we also “buy into” surveillance for pleasure and convenience as well as safety
 (eg mobile phones, store loyalty cards, sat nav in cars, “Whereify”, implanted chips).
 We are all nowadays locatable/pinpointable/traceable to a greater or lesser degree
 - want to be? need to be?

This is probably why the pinpointability of offenders with EM does not seem as amazing/
 draconian as it would have done to Orwell - locatability has been normalised and made
 desirable to all.

4. Socio - Technological Developments

EM is NOT just a new type of community supervision, an addition to an existing repertoire
 (broadly understood) EM has the capacity to transform /reconfigure the community
 supervision field, because it is an expression - in criminal justice - of something much
 bigger than criminal justice

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the global telecommunications revolution of the past 25 years
 - nothing to do with criminal justice *per se* -
 has created an environment/infrastructure of electronic contactability
 from which new forms of crime control can be created.

EM is one:

it customises equipment developed as “information and communication technology” (I C T)
 and puts it to use in a new context.

(Part of a broader technologically facilitated, politically-driven move to exert control “in
 real-time”: electronic databases, speedier decision making and info-sharing,
 reduced delay in administration of justice, instant fines, longer custodial sentences).

This is the key reason it is important to constrain and embed EM within a rehabilitative
 tradition.

The emergence of a global telecommunications infrastructure has given politicians in all
 western countries.

A new set of options in the way they respond to crime.

A set of options which make possible a new wave of “modernisation”
 to add to or compliment old ways of doing things, to displace and transcend old ways of
 doing things?

To supplement probation/social work or to dispense with it?

NB - this is not “technological determinism”

technology creates possibility - commerce and (finally) politics shape actuality
 so, we do have political leeway to shape how EM technology is developed and used, to
 express and assert our values but not the option to say “no” to it completely

What are we up against?

There are powerful political and commercial forces who advocate and lobby for
 surveillance.

“The commercial-corrections complex” the “technocorrections” movement
 debate on these is usually focussed on private prisons --
 but the EM industry is also part of “the complex”.

To the extent that humanistic interventions with offenders can be portrayed as inadequate
 (and passe).

The purveyors of surveillant interventions will be called upon (or offer) to fill the vacuum
 and will argue that they can fill the gap “better” (more efficiently) .

Florida seems to have made EM a normal/formal/usual ingredient of supervision with all
 offenders.

“Automated socio-technical systems” (Douglas and Lianos 2000)

are coming into being in many spheres of life. Why not crime control ? – esp. if

- a) underclass offenders are deemed unworthy of human attention & social and financial investment
- b) crime control is deemed dirty work/ menial work - doable by machines not people

Automation entered American life on a broad front, right from the ‘bottom’ - that is from those service industries which could most easily be mechanised, because they demanded no intellectual activity (banking, transport, the hotel industry). ...As was to be expected, the range of decisions entrusted to automatic systems kept on growing.
(Stanislaw Lem 1991:100-101)

The thin end of the wedge argument about EM – EM as Trojan Horse – is not without foundation: but if we lose confidence in rehabilitation, EM – and other control technologies - will more likely develop in alarming ways.

In the twenty-first century [the prison] may serve as a humane alternative to biochemical controls on behaviour and electronic controls on movement. The technological gap between drugs that allow deeply mentally disturbed people to function in the community and drugs that offset aggressive impulses or excitement is bridgeable. When that bridge is crossed, there will be those who regard the moral autonomy of offenders as less important than the prevention of harm to victims. Delayed delivery drugs and subcutaneous computer chips are available now. Some crime controllers will be happy to see them used. In the long term we cannot know how these debates will be resolved but for a time at least imprisonment may serve as a humane alternative to behavioural controls that may be much more deeply violative of human rights and liberties. (Michael Tonry The Future of Imprisonment 2003: 4-5)

If we do not lose confidence in rehabilitation - and retain structures and cultures which uphold it - EM (and other control technologies) - may be held at bay.

We live in “new times”/ times of transition - as transformative as the feudal/industrial transition.

In the course of the 21st century , will probation/ social work go the way of the pillory ? For a century the community supervision of offenders was dominated by social work. now there is another way.

Criminal justice will *inevitably* “exploit” new forms of electronic contactability the terms on which we can (and must) defend rehabilitation have changed/ got more complicated.

My aim here was to equip you with arguments to face (down) some of the crime control challenges of the 21st century. I hope I have done so.