

Standards and Ethics in EM in a Digital Era

Mike Nellis

University of Strathclyde

The Paucity of EM Ethics

- Negligible expert ethical discussion of EM
- “Netwidening” & “Proportionality” have been surrogates for full ethical discussion
- “Legitimacy” in the eyes of offenders, victims and professionals - has been addressed.
- Techno-utopianism – creates false hopes of mass prison reduction – and begs questions of humanity and social (in)justice
- Techno-dystopianism: slippery slope arguments of inevitable dehumanisation in an expanding culture of high-tech surveillance. Influenced by popular culture.

Council of Europe “Recommendation”

Council for Penological Co-operation (PC-CP)

- Requested by CEP - Accepted by PC-CP, but NOT as addition to Probation Rules.
- Committee of people from 9 countries.
- Chair: Andre Valloton/ Secretary: Ilina Taneva.
- Advisers: Dominik Lehner & Mike Nellis
- Met 7 times between 2012-2013.
- Recommendation endorsed by Council of Ministers in February 2014.
- “Soft law” – guidance not prescription.

Council of Europe – Concerns

- Reluctant recognition of EM's expansion and likely durability as a penal measure (and the role of the private sector within that)
- Recognition of inadequacy of the existing Probation Rules comment on EM
- The need for judicial – not executive - oversight of all EM-based restrictions of liberty.
- Increasing police interest in and use of EM - it is not just used by prison and probation services.
- Dissemination – Council held a follow-up seminar in November 2014 (too early?)

The Recommendation

CM/Rec 2014(4)

Headings

- Definitions
- Basic Principles
- Conditions of Execution
- Data Protection
- Staff
- Research and evaluation

Some Themes

- Meanings of EM, varieties of EM technologies, intensity & duration of regimes, consent, locational privacy, respect for the evidence base, impact on co-residents, citizenship & exclusion zones, use with victims, stigma, training, discrimination, media strategy and public relations, privatisation, (NOT juveniles or EM in prison)
- All this is only a start
- Dissemination and influence is a problem

Council of Europe – additions

- EM in Recommendation on Dangerous Offenders
- Guidelines to prisons and probation on response to radicalisation and violent extremism permits EM use. Necessary because, for example:
- UK Control Orders on terrorist *suspects* (later renamed Terrorism Prevention and Investigation Measures - TPIMs) use GPS EM as an alternative to preventive detention (criticised by ECHR)
- *Civil Case in London - August 2015*

“Islamic State fear prompts family electronic tags order” (London, August 2015)

- Two Muslim families head for Syria to join ISIS – detained in Turkey and England – children placed in local government foster care, pending decisions on their future in late 2015.
- Family Division of High Court says children can return to their parents if parents voluntarily accept rf tagging (later GPS tracking) & reporting to police
- Is this particular judicial innovation ethical?

The Judicial Reasoning

(accepting that flight to ISIS would put children's lives at risk)

- “I accept that there is some degree of risk of successful flight,” said Judge Sir James Munby. “But, taking a realistic view, though not forgetting that we are here in the realm of unknown unknowns, my considered assessment is that the degree of that risk is very small indeed, so small that it is counter-balanced by the children's welfare needs to be returned to parental care. I should add, to make plain, that in relation to their welfare (leaving flight risk on one side), the benefits all of these children will derive from being returned to their parents clearly, in my judgment, outweigh any and all of such contrary welfare arguments.”

Ethics and Cultural Resistance to EM

(in Germany)

Germania Philip Veit 1848



Memories of the Stasi



The Question Concerning Technology

Martin Heidegger 1957



- A good European (pre-digital) question – how far has (digital) tech become an inescapable mode of life – and is this a bad thing – and how much can “we” shape technology to suit human hopes?
- Ask this of EM.

Rationality = Technology?

- “Having wired up the world, Silicon Valley assured us that the magic of technology would naturally pervade every corner of our lives. On this logic to oppose technological innovation is tantamount to defaulting on the ideals of the Enlightenment” (Evgeny Morozov 2014)
- Digital solutionism – using real-time geo-location - will inevitably make claims on “the penal field”
- “Surveillance society” &/or “surveillance state”?
- EM as **E-governance** – how far can or should it be resisted?

Three “Ethical EM” Propositions

- Forms of EM can be devised which are cheaper and less destructive than prison – and there is a democratic imperative to minimise prison use.
- The symbolic & material power of prison is hard to challenge – do not reject the affordances of digital infrastructure – rather, shape them.
- EM can **reduce** or enhance punitiveness
- EM will never be used wisely or well unless it is embedded in an “ethic of care” & human rights – outside this it could add to “penal harm”.

The Seductions of Technology



- EM is not exactly a neutral tool – choosing tech to augment or replace the human is itself a moral choice
- Affirming the human, the personal, the relational in a digital era – and why this matters in penal practice – is a vital, overarching ethical task
- This does not mean rejecting EM – but acceptance has risks which must be managed.
- Note: there is already a Campaign Against Sex Robots – but not all robots.