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Post-Script: Guide, Guard and Glue -- Electronic monitoring and penal supervision

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Introduction

This issue of the *European Journal of Probation* provides us with contemporary, considered and thoughtful analyses of the development of electronic monitoring (EM) in the context of penal sanctions and measures in 5 jurisdictions: Australia, Belgium, Germany, the Netherlands and Scotland. The guest editor of this special issue – Professor Kristel Beyens – deserves great credit for pulling together such an interesting and important collection of papers. She has asked me – as someone deeply interested in penal supervision but to some extent detached debates about EM – to offer some closing reflections. In what follows, I try to do that, not through any attempt to synthesise the analyses of these excellent papers, but rather simply by sharing the thoughts and questions they provoked in this reader.

Perhaps the obvious place to start is with my 'detachment' hitherto from EM. Despite the encouragement of wiser colleagues (like Mike Nellis and Kristel Beyens) to engage more with EM in my work on supervision, I have always been hesitant. On the one hand, like everyone else, I find it impossible to dispute the important influence of technologies on social (and therefore penal) policies and practices – and on the evolution of social life and social control in late-modernity. To make this case, I need only examine the way that my own life has been progressively re-framed by new technologies. My smartphone is my guide and my guard -- and the glue that, in one sense, fixes together my social and personal relations. In fact, this single handheld device digitally mediates most of my social relations. It's not that I don't have an 'analogue life' where I meet and relate to 'real' people in the flesh; rather, it is that *even those interactions* are planned, ordered and facilitated by that device. So I shudder at the fearful prospect of the loss of my smartphone, even if I also sometimes resent its omnipresence and fear its omniscience: Better than any person perhaps, it knows (and records) my plans, my contacts, my movements, my curiosities, my purchases, my networks, etc. Yes, I can silence its tones and alerts, but even then *I* hover around *it* -- curious as to the digital 'action' that I might be missing. And the digital world does seem to be where most of the action is.

Even so, when it comes to thinking about penal supervision, perhaps like many probation academics and practitioners of my generation (or older), the centrality of human-human interactions and relationships has been drilled into me, both in my professional training (as a social worker), in my professional experience (as a social worker and as an academic), and through my research and knowledge exchange activities (e.g. Burnett and McNeill, 2005). These human-human interactions – according to this world-view – are where the 'real' action is. In particular – along with many others – I have been eager

to stress not just how social structures and cultures shape social (and penal) lives and practices, but also how human actors (in particular, practitioners within penal systems) can *both* resist and subvert *and*, by contrast, be co-opted by and to governing rationalities and technologies (e.g. McNeill et al., 2009).

Indeed, an interest in how technologies and techniques are inscribed with and expressive of particular penal rationalities and sensibilities is commonplace in the sociology of punishment. Even if this interest has become most associated with him, it predates even Foucault; for example, Durkheim noted the crucial role played by the availability of a particular technology or architecture (specifically, the debtor's prison as a place of remand) in the development of imprisonment and, with it, modern penalty. In relation to probation and parole, both David Garland's (1985) *Punishment and Welfare* and Jonathan Simon's (1993) *Poor Discipline* offer telling analyses of how penal supervision emerged and then adapted within the continuously evolving rationalities, sensibilities, technologies and techniques of penal welfarism.

Robinson, McNeill and Maruna (2013) provide a more recent account of probation's continuing adaptations – and these adaptations *are* all 'technologies' of a sort and *employ* technologies of various sorts. For example, the punitive adaptation requires technologies of visibility (the ubiquitous orange vest). The rehabilitative adaptation needs technologies of behaviour change (the cognitive-behavioural programme). The managerial adaptation needs technologies not just for rationing resources (through risk assessment) but also for audit and performance measurement (the 'standards' and 'key performance indicators' *and* the infrastructure of information and communications technology that records and collates all the requisite data). Even the reparative adaptation needs a technology (or at least a practice) of accountability and of mediation (the restorative justice conference).

In thinking about penal change, this special issue might help us to consider whether or not it is time to speak of a 'surveillant' adaptation of supervision. Robinson, et al. (2013) do discuss EM, but treat it less as a distinct and novel form of adaptation in its own right and more as evidence of more punitive and/or more managerialised forms of supervision. Yet, interestingly, several of the contributors to this edition, like other well-informed commentators (Nellis, 2010), criticise a tendency in the development of EM to dichotomise 'supportive' and, by implication, 'human' forms of supervision from electronic monitoring as, by implication, 'mere surveillance'. Not only does that false dichotomy understate the growing evidence about the intensively surveillant and painful aspects of some forms of 'human' penal supervision (see Durnescu, 2011; Fitzgibbon, Graebisch and McNeill, 2017 forthcoming), it also neglects the human mediation of EM, both in the contact between monitoring officers and people under supervision, and in the humans who watch the screens in the monitoring centres.

Equally importantly, the false dichotomy between human and electronic monitoring neglects the potential and the risks that may lie in their integration.

At the outset of this brief reflection, I noted my reliance on my smartphone as a digital mediator of my social world. I also noted my ambivalence about this situation. But whatever my ambivalence, I have accepted (even embraced) that particular technology, including some aspects of its surveillant capacities. For example, I choose to let it know where I am (or, more accurately, where it is), so that it can tell me how to get where I want to be. I choose to let it record other personal data about me (my weight, the distances I walk or run) so that I can monitor, plan and motivate my progress towards goals that I have chosen.

The analogy breaks down, of course, over the fact that when it comes to my smartphone, I *choose* to embrace its utility and I have some control (or believe I have some control) over some of the information flows. I choose to trade some of my privacy for help with my daily life – and I do so freely and without (much) fear of the consequences of making other choices. A person compelled to submit to electronic monitoring -- or even consenting to such monitoring as a condition of early release or bail or probation -- is not making such a freely informed choice. Indeed, EM only 'works' as a means of encouraging compliance if the person subject to it believes in and is disciplined by its threat; to expose non-compliance and invoke the penal consequences. And EM only 'works' in terms of public and judicial credibility if they in turn believe that those subject to it are rendered compliant by this threat. There is something of a paradox here; EM's credibility depends on high rates of compliance and, simultaneously, on swift and certain discovery and enforcement of *non*-compliance. The same is perhaps true of any and every form of penal supervision – whether mediated by technology or not – but EM adds to the risk of defaulting on supervision if it increases the risks of the discovery of infractions.

That is one reason why the imposition of EM – like every form of penal supervision – must be subject to the tests of proportionality and parsimony. The two key principles advanced in the Final Report of the COST Action on Offender Supervision in Europe (McNeill and Beyens, 2016) are these:

1. 'Since supervision hurts, decisions about imposing and revoking supervision must be bound by considerations of proportionality. No one should be subject to more demanding or intrusive supervision than their offending deserves.
2. Supervision must be delivered in ways that actively minimize unintended and unnecessary pains both for those subject to supervision and for others affected by it (for example, family members)'.

These principles apply to EM no more and no less than to any other form of supervision, as well as to supervision that combines electronic and 'human' elements. Importantly, it is impossible to properly apply the first principle in the absence of knowledge about the how supervision is experienced in terms of its demands and intrusions; without that knowledge, the calculus of proportionality can only be uninformed. It is also impossible to properly apply

the second principle without knowledge about what *forms of delivery* minimise unintended and unnecessary pains of supervision.

A good example of the complexity of these issues is provided by the contrast between EM with radio-frequency (RF) technology and EM with GPS technology. The former simply monitors whether a tag stays where it is supposed to stay at the appointed times. The latter – all being well -- tracks a tag wherever it goes. Courts – and even in some cases people about to be subject to EM – may then have a choice between seeking to constrain liberty or (also) to invade privacy. A GPS tracked person may submit to less privacy (e.g. 24/7 monitoring of all movements) if that means less restrictive curfew hours. But how exactly is a judge to weigh loss of liberty against loss of privacy in determining a proportionate and parsimonious penalty (especially in societies where many of us are already submitting voluntarily to 24/7 monitoring of our movements by our smartphones!)?

To take another, perhaps more controversial, example: Most probation advocates tend to assume that the experience of human supervision is likely to be more congenial than standalone EM. But, similarly to the contrast in the last paragraph, imagine oneself compelled to choose between a 'simple' EM curfew between 8pm and 8am for 4 months and a year of fortnightly hour-long meetings with a human supervisor in an office on the other side of town, who is consistently late, or whose questioning you find intrusive, or whose judgment you find questionable, or whose advice you find patronising, or who seems intent on finding any excuse to breach your probation order or have you recalled you to prison. Perhaps if you like the place where you live and your own company, the choice would be easy.

Without answers to these sorts of questions, we are ill-equipped to assess the significance of the rapid expansion of EM. We need to better understand what EM *is* – not as a set of technologies, but as a set of human experiences that are mediated and moderated, for example, by individual tastes, habits, circumstances, resources and opportunities. This is important not just to consider crucial questions about proportionate punishment; it is also vital to understanding EM's potential (or otherwise) to support rehabilitation. Once again, several of our contributors recognise that potential; the Dutch and Australian cases seem particularly instructive in this regard. Yet our contributors also recognise the need for more research on whether, how, why and in what circumstances combining human support and electronic monitoring might support desistance from crime.

Whenever such optimism about penal innovations in the community surfaces, we should hear the ghost of Stan Cohen (1985) warning us about the risks of 'net-widening' and 'mesh-thinning' that commonly attend the development of systems of supervision. As a 'successful' penal innovation, EM's most common and most effective selling point has been its cost-effectiveness relative to imprisonment. It is a technology that offered to meet a policy need related to prison population management. The same was and is true of probation itself, and of community service (McNeill and Robinson, 2015). But like most commentators on these two earlier forms of supervisory sanction,

the contributors to this edition – and the literature on EM in general – do not seem able to reach clear conclusions about whether or not EM *has* succeeded in diverting people from prison sentences. So, both in terms of cost-effectiveness and in terms of parsimony, the case for EM has not yet been made.

When is EM proportionate? When does its use represent parsimonious punishment? Can it be constructive in supporting desistance? Can it divert people from prison? In a way, this special edition leaves us paradoxically with a sharper sense of the importance of these questions about EM but without clear answers to them. There are plenty of hints here – particularly about how and why national systems and contexts have shaped different uses of EM for better and worse. We have made progress therefore, but there is much work still to be done!

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