



# Electronic Monitoring

Tagging Offenders in a Culture of Surveillance

Tom Daems



palgrave  
macmillan

# Electronic Monitoring

Tom Daems

# Electronic Monitoring

Tagging Offenders in a Culture of Surveillance

palgrave  
macmillan

Tom Daems  
KU Leuven  
Leuven, Belgium

ISBN 978-3-030-34038-4      ISBN 978-3-030-34039-1 (eBook)  
<https://doi.org/10.1007/978-3-030-34039-1>

© The Editor(s) (if applicable) and The Author(s) 2020

This work is subject to copyright. All rights are solely and exclusively licensed by the Publisher, whether the whole or part of the material is concerned, specifically the rights of translation, reprinting, reuse of illustrations, recitation, broadcasting, reproduction on microfilms or in any other physical way, and transmission or information storage and retrieval, electronic adaptation, computer software, or by similar or dissimilar methodology now known or hereafter developed.

The use of general descriptive names, registered names, trademarks, service marks, etc. in this publication does not imply, even in the absence of a specific statement, that such names are exempt from the relevant protective laws and regulations and therefore free for general use. The publisher, the authors and the editors are safe to assume that the advice and information in this book are believed to be true and accurate at the date of publication. Neither the publisher nor the authors or the editors give a warranty, expressed or implied, with respect to the material contained herein or for any errors or omissions that may have been made. The publisher remains neutral with regard to jurisdictional claims in published maps and institutional affiliations.

Cover credit: lorenzo rossi/Alamy Stock Photo

This Palgrave Pivot imprint is published by the registered company Springer Nature Switzerland AG  
The registered company address is: Gewerbestrasse 11, 6330 Cham, Switzerland

## PREFACE

This little book grew out of an interest in electronic monitoring (hereinafter: EM) that started two decades ago. As a last-year criminology student in Leuven, I did an internship in the prison of Saint-Gilles in Brussels, Belgium, where the first experiment with EM took place. These were exciting times, in particular for a young criminology student: my first experiences with prison life—Saint-Gilles is one of Belgium’s most notorious so-called Ducpétiaux prisons (named after the famous nineteenth-century prison reformer Édouard Ducpétiaux; it became operational in 1884 and is scheduled to close its doors in 2022)—coincided with Belgium’s first steps towards introducing EM. Past and future seldomly meet so well before one’s eyes. I vividly remember spending many evening hours making photocopies of a lengthy German-language research report on ‘Social Control Technologies’ on a Xerox machine in the administrative office of the old prison. I also recall the energy and enthusiasm surrounding EM as well as the vehement opposition it provoked. EM was, from its early beginnings, controversial—just like the modern prison, so Michel Foucault might have argued, if he were still alive and able to write on the birth of EM.

During my Ph.D. studies, I came across the 1977 book *De functies van de vrijheidstraf* [The functions of imprisonment] written by the Dutch criminologist Willem Nagel. My supervisor Lieven Dupont quoted Nagel’s book in his preparatory study for Belgium’s first prison law when he discussed the so-called legitimization crisis of the modern prison, that is the perennial failure of the prison to attain the goals that

it is supposed to achieve. Nagel had been able to identify 57 such functions. In his study Dupont quoted from *Gefängnislogik*, the German-language edition of Thomas Mathiesen's *Prison on Trial*, when he reflected on the crisis of the prison: 'the prison is a fiasco in terms of its own purposes' (Mathiesen 1990: 137; see Dupont 1998: 121). Reading Nagel's study of imprisonment was (and still is) a bewildering experience; indeed, it is a remarkable and unusual book, in terms of both form and substance, as we will explain in Chapter 1 of this book (unfortunately, it was never translated to English). What would happen if we would apply the 'Nagel'-approach to EM? That is what this little book is about. For me, this volume is a first step—maybe one could speak in terms of a prolegomenon, as I argue in the final chapter—in a larger project attempting to come to grips with the uses and abuses, the challenges and the dangers, of applying monitoring technology in the penal sphere.

Over the past two decades, I have had the opportunity and pleasure to reflect on EM and learn from various people whom I have met at different places and occasions. In April 2008, Stef De Decker, Luc Robert, Frank Verbruggen and I invited all scholars who had been involved in research on EM in Belgium for a seminar at KU Leuven to discuss research findings and policy implications. Julian Roberts was our special guest, and the papers were published in a book in 2009 (Daems et al. 2009). Five years later, in November 2013, Tom Vander Beken, Delphine Vanhaelemeesch and I organized a conference at Ghent University, to reflect upon the past, present and future of EM, at the occasion of 15 years of EM in Belgium. Also, these papers were subsequently published as an edited volume (Daems et al. 2013). For this conference, we had invited Mike Nellis as a plenary speaker and I had the pleasure to meet him again in Leuven in April 2015 (at the occasion of the colloquium 'Limits to the growth of EM?'), and in Brussels in November 2016 (for the conference 'Privatising punishment in Europe?'). Mike contributed chapters to two book projects and a report of his Leuven lecture was published in *Ethische Perspectieven* in 2015, together with a summary of the lecture by Marie-Sophie Devresse who was the other keynote speaker at that event (Daems and Gudders 2015). In May 2017, I was invited by Anabel Cerezo from the University of Málaga to be a member of the examination board of the Ph.D. dissertation of Lorea Arenas García which deals with EM in Spain. From January 2015 till June 2019, our own Ph.D. student Danique Gudders



worked on a research project on ‘Penal policy transfer’, which included a case study on the introduction of EM in Belgium. In Fall 2017, we had invited Anthea Hucklesby to teach in our Global Criminology course at KU Leuven on community sanctions, including EM. And, finally, the colleagues from the research line on youth criminology invited us to join the debate on the future of youth justice in Flanders, which includes, from 1 September 2019 onwards, the possibility of using monitoring technologies for minors (Daems and Goossens 2019).

A special word of thanks to Ralf Bas, who was my mentor during my internship in the prison of Saint-Gilles, in 1999, which proved to be, in many ways, an eye-opening experience and defining moment in my life-course. During that period I met Kristel Beyens, the leading lady of EM in Belgium, for the first time and we have met regularly over the past 20 years, at conferences, editorial board meetings, a restaurant in Barcelona. The 2013 Dutch-language chapter that I wrote for the volume that we published at the occasion of the Ghent conference on 15 years EM in Belgium (Daems, T. (2013). *Functies en functionarissen van het elektronisch toezicht*. In T. Daems, T. Vander Beken and D. Vanhaelemeesch (eds.), *De machines van justitie: Vijftien jaar elektronisch toezicht in België*. Antwerp: Maklu, 75–126) was the basis for this book. The text was first translated to English and then reworked, updated and expanded to the present volume. Quotes from legal documents, policy papers and publications in Dutch have been translated to English.

Thank you to Josie Taylor for welcoming this volume to the Palgrave publishing programme and to Liam Insko-Jones for help and support throughout the production process. And finally, as always, a special thank you to *mi mariposa* for helping to keep track of the little ones—and for much more.

Leuven, Belgium  
September 2019

Tom Daems

## REFERENCES

- Daems, T., & Goossens, E. (2019). Elektronische monitoring voor jongeren: een volwassen reflectie. In J. Put & J. Leenknecht (Eds.), *Het Vlaamse jeugddelinquentierecht* (pp. 107–119). Brussels: Larcier.
- Daems, T., & Gudders, D. (2015). Grenzen aan de groei van het elektronisch toezicht? *Ethische Perspectieven*, 25(2), 162–175.

- Daems, T., De Decker, S., Robert, L., & Verbruggen, F. (Eds.). (2009). *Elektronisch toezicht. De virtuele gevangenis als reële oplossing?* Leuven: Universitaire Pers Leuven.
- Daems, T., Vander Beken, T., & Vanhaelemeesch, D. (Eds.). (2013). *De machines van Justitie: Vijftien jaar elektronisch toezicht in België*. Antwerp: Maklu.
- Dupont, L. (1998). Proeve van een voorontwerp van beginselenwet gevangeniswezen en tenuitvoerlegging van vrijheidsstraffen. In L. Dupont (Ed.), *Op weg naar een beginselenwet gevangeniswezen* (pp. 15–229). Leuven: Universitaire Pers Leuven.
- Mathiesen, T. (1990). *Prison on trial*. London: Sage.



# CONTENTS

<b>1</b>	<b>Electronic Monitoring in a Culture of Surveillance</b>	<b>1</b>
<b>2</b>	<b>Functions of Electronic Monitoring: A to H</b>	<b>23</b>
<b>3</b>	<b>Functions of Electronic Monitoring: I to W</b>	<b>53</b>
<b>4</b>	<b>Conclusion: Defamiliarizing Electronic Monitoring</b>	<b>75</b>
	<b>Index</b>	<b>85</b>



## CHAPTER 1

---

# Electronic Monitoring in a Culture of Surveillance

**Abstract** This chapter explores the history and development of electronic monitoring as part of contemporary cultures of surveillance. It discusses the birth and spread of electronic monitoring worldwide, with particular attention for the case of Belgium. The chapter also introduces Willem Nagel's work on the functions of imprisonment and it explains why a similar approach is useful to study electronic monitoring as part of current cultures of surveillance.

**Keywords** Electronic monitoring · Surveillance · Functions of imprisonment

## INTRODUCTION

On 23 August 2013, Belgian newspaper *De Tijd* published a short report entitled 'Electronic meal vouchers on the rise':

Slowly but surely, Belgians seem to be embracing electronic meal vouchers. This is the finding of a survey carried out by the retail federation Comeos. "One in three meal vouchers currently handed out is electronic". In supermarkets, one in four payments with meal vouchers are already processed electronically. In restaurant chains, this figure is around 15 percent. More and more employers are therefore switching from paper versions of the vouchers

to the system that uses cards on which a monthly amount is deposited. The electronic voucher was introduced two years ago.

That same day, on the same page, the same newspaper, in an adjacent column, published a report entitled ‘Electronic monitoring almost doubled’:

The number of people under electronic monitoring has almost doubled in just over a year and a half to 1,567 ... Every day, around 1,500 people are monitored in this way, either with a traditional ankle bracelet or with a speech recognition system. This figure has almost doubled since the end of 2011, when 800 people were monitored in this way. By the end of this year, 4,500 people will have served their sentence via electronic monitoring. Only 9 percent of those involved commit another offence afterwards.

It seems unlikely that the simultaneous publication of both newspaper reports, so close together, is the result of a targeted editorial strategy. However, perhaps the publication of both reports together is not such a coincidence? It concerns two technological applications that, in a certain sense, characterise today’s society and its fascination with electronics; both are also on the rise and quickly find their way to relevant customers; they also have a relatively short history and nothing seems to be standing in the way of a promising future.

Nevertheless, there are also important differences. The electronic meal voucher is a means of payment that allows one specific goal to be achieved: it makes it possible to successfully conclude a transaction and, as such, to realise the purchase of, for example, a loaf of bread, a bag of potatoes, a pizza or a tin of peas. This is somewhat more complex when it comes to electronic monitoring (hereinafter: EM). Indisputably, this also concerns a means of achieving a goal, but which goal—or goals—are involved? On closer inspection, this does not seem to be particularly clear. For EM (as well as conditional and provisional release), the ministerial circular no. 1794 states the following: ‘The law does not define any explicit objectives for these penalty implementation modalities’ (Ministry of Justice 2007: 22). In addition, the pursuit or achievement of a certain goal (such as reducing overcrowding) can also lead to less effective action in another area (for example, the reintegration of those under surveillance). In contrast to electronic meal vouchers, it is not possible to understand EM without taking

into account the operation and supervision by the agents involved: technicians, justice assistants, prison directors, monitoring staff, central administration, the police, investigating magistrates, housemates; their relative contribution—or lack thereof—exerts a decisive influence on the way in which surveillance will be exercised.

While most of us probably do not care that much about the fact that the success of the electronic meal voucher hardly provokes any debate, this is not the case for EM. A decade ago, in a reflection on ten years of policy and research on EM in Belgium (Daems et al. 2009a), we came to the conclusion that the use of EM in Belgium had increased rapidly in just ten years time, but that the available scientific research had played little or no role in policy decisions and that reflection on EM's place in criminal justice was, for the main part, lacking. EM seemed to be, above all, a cheap and easily deployable means of remedying all kinds of problems in the Belgian criminal justice system:

If the seller of a new drug says it can have an effect against one or two diseases, maybe there's something to it. However, if it is presented as a remedy for just about all ailments, be aware of quackery ... these days, EM presents itself as a possible remedy for all kinds of shortcomings in our criminal justice system: some people want to make it a separate punishment, others see it as an alternative to pre-trial detention and others still see it as a better, more human and reintegration-oriented penalty implementation modality for the custodial sentence and just about everyone hopes it helps in the fight against the overcrowding of prisons. (Daems et al. 2009b: 127)

As we will discuss in the next section, in Belgium EM has not lost any of its appeal since then. Moreover, also in other countries in Europe and beyond we have seen a growing interest in tagging offenders—even though the picture is complex and mixed. We will explore EM as part of contemporary cultures of surveillance in the next section of this chapter. For our purpose here we use the definition of EM of Nellis and Roswell, 'EM technology must be understood as nothing more or less than a form of remote surveillant control, a means of flexibly regulating the spatial and temporal schedules of an offender's life' (quoted in Nellis et al. 2013b: 4–5). As Nellis et al. (2013b: 5) suggest, this definition shows the 'emptiness' of EM as a stand-alone measure: 'Yet its "emptiness" is also its strength (from the standpoint of politicians and criminal justice managers): it can be used

in so many different ways, it can be ascribed many different aims and it can easily be adapted to different situations' (Nellis et al. 2013b: 5).

Radio-Frequency (RF) technology is still most commonly used to enforce a curfew or house arrest. Offenders usually wear an ankle bracelet or wristband that allows to monitor and verify their location. When offenders leave their home or other designated place (or when they tamper with the monitoring equipment) the system sets off an alarm signal. In recent years also Global Positioning Systems (GPS) have increasingly come to be used. One major difference is that these allow to track the movements of offenders and to create inclusion and exclusion zones (such as playgrounds, victims' home, schools etc.). The market of EM technologies is vibrant and constantly changing. Nowadays EM also takes place through enhanced models equipped with remote breath alcohol testers or transdermal alcohol testing systems; voice verification technology which uses biometric voiceprints; bilateral monitoring in cases of domestic violence which gives victims a device that alerts them when offenders are in their vicinity; and newer technologies using smartphones, apps, facial recognition and, in the future, maybe even gait analysis and heartbeat detection (see e.g., Gable 2017; Hucklesby et al. 2019; Thomas 2019). All of these applications share that they are about tagging and monitoring offenders in time and space, in order to verify where and when their bodies are situated, whether they are in the right place on the right moment.

In this little book we will focus on the functions of EM. In doing so, we are inspired by the Dutch criminologist Willem Nagel who wrote a fascinating and thought-provoking book in 1977 entitled *De funkties van de vrijheidstraf* [The functions of imprisonment]. In his study, Nagel identified 57 such functions. Upon closer inspection, a number of these functions were counted twice. In addition, not all of the functions he listed were dealt with in equal detail—and some not at all. By discussing the functions of imprisonment in this way, Nagel nevertheless demonstrated how complex the debate about imprisonment is (or at least how complex it should be) and which sometimes conflicting manifest—but also latent—functions are involved. In the final section of this chapter, we will briefly discuss Nagel's book and his distinctive approach towards studying the complex history of imprisonment. In Chapters 2 and 3 we will then attempt to replicate Nagel's exercise, but applied to EM: what are the functions of EM? It is not our ambition to offer a systematic or exhaustive review of EM in this little book. Rather we aim to offer an exploration of 22 different functions of EM. As we will argue in the final chapter, such an exploration

may be particularly useful and it may offer inspiration for future research and debate on EM in contemporary cultures of surveillance. Listing and discussing these functions in the next two chapters, in an alphabetical and uneven way, like Nagel did for the prison, will help us to defamiliarize EM, like it helped Nagel to question the natural, taken-for-granted character of the modern prison.

## EM AND CONTEMPORARY CULTURES OF SURVEILLANCE

### *The Birth and Spread of EM*

The history of EM goes back at least to the early 1960s. In a brief article ('Delinquents with tape recorders') published in 1963 in *New Society*, a now defunct social science review that offered a forum to discuss and disseminate findings to a wider public, Schwitzgebel (1963) discussed some of the findings of a project called 'Streetcorner research', which started in 1958 in Boston, at Harvard University. For this project 20 young offenders were asked to talk into a tape recorder about self-chosen topics for about 2–3 hours a week. Towards the end of the article there were some brief observations on a newly designed electronic communications system. Delinquents attached a so-called 'behaviour transmitter reinforcer' to their belt and wore it wherever they happened to go. The small unit transmitted a tone signal that could be received and recorded at the base station. Schwitzgebel went on to suggest that such 'behaviour transmitter reinforcers' have at least three purposes: (1) *research* (recording the location of delinquents could help determine their whereabouts which may prove more reliable than self-reported data: 'Data obtained by electronic means are not subject to the purposeful [or the unintentional but unavoidable] distortion of recall from memory' [Schwitzgebel 1963: 13]); (2) *preventive parole* (persons on parole could be required to wear the unit during certain hours, e.g., when the parolee is at a higher risk of reoffending because of where he is at a particular time. Moreover, wearing the unit may also help refute false accusations: 'Persons on parole are often suspected of committing crimes of which they are, in fact, innocent. An objective record of their whereabouts may alleviate unnecessary suspicion' [Schwitzgebel 1963: 13]); and (3) *immediate reinforcement* (a transmitting set could allow to more immediately reinforce desirable behaviour: '...reinforcement of small units of behaviour may be a clue to more effective development of social skills' [Schwitzgebel 1963: 13]).

One year later, in a paper outlining an ambitious programme of research in behavioural electronics, Schwitzgebel et al. (1964) elaborate on this; the central objective of behavioural electronics is, so they argued, the understanding, maintenance and modification of human behaviour (Schwitzgebel et al. 1964: 233). In this paper we see one of the first predictions that electronic progress could contribute to making prisons obsolete and heralding a new phase in the history of punishment. In a section on ‘electronic parole’, the authors formulate it as follows:

Society has moved away from the physical confinement of a person to control his behavior. The stockade of the ball and chain were replaced by the institutional courtyard; the courtyard is now being replaced by the farm and half-way house. When specific offending behaviors can be accurately predicted and/or controlled within the offender’s own environment, incarceration will no longer be necessary as a means of controlling behavior and protecting society. (Schwitzgebel et al. 1964: 237)

Towards the end of the paper, they added: ‘A new horizon opens before us as human relationships can now begin to develop beyond the historical barriers of space and form’ (Schwitzgebel et al. 1964: 238).

This was 1964. In the meantime things have changed in manifold and, as it turned out, unforeseen ways: these early predictions of Schwitzgebel et al. (1964) about the final days of the prison predate the rise of penal confinement world-wide from the 1970s onwards—in particular in the US, where the prison population increased exponentially (on this, see e.g., Garland 2001a, b; National Research Council 2014). Schwitzgebel et al. (1964) were not alone in making such wrong predictions about a new world without prisons; indeed, their predictions illustrate and confirm, once more, how unpredictable penal change often is and that we do not have a crystal ball to predict the future (on this, see Daems 2008: 5–10). But such predictions—however ill-founded they may have turned out to be—convey something of the hope and fascination that electronic progress was (and is) able to incite; how technology was (and is) believed to be a bearer of progress and humanization—including in the dirty business of punishment. Lilly and Nellis therefore relate the origins of EM in the US to the notion of ‘technological utopianism’, that is, ‘...a distinctively US outlook on social progress, in which technology is considered indispensable to the creation of a convivial life and to the solution of pressing social and political problems’ (Lilly and Nellis 2013: 22).



Notwithstanding some early experiments and enthusiasm in the late 1960s we would have to wait till the early 1980s before the use of EM in criminal justice practice really took off. EM first came to be applied in 1983 in the US when Jack Love, a district judge in Albuquerque, subjected a probation violator to EM (Lilly and Nellis 2013). Throughout the 1980s EM would grow steadily and spread throughout the US. Towards the end of the 1980s EM also came to be introduced in Western Europe: England and Wales (1989), Sweden (1994) and The Netherlands (1995) were the first to experiment with EM (Gudders 2019). Nowadays, EM is widely used in many jurisdictions across the globe. In the US the number of people under EM rose nearly 140% in a 10 year period, from 53,000 in 2005 till over 125,000 in 2015. Interestingly, there is a sharp rise here in the use of GPS, from approximately 2900 in 2005 till about 88,000 GPS units in 2015. The number of RF units, however, fell, from over 50,000 to below 38,000 (The Pew Charitable Trusts 2016: 1, 3). For Europe it is difficult to get a clear picture (on this, see Dünkler et al. 2017b). Based on incomplete data for 2010 Nellis (2014: 490) concluded that EM was used in about 27 countries; 12 countries were not using EM. However, as Nellis added, such numbers leave us with many questions:

Useful as it is to know the number of “the jurisdictions using EM”, such lists nonetheless fail to capture the widening range of EM technologies, their very varied modalities (different legal forms and purposes), whether schemes are restricted to particular regions or are nationwide - as well as begging the question as to how penally significant EM has actually become in a particular jurisdiction, in comparison to more traditional penal measures. (Nellis 2014: 490)

The findings of the most recent survey of the Confederation of European Probation (CEP) on EM in Europe, conducted for the 2018 conference in Zagreb, Croatia, were far from complete (data related to 15 European countries) but, nonetheless, the report shows that EM is being used in different parts of Europe, at different stages of the criminal justice process, with France being the leader on the European continent, comparable to England and Wales (who did not respond to the survey) (see Kystad Øster and Franco Caiado 2018). Other indicators for how EM has captured the attention of politicians, policy makers and practitioners within Europe are the bi-annual conferences on EM organized by the CEP (Nellis 2014;

Gudders 2019) as well as the adoption of the Council of Europe's Recommendation on Electronic Monitoring (Council of Europe 2014). Another avenue to explore EM's inroads in criminal justice systems across the globe is to study how the EM industry develops (see Nellis 2018: 131–132). Early January 2019 IoT analyst firm Berg Insight published a press release with new findings on the market of EM, with as title 'The electronic offender monitoring market in Europe and North America to reach € 1.0 billion in 2022'. According to Berg Insight the market for EM equipment and services was in a growth phase:

The number of participants in EM programmes on a daily basis amounted to around 36,000 people in Europe and around 155,000 people in North America in 2017. The market value for EM including equipment, software and services in Europe was € 170 million in 2017. Growing at a compound annual growth rate (CAGR) of 11 percent, this number is expected to reach € 285 million by 2022. The North American market for EM is forecasted to grow at a CAGR of 6 percent from US\$ 580 million in 2017 to US\$ 785 million in 2022. (Berg Insight 2019)

Given EM's intrinsic connections to technology and surveillance it seems obvious to relate its birth and increasing deployment to some deeper transformations within contemporary societies, as captured in denominators such as 'maximum-security society' (Marx 1988; Corbett and Marx 1991), 'societies of control' (Deleuze 1992), 'surveillance society' (Lyon 1994, 2001), 'expository society' (Harcourt 2015), or 'culture of surveillance' (Lyon 2018). Recent reflections on the role of surveillance in everyday life increasingly move away from the images conjured up by George Orwell's 1984 or Michel Foucault's use of Jeremy Bentham's *panopticon*. In his latest book David Lyon (2018) suggests that Dave Eggers' *The Circle* captures much better how '...life is increasingly subsumed into a digital world, encircled by cyberspace' (Lyon 2018: 3). In such a world 'Big Data' prove to be a bigger challenge than 'Big Brother'. In cultures of surveillance watching itself has become a way of life. This also explains why Lyon (who was one of first to write about 'surveillance society' [Lyon 1994, 2001]) now prefers to speak of 'surveillance culture': 'Surveillance is no longer merely something external that impinges on "our lives". It is also something that everyday citizens comply with – willingly and wittingly or not – negotiate, resist, engage with and, in novel ways, even initiate and desire' (Lyon 2018: 9).

Interestingly, also in criminology we have seen some creative thinking beyond the *panopticon*, in order grasp some of these contemporary developments. Thomas Mathiesen (1997) suggested that the concept of the *panopticon* needs to be supplemented with the *synopticon* because, so he argued, in a ‘viewer society’, pervaded by mass media, the few see the many, but the many also see the few. Fergus McNeill (2019) recently argued to expand our conceptual tool-kit with the *malopticon* in order to ‘...recognize mass supervision as “Maloptical” as much as “Panoptical”’. Through the “Malopticon”, the penal subject is seen badly, is seen as bad and is projected and represented as bad’ (McNeill 2019: 207). Older discussions on decarceration have come to be supplemented and, at times, related to debates on ‘e-carceration’ and the rise and spread of ‘virtual’ or ‘digital’ prisons (see e.g., Kilgore et al. 2018).

Tagging offenders, then, seems to have become a taken-for-granted part of societies where surveillance practices are omnipresent, from the use of smartwatches and apps to monitor one’s health or sport activity to the deployment of wrist bands to track the whereabouts of small children or elderly suffering from dementia. Indeed, tagging offenders happens in a world where practices as diverse, and at times as controversial, as using apps for ‘wife tracking’ in Saudi Arabia (Bennett 2019) or deploying GPS technology to saving babies’ lives in remote areas in rural Kenya (Berhanu 2019), have secured a place in the order of things. The purposes of such technologies may be very different—usually: control, care or convenience (see Michael et al. 2006)—but they do have in common that they all are about locating and monitoring the movement and functioning of human bodies. Addressing the question ‘why EM?’ therefore implies that we need to engage with such wider currents, as studied in the burgeoning literature on surveillance societies and cultures.

However, at the same time we have to be cautious. When EM is studied more closely and comparatively we can observe very different and, at times, contradictory developments. Within Europe EM has not been a relentless juggernaut-like force transforming criminal justice systems. Next to jurisdictions where EM has grown rapidly—such as England and Wales, France and Belgium—the story is very different elsewhere, for example in Italy or Germany (see e.g., Nellis et al. 2013a; Hucklesby et al. 2016; Dünkler et al. 2017a; Kilstad Øster and Franco Caiado 2018). The same is true for EM outside of Europe. In Canada EM has been for a long time a ‘sleeping issue’ and it has assumed only a ‘low profile’ (Wallace-Capretta and Roberts 2013: 45). In Australia and New Zealand, EM came to be utilized

in a wide range of settings but also here there has been little public debate about EM and there has been no sea change in terms of the numbers of offenders being monitored (Smith and Gibbs 2013), even though things seem to be changing quite dramatically in Australia in recent years (Herbert 2019). And despite the considerable growth of EM in the US it is still a relatively minor phenomenon: ‘Nationally, nearly 7 million people were in prison or jail or on probation or parole at the end of 2014, but individuals tracked using electronic devices in 2015 represented less than 2 percent of that total’ (The Pew Charitable Trusts 2016: 3). We should therefore try to avoid jumping too quickly to conclusions about EM’s transformative impact. As Mair and Nellis (2013: 78–79) note for England and Wales, which has the largest EM scheme in Europe, ‘...the real lesson of British experience with EM is how little difference the stimulus of technological innovation actually made to penal practice ...it has not had even a modestly transformative effect on the enduring punitive traditions that ensure Britain’s continuing place near the top of European league tables of prison use.’

This complex and contradictory picture of the global development of EM implies that we cannot understand EM simply as a natural product of a culture of surveillance, as Edwin Sutherland’s theory of ‘cultural consistency’ would suggest: ‘The societal reactions to lawbreaking and the methods used to implement or express those reactions show a general tendency to be consistent with other ways of behaving of the society’ (Sutherland and Cressey 1970: 337). Indeed, notwithstanding its obvious affinity with key features of contemporary cultures of surveillance EM apparently does not always succeed in finding its way to criminal justice systems as rapidly as one might expect or hope; and, indeed, at times it fails to do so altogether. When we refer to a culture of surveillance in the title of this little book we therefore do not suggest that there exists a direct or automatic connection between EM and such a culture; on the contrary, the point of departure of this volume is that EM becomes a possibility, technically and mentally, but that its deployment implies further and wider reflection and research. Unlike other technological innovations (such as the electronic meal vouchers, that we discussed in the introduction to this chapter) EM, when used for tagging offenders, is a much more complex technological innovation issue that deserves careful attention and needs to be understood against a wider context. For that reason we will need to defamiliarize EM as a necessary prolegomenon to further its understanding. One way to do so, will be to explore the many different functions of EM, following in the footsteps

of Willem Nagel. But before introducing Nagel's work in the next section, we briefly clarify why we pay special attention to Belgium in this book.

### *EM in Belgium*

EM was introduced in Belgium in April 1998. It started as a small-scale experiment, organised from within the prison of Saint-Gilles, Brussels. Initially it was only intended for inmates who were close toward the end of their prison sentence. In that period two monitoring systems were being used: RF technology and voice verification. However, voice verification was soon discontinued because of technical problems. The start-up of the project proved to be slow and cumbersome: ministerial circulars were amended multiple times and selection criteria relaxed in order to increase the number of people under EM. After twenty months only 53 inmates had been placed under EM. However, these low numbers did not prevent the further expansion of EM: in 2000 a National Centre for Electronic Monitoring was created and from then onwards EM would be possible throughout Belgium. The number of people under EM increased steadily till approximately 300 on a daily basis by 2002. A great deal of attention was being paid to supporting the controlled, sometimes referred to as the 'Belgian model': the search for a balance between non-human supervision through the use of monitoring technology on the one hand, and human support and follow-up by justice assistants on the other hand.

In reflections on EM in Belgium the period 2002–2006 is usually described as a period of relative stability: the number of people under EM oscillated around 300 on a daily basis and there were no significant changes in the regulatory framework. This would change from 2006 onwards: amidst political turmoil provoked by concerns over prison overcrowding the then Minister of Justice decided to play down the human factor in EM in order to speed up selection procedures and increase capacity. This had immediate results: the number of people under EM doubled almost overnight, till approximately 600 on a daily basis. Moreover, in that period EM was given a legal basis for the first time: the partial implementation of the Law of 17 May 2006 implied that from February 2007 onwards the newly created Sentence Implementation Courts would take decisions related to EM for prisoners with sentences of more than three year. In the other cases (prisoners with sentences of up to three years) the Minister of Justice continued (and, at the time of writing [September 2019], continues) to be in charge.

From 2009 onwards we observe again a remarkable increase in the number of people under EM: the numbers now rise till approximately 1000 per day. However, the most significant development would take place a couple of years later. Since 2008, the federal government had made fighting impunity and increasing the credibility of the execution of prison sentences a political priority. From 2012 onwards also EM moves to the center of this agenda. This would result in a remarkable transformation of EM for short prison sentences (up to 3 years): first in 2012 (with the introduction of home detention under EM) and then, in 2013, through the introduction of a new circular letter which further streamlined procedures and reduced (or, in some cases, abolished altogether) the role of the justice assistants. In reflections on these developments commentators referred to the advent of ‘ET light’ and ‘ET zero’ (Vander Beken 2013) or ‘Ryanair ET’ (Beyens and Roosen 2013). It goes without saying that such terms were used to deplore these changes and criticize the further reduction of human involvement in the supervision of people under EM. These changes, again, had an important quantitative impact: the number of people under EM increased steeply till over 1500.

However, in this period we not only observe a quantitative increase; we also see a qualitative diversification. From 1 January 2014 onwards (Law of 27 December 2012) EM became possible in the pretrial phase as an alternative for remand custody. Interestingly, the introduction of EM at this stage in the criminal justice process also resulted in the first uses of GPS technology in Belgium—even though the added value of using GPS technology in such cases came to be questioned: indeed, GPS technology makes it possible to track the movement of people but (unlike other categories of people under EM) suspects are not allowed to leave their home and are, therefore, *de facto* immobilized (Devresse 2014). From 1 May 2016 onwards (Law 7 February 2014) EM also came to be introduced at sentencing stage as an autonomous sanction. Moreover, since 1 September 2019 the use of EM technologies is also possible in Flanders in the new youth justice system—even though it is, at the time of writing (September 2019), unclear what kind of technology will be used. The Flemish Minister of Welfare, Public Health and Family had previously rejected the idea of using anklet bracelets for minors and had suggested that we needed to find more creative ways of using technology that can relate to the lifeworld of young people (Daems and Goossens 2019).

It should have become clear from this brief historical overview (for more information see e.g., Daems et al. 2009a; Vander Beken 2013; Beyens and

Kaminski 2013; Devresse 2014; Vanhaelemeesch 2015; Beyens and Roosen 2016; Gudders 2019; Daems and Goossens 2019) why Belgium offers a rich case to study EM. Next to the remarkable increase in the number of people under EM (in 2017 around 1850 people were being monitored on a daily basis and there were 6592 new activations [Ferreira Marum 2018: 21]) the uses of EM have further diversified over time, from EM as an alternative for pre-trial detention, over EM at the stage of sentencing to the different uses of EM in the post-sentencing stage, for short and long-term prison sentences, and, more recently, also for other categories, such as mentally ill offenders and minors. Our exploration of the functions of EM in the next two chapters of this book will therefore start from the experience and debate in Belgium.

## FROM THE FUNCTIONS OF IMPRISONMENT TO THE FUNCTIONS OF EM

In the preface and in the introduction to this chapter we already mentioned that the substance and form of this little book on EM is inspired by the work of Willem Hendrik Nagel (1910–1983). Nagel was a remarkable figure with an interesting biography. He was born in Zwolle, The Netherlands, in 1910 and studied law in Groningen. During World War II he joined the resistance and played an active role opposing the German aggressor. In 1949 Nagel completed his Ph.D. research on crime in Oss. This also signalled his transition from law to criminology. Nagel joined the University of Leiden where he was professor in criminology and penology till his retirement in 1976. Interestingly, Nagel was also a prolific writer of poetry and non-fiction under his pseudonym J. B. Charles. He is well-known in The Netherlands (the Dutch Society of Criminology has named its tri-annual Ph.D. prize after him) but also internationally: Nagel received the Beccaria Medal from the Deutsche Kriminologische Gesellschaft (in 1965) and he was a Fellow of the American Society of Criminology and, in 1981, recipient of its Sellin Glueck Award (for more information, see e.g., Jasperse 1976; Schuyt 2010; Kelk 2017; van Veen 2013).

Here we are particularly interested in his 1977 book *De funkties van de vrijheidstraf* [The functions of imprisonment]. In this book Willem Nagel devotes numerous pages to the concept of the ‘function’ of punishment. In doing so, he explains why he prefers not to speak about the ‘purpose’ of punishment. To this end, Nagel takes advice from Robert Merton (1967) and his well-known distinction between manifest and latent



functions. Manifest functions are recognised and people rely on how they work. Latent functions are ‘neither intended, nor recognized’. In 1936, Merton had already mentioned the ‘unanticipated consequences of purposive action’ (Merton 1936: 894; Nagel 1977: 19–20).

Ultimately, however, Nagel abandoned his intention to clearly emphasise the distinction between latent and manifest functions in his study: after all, the functions of punishment cannot always be distinguished very easily from each other and there is a lot of overlap (Nagel 1977: 21). Different functions can also ‘work together’, he added. In the study by Malinowski, when the people of the Trobriand Islands build a canoe, they are not only all involved together in the technical construction process, but they are also working on their interpersonal relationships. Moreover, we are not always equally steadfast: ‘We are the ones who, when penalising people, switch from one function to another that we wish to make use of’ (Nagel 1977: 26).

His concerns about the concept of ‘function’ led him to a pragmatic classification of the 57 punishment functions that he identified at the time: Nagel listed them alphabetically, from ‘Afkeer uitdrukken’ [Expressing aversion] to ‘Vorming’ [Education]. Nevertheless, the distinction between manifest and latent functions remained beneath the surface in his study. In addition, his comments on this were useful from a didactic point of view because it made it easier for Nagel to explain to the reader why he felt that the term ‘purpose’ was not appropriate:

It was mainly the latent and the dysfunctional functions that made me decide to replace the word “purpose” with the word “function” for the purpose of this text. Latent purposes – *neither intended, nor recognized* – are in fact impossible and dysfunctional purposes can only occur in the brain of a schizophrenic. (Nagel 1977: 23, italics in original)

In his discussion about the concept of the function, Nagel could have included a number of other authors. A law that fails to achieve its purpose can still be (latently) functional. That was the conclusion that the Norwegian sociologist of law Vilhelm Aubert (1971) tied in to his study, which has since become a classic, on the law on domestic workers. Aubert observed that a law, apparently aimed at improving the employment situation of young domestic workers in Norway, completely failed to achieve its objective. The new rules were hardly known and the law was useless: penalties

were vague and an inspection mechanism that monitors and detects violations on its own initiative was lacking. The law therefore disregarded the fact that the maids were in a subordinate position and, in the event of conflicts with their employer, would rather opt to work elsewhere than to enforce their newly acquired rights through a long and unnerving legal process. Which (latent) function did the law fulfil?

The answer has to be found in the analysis of a function of the legislation, which has nothing to do with the process of transferring the standards and achieving compliance with those standards in a certain population group. This function relates to the need to reach compromises in the legislature. This makes legislation a means of resolving or mitigating group conflicts. (Aubert 1971: 61)

The law succeeded remarkably well in reconciling the reforming and conservative tendencies in the Norwegian parliament: one tendency could be proud of itself because the legal position of domestic workers had improved and there was, from then on, a threat of penalties; the other tendency was fortunate because the law was inefficient and would probably never be applied in practice: ‘The content of the law is entirely in favour of domestic workers, while the procedural rules protect housewives. The idea of law enforcement has been honoured, while in practice it remains ineffective’ (Aubert 1971: 66).

Such a (latent) functional analysis is not unknown in the study of punishment. Thomas Mathiesen (1974: 76–78), who is mentioned in the study by Nagel (1977: 14, 25, and 113), for example, identified four functions that have little to do with the official, manifest purposes of imprisonment: (1) the *expurgatory* function (the prison as a ‘vacuum cleaner’, which cleanses capitalist society of the unproductive groups it creates itself, by placing them behind bars); (2) the *power-draining* function (the prison that makes inmates powerless by locking them up and isolating them); (3) the *diverting* function (the prison that draws attention to petty thieves and other relatively harmless individuals and at the same time turns attention away from powerful groups in society, who perform acts that cause much more damage [such as environmental pollution and exploitation of workers], but are nevertheless let off the hook); and (4) the *symbolic* function (imprisonment goes hand in hand with stigmatisation and draws a sharp line between ‘them’ and ‘us’: ‘Those who are imprisoned are stigmatized as black. Thereby the rest of us, outside, may define ourselves as white.

We may regard ourselves as all the better, more correct, more harmless' [Mathiesen 1974: 78]).

Mathiesen stated that a pressure group such as the 'Norwegian Association for Penal Reform' (KROM), which spoke up for the rights and interests of prisoners and whose members included many (former) prisoners 'disrupted' each of these four functions: (1) KROM attempted to expose the ideological superstructure of prisons, in order to expose their true *expurgatory* function; (2) KROM tried to make detainees more powerful by forging links with forces in the outside world; (3) KROM explained who ended up behind bars—and who did not—and wanted to show as such that those who are really dangerous are usually found outside of prisons; and (4) the frequent contacts between KROM and the prisoners put pressure on the dividing line between 'black' and 'white'. In 1990, Mathiesen added a fifth function: the *action* function (the prison is the most visible sanction in our society and thus serves as an observable sign that action is being taken):

By relying on the prison, by building prisons, by building more prisons, by passing legislation containing longer prison sentences, the actors on the political level of our own times thus obtain a method of showing that they act on crime as a category of behaviour, that they do something about it, that something is presumably being done about law and order ...No other sanction fulfils this function as well. (Mathiesen 1990: 139)

Some go one step further and argue that the success of punishment lies in its failure. John Pratt, for example, suggested that the failure of alternative sanctions should be assigned a deeper function: 'Rather than querying the extent to which it should be modified to bring it into line with the aims set out for it, the question is what purpose does this policy have?' (Pratt 1986: 214). In short, according to Pratt, it was not so much a question of investigating how we could improve the alternatives so that they would ultimately fulfil the openly expressed expectations, but rather of investigating the 'true' function of the failed policy. Pratt was inspired here by Michel Foucault (1975) who, a decade earlier, had already wondered what function the failure of the modern prison, which had, since its inception, been used as a remedy for its own failure, actually serves.

It is not our intention to evaluate the above functions—let alone to rank them here. Throughout this little book we are inspired by Nagel's open and somewhat pragmatic approach: 'There is almost always a difference of

opinion about the essence of the workings of a phenomenon ... That is why I propose that we should pay attention to all the functions there seem to be' (Nagel 1977: 19). In the case of Nagel, this resulted in an alphabetical listing of 57 functions of imprisonment. He devoted dozens of pages to a number of functions (in particular 'Deterrence' [Afschrikking] and 'Retaliation' [Vergelding]), but overall, a few pages were sufficient. For some functions, Nagel, on the other hand, limited his explanation to one or several lines (such as 'Expressing aversion' [Afkeer uitdrukken], 'Terminating a criminal career' [Beëindiging kriminele carrière] and 'Creating awareness of the limited nature of our freedom' [Besef bijbrengen van de beperktheid van onze vrijheid]) and, in one case, he even left the stated function completely blank ('Impeding physical life' [Lichamelijk leven belemmeren]). A number of functions were also counted twice in his list: for 'Work' [Arbeid], the reader was referred to 'Vocational training' [Beroepsopleiding], for 'Desocialisation' [Desocialisering] to 'Excommunication' [Ekscommunicatie], for 'Substituting the death penalty' [Doodstraf substitueren] to 'Substitution' [Substitutie], for 'Enculturation' [Enculturation] to 'Resocialisation' [Resocialisatie], and so on. At first sight, this unbalanced treatment of the functions of imprisonment seems somewhat strange and puzzling. But perhaps this uneven presentation makes Nagel's message even stronger: does this not—to a certain extent—reflect the way in which the debate on punishment is generally conducted?

Nagel also argued that we cannot speak about functions without thinking of the agents '... and not without distinguishing the subjective "motive" from the objective factor "the function"' (Nagel 1977: 28). In this context, he noted the following:

The legislator has formed a value judgement and wants to realise that. The agents' job is to take part in this realisation. But the agents' eternal problem is that they may hold different value judgements from the legislator. In that case, they will have to bend or go. (Nagel 1977: 28)

However, Nagel subtly added to this:

Incidentally, there is hardly ever a problem with regard to the intention of sanctioning, because every Dutch government has always succeeded in not disclosing a fundamental government value judgement. Maybe because such a thing does not exist. Perhaps because the legislation is a compromise between holders of various value judgements. (Nagel 1977: 29)

In the introduction to his study, Nagel referred to what he called ‘the historical limitation of the custodial sentence’: ‘It may be assumed that punishment is timeless, we can see the prison come into existence’ (Nagel 1977: 13). He also referred to the *Constitutio Criminalis Carolina* of 1532, which only mentioned the custodial sentence once. EM, which only existed as an experimental technology when Nagel completed his study, is possibly even more ‘historically limited’ than the custodial sentence. If we can see the prison come into existence, then this is even more true for a penal innovation such as EM.

## REFERENCES

- Aubert, V. (1971). Enkele sociale functies van wetgeving. In B. Peper & K. Schuyt (Eds.), *Proeven van rechtssociologie. Uit het werk van Vilhelm Aubert* (pp. 46–74). Rotterdam: Universitaire Pers Rotterdam.
- Bennett, C. (2019, April 28). Wife-tracking apps are one sign of Saudi Arabia’s vile regime—Others include crucifixion. *The Guardian*.
- Berg Insight. (2019, January 11). *The electronic offender monitoring market in Europe and North America to reach €1.0 billion in 2022*. Available at [http://www.berginsight.com/News.aspx?m\\_m=6&cs\\_m=1](http://www.berginsight.com/News.aspx?m_m=6&cs_m=1).
- Berhanu, Y. (2019, July 31). How I save babies’ lives using GPS trackers. *BBC*. Available at <https://www.bbc.com/news/av/world-africa-49120067/how-i-save-babies-lives-using-gps-trackers>.
- Beyens, K., & Kaminski, D. (2013). Is the sky the limit? Eagerness for electronic monitoring in Belgium. In M. Nellis, K. Beyens, & D. Kaminski (Eds.), *Electronically monitored punishment: International and critical perspectives* (pp. 174–199). London: Routledge.
- Beyens, K., & Roosen, M. (2013). Electronic monitoring in Belgium: A penological analysis of current and future orientations. *European Journal of Probation*, 5(3), 56–70.
- Beyens, K., & Roosen, M. (2016). *Electronic monitoring in Belgium*. Brussels: Vrije Universiteit Brussel. Available at <http://28uzqb445tcn4c24864ahmel.wpengine.netdna-cdn.com/files/2016/06/EMEU-Electronic-monitoring-in-Belgium.pdf>.
- Corbett, R., & Marx, G. T. (1991). Critique: No soul in the new machine—Technofallacies in the electronic monitoring movement. *Justice Quarterly*, 8(3), 399–414.
- Council of Europe. (2014). *Recommendation CM/Rec(2014)4 of the Committee of Ministers to member states on electronic monitoring*. (Adopted by the Committee of Ministers on 19 February 2014, at the 1192nd meeting of the ministers’ deputies).

- Daems, T. (2008). *Making sense of penal change*. Oxford: Oxford University Press.
- Daems, T., De Decker, S., Robert, L., & Verbruggen, F. (Eds.). (2009a). *Elektronisch toezicht. De virtuele gevangenis als reële oplossing?* Leuven: Universitaire Pers Leuven.
- Daems, T., De Decker, S., Robert, L., & Verbruggen, F. (2009b). Epiloog. In T. Daems, S. De Decker, L. Robert, & F. Verbruggen (Eds.), *Elektronisch toezicht. De virtuele gevangenis als reële oplossing?* (pp. 127–130). Leuven: Universitaire Pers Leuven.
- Daems, T., & Goossens, E. (2019). Elektronische monitoring voor jongeren: een volwassen reflectie. In J. Put & J. Leenknecht (Eds.), *Het Vlaamse jeugddelinquentierecht* (pp. 107–119). Brussels: Larcier.
- Deleuze, G. (1992). Postscript on the societies of control. *October*, 59, 3–7.
- Devresse, M.-S. (2014). La surveillance électronique des justiciables. *Courrier hebdomadaire du Centre de Recherche et d'Information Socio-Politique*, 2227–2228, 1–73.
- Düinkel, F., Thiele, C., & Treig, J. (Eds.). (2017a). *Elektronische Überwachung von Straffälligen im europäischen Vergleich – Bestandsaufnahme und Perspektiven*. Mönchengladbach: Forum Verlag Godesberg.
- Düinkel, F., Thiele, C., & Treig, J. (2017b). Elektronische Überwachung von Straffälligen und Beschuldigten in Europa – Zusammenfassender Vergleich und Perspektiven für die Kriminalpolitik. In F. Düinkel, C. Thiele, & J. Treig (Eds.), *Elektronische Überwachung von Straffälligen im europäischen Vergleich – Bestandsaufnahme und Perspektiven* (pp. 475–540). Mönchengladbach: Forum Verlag Godesberg.
- Ferreira Marum, P. (2018). Testimonials about EM: Evolution and perspectives for the future. *Justice Trends*, 3, 21–22.
- Foucault, M. (1975). *Surveiller et punir*. Paris: Gallimard.
- Gable, R. S. (2017, July 20). *Let's stop using ankle bracelets to monitor offenders*. Available at <https://spectrum.ieee.org/consumer-electronics/portable-devices/lets-stop-using-ankle-bracelets-to-monitor-offenders>.
- Garland, D. (2001a). *The culture of control*. Oxford: Oxford University Press.
- Garland, D. (Ed.). (2001b). *Mass imprisonment: Social causes and consequences*. London: Sage.
- Gudders, D. (2019). *Penal policy transfer*. PhD in Criminology, KU Leuven.
- Harcourt, B. E. (2015). *Exposed: Desire and disobedience in the digital age*. Cambridge, MA: Harvard University Press.
- Herbert, M. (2019, August 31). Fears Australia being turned 'into a prison' after surge in electronic monitoring of offenders. *The Guardian*.
- Hucklesby, A., Beyens, K., Boone, M., Düinkel, F., McIvor, G., & Graham, H. (2016). *Creativity and effectiveness in the use of electronic monitoring: A case study of five jurisdictions*. Leeds: University of Leeds.

- Hucklesby, A., Holt, R., & Macnish, K. (2019). *Tracking people: Controversies and challenges* (Tracking People Network Briefing Paper 1), Leeds: University of Leeds. Available at <https://trackingpeople.leeds.ac.uk/wp-content/uploads/sites/63/2019/03/Tracking-Network-Briefing-paper-1.pdf>.
- Jasperse, C. W. G. (1976). Biography of Willem H. Nagel. In C. W. G. Jasperse, K. A. van Leeuwen-Burow, & L. G. Toornvliet (Eds.), *Criminology between the rule of law and the outlaws: Volume in honour of Willem H. Nagel* (pp. v–vi). Deventer: Kluwer.
- Kelk, C. (2017). Willem Nagel (1910–1983). *De Criminoloog*, 17, 2.
- Kilgore, J., Sanders, E., & Hayes, M. (2018). *No more shackles: Why we must end the use of electronic monitors for people on parole*. A report for Challenging E-Carceration and the #NoDigitalPrisons campaign. Available at [https://mediajustice.org/wp-content/uploads/2019/05/NoMoreShackles\\_ParoleReport\\_UPDATED.pdf](https://mediajustice.org/wp-content/uploads/2019/05/NoMoreShackles_ParoleReport_UPDATED.pdf).
- Kylstad Øster, M., & Franco Caiado, N. (2018). *Survey of electronic monitoring in Europe: Analysis of questionnaires 2018*. Confederation of European Probation. Available at <https://www.cep-probation.org/wp-content/uploads/2018/10/Analysis-Questionnaire-EM2018.pdf>.
- Lilly, J. R., & Nellis, M. (2013). The limits of techno-utopianism: Electronic monitoring in the United States of America. In M. Nellis, K. Beyens, & D. Kaminski (Eds.), *Electronically monitored punishment: International and critical perspectives* (pp. 21–43). London: Routledge.
- Lyon, D. (1994). *The electronic eye: The rise of surveillance society*. Minneapolis: University of Minnesota Press.
- Lyon, D. (2001). *Surveillance society: Monitoring everyday life*. Maidenhead: Open University Press.
- Lyon, D. (2018). *The culture of surveillance: Watching as a way of life*. Cambridge: Polity Press.
- Mair, G., & Nellis, M. (2013). ‘Parallel tracks’: Probation and electronic monitoring in England, Wales and Scotland. In M. Nellis, K. Beyens, & D. Kaminski (Eds.), *Electronically monitored punishment: International and critical perspectives* (pp. 63–81). London: Routledge.
- Marx, G. (1988). *Undercover: Police surveillance in America*. Berkeley: University of California Press.
- Mathiesen, T. (1974). *The politics of abolition: Essays in political action theory*. Oxford: Martin Robertson.
- Mathiesen, T. (1990). *Prison on trial*. London: Sage.
- Mathiesen, T. (1997). The viewer society: Michel Foucault’s ‘panopticon’ revisited. *Theoretical Criminology*, 1(2), 215–234.
- McNeill, F. (2019). Mass supervision, misrecognition and the ‘malopticon’. *Punishment and Society*, 21(2), 207–230.



- Merton, R. K. (1936). The unanticipated consequences of purposive social action. *American Sociological Review*, 1(6), 894–904.
- Merton, R. K. (1967). Manifest and latent functions. In N. J. Demerath & R. A. Peterson (Eds.), *System, change and conflict*. New York: Free Press.
- Michael, K., McNamee, A., & Michael, M. G. (2006). *The emerging ethics of human-centric GPS tracking and monitoring*. Wollongong: University of Wollongong.
- Ministry of Justice. (2007). Ministeriële Omzendbrief nr. 1794 van 7 februari 2007 betreffende de externe rechtspositie van de veroordeelden tot een vrijheidsstraf en de aan het slachtoffer toegekende rechten in het raam van de strafuitvoeringsmodaliteiten.
- Nagel, W. H. (1977). *De funkties van de vrijheidstraf*. Samson: Alphen aan den Rijn.
- National Research Council. (2014). *The growth of incarceration in the United States: Exploring causes and consequences*. Washington DC: The National Academies Press.
- Nellis, M. (2014). Understanding the electronic monitoring of offenders in Europe: Expansion, regulation and prospects. *Crime, Law & Social Change*, 62, 489–510.
- Nellis, M. (2018). Electronically monitoring offenders as ‘coercive connectivity’: Commerce and penalty in surveillance capitalism. In T. Daems & T. Vander Beken (Eds.), *Privatising punishment in Europe?* (pp. 124–142). London: Routledge.
- Nellis, M., Beyens, K., & Kaminski, D. (Eds.). (2013a). *Electronically monitored punishment: International and critical perspectives*. London: Routledge.
- Nellis, M., Beyens, K., & Kaminski, D. (2013b). Introduction: Making sense of electronic monitoring. In M. Nellis, K. Beyens, & D. Kaminski (Eds.), *Electronically monitored punishment: International and critical perspectives* (pp. 1–18). London: Routledge.
- Pratt, J. (1986). Diversion from the juvenile court: A critique of progress and a history of inflation. *British Journal of Criminology*, 26(3), 212–233.
- Schuyt, C. J. M. (2010). *Het spoor terug*. Amsterdam: Balans.
- Schwitzgebel, R. R. (1963, January 31). Delinquents with tape recorders. *New Society*, 18, 11–13.
- Schwitzgebel, R., Schwitzgebel, R., Pahnke, W. N., & Hurd, W. S. (1964). A program of research in behavioral electronics. *Behavioral Science*, 9(3), 233–238.
- Smith, R. G., & Gibbs, A. (2013). Extending the electronic net in Australia and New Zealand: Developments in electronic monitoring down-under. In M. Nellis, K. Beyens, & D. Kaminski (Eds.), *Electronically monitored punishment: International and critical perspectives* (pp. 82–101). London: Routledge.
- Sutherland, E. H., & Cressey, D. R. (1970). *Criminology* (8th ed.). Philadelphia: J.B. Lippincott Company.

- The Pew Charitable Trusts. (2016, September). *Use of electronic offender-tracking devices expands sharply*. Available at [https://www.pewtrusts.org/-/media/assets/2016/10/use\\_of\\_electronic\\_offender\\_tracking\\_devices\\_expands\\_sharply.pdf](https://www.pewtrusts.org/-/media/assets/2016/10/use_of_electronic_offender_tracking_devices_expands_sharply.pdf).
- Thomas, E. (2019, September 16). *New surveillance tech means you'll never be anonymous again*. Available at: <https://www.wired.co.uk/article/surveillance-technology-biometrics>.
- Vander Beken, T. (2013). Van vette vis tot dieetpil. Vijftien jaar elektronisch toezicht in België. In T. Daems, T. Vander Beken, & D. Vanhaelemesch (Eds.), *De machines van Justitie: Vijftien jaar elektronisch toezicht in België* (pp. 11–41). Antwerp: Maklu.
- Vanhaelemesch, D. (2015). *De beleving van het elektronisch toezicht in vergelijking met de gevangenisstraf*. The Hague: Boom Criminologie.
- Van Veen, T. W. (2013, November 12). Nagel, Willem Hendrik (1910–1983). In *Biografisch Woordenboek van Nederland*. Available at <http://resources.huygens.knaw.nl/bwn1880-2000/lemmata/bwn4/nagel>.
- Wallace-Capretta, S., & Roberts, J. (2013). The evolution of electronic monitoring in Canada: From corrections to sentencing and beyond. In M. Nellis, K. Beyens, & D. Kaminski (Eds.), *Electronically monitored punishment: International and critical perspectives* (pp. 44–62). London: Routledge.



## CHAPTER 2

---

# Functions of Electronic Monitoring: A to H

**Abstract** This chapter adopts the ‘Nagel’-approach that was introduced in Chapter 1 and it explores, in an alphabetical order, twelve different functions of electronic monitoring: the action function, automation, behavioural control, cost reduction, crime control, decarceration, degradation, detection, deterrence, harm reduction, hard treatment and humanization.

**Keywords** Electronic monitoring · Action function · Automation · Behavioural control · Cost reduction · Crime control · Decarceration · Degradation · Detection · Deterrence · Hard treatment · Harm reduction · Humanization

## ACTION FUNCTION

In the previous chapter we already referred to the action function of Thomas Mathiesen (1990: 138–139), which he linked to imprisonment: promoting, building and filling prisons as a visible sign that politicians are in control. Over the past decade, this type of an action function has increasingly come to the fore in Belgium. The coalition agreement of 18 March 2008 coined the notion of ‘credible enforcement of sentences’ [geloofwaardige strafuitvoering], which subsequently became the leading mantra for the ‘2008 - 2012 master plan for a prison infrastructure in

humane conditions', a large-scale programme aimed at building new prisons and renovating, expanding and, occasionally, closing existing prisons (Daems 2008; Daems et al. 2013). Since then, the so-called 'credible enforcement of sentences' has been the central theme and guideline for the sentence enforcement policy. This also had implications for EM's place within the criminal justice system. Ministerial circular no. ET/ SE-2 of 17 July 2013 states the following:

The effective and rapid execution of sentences, and especially of short prison sentences, is necessary in order for the criminal justice system to be credible again. In the current context of overcrowding in prisons, electronic monitoring is a preferential tool for this purpose. (Ministry of Justice 2013: 1)

On 8 May 2013, the then Minister of Justice made it clear that the waiting lists, which had been an issue for EM for some time, were especially worrying to her. The 2013 circular on EM, which is mainly aimed at simplifying procedures and thus getting more people more quickly under EM, must be understood in that light:

The new circular on electronic monitoring is primarily intended to increase the efficiency and credibility of the sentence. The situation in which a convicted person waited months, sometimes even longer than a year, for an ankle bracelet is unacceptable and affects trust in our legal system. Finding a balance is therefore key. I am convinced that with this new circular, the sentence will be enforced in an efficient and quick way, so that the convicted person no longer has a sense of impunity. (Senate 2013: 42)

The 'credible enforcement of sentences' also keeps parliament in its grip. Among other things, it was the driving rationale behind the bill that eventually (Law of 7 February 2014) led to the introduction of EM as an autonomous sanction. The members of parliament submitting the bill pointed out the following:

Those who oppose turning electronic monitoring into an autonomous punishment fear what is referred to in the literature as the *net widening* effect. The extension would just result in convicts who, for example, receive a suspended prison sentence, now qualifying for electronic monitoring. According to them, it would have no impact on the prison population. Those submitting the bill refute this. It is important that those who commit a crime and are convicted of it receive a penalty. First and foremost, the proposal aims

to put an end to the non-execution of prison sentences of 6 months up to 3 years. (Chamber of Representatives 2011: 4)

This bill therefore was primarily a response to the alleged impunity. It is striking that the members of parliament who submitted the proposal write that they refute the argument of the so-called opponents about *net widening* but that they do not actually do this. Indeed, the above passage contains an argument that is irrelevant in this context, that is, the idea that punishments issued by a judge must also be executed becomes a *passe-partout* to further extend EM to the phase of sentencing.

EM seems to have at least one major advantage over other community sanctions and measures, that is, its visibility. Indeed, as Robinson (2016) pointed out, community sanctions and measures suffer from a relative invisibility:

Unlike prisons, community sanctions have no obvious physical architecture or structural locus (beyond probation and parole offices and supervisees' homes) and those who administer them tend not to wear uniforms, such that both the sanctions and those who enact them fail to generate ready images or occupy any significant space in the public imagination. (Robinson 2016: 104)

In order to address and challenge this invisibility we have recently seen a growing interest in the use of creative research methods, in particular visual methods, to bring such sanctions into view (see e.g., Carr et al. 2015; McNeill 2019a). Picturing EM is much easier because it has a visible component (the tag or wristband) which makes it much more photogenic and, therefore, easier to use to show that action is being taken; indeed, the tag allows to shoot pictures (typically the foot and part of the leg of an offender wearing the tag) or to conduct interviews in front of a TV camera (such as politicians proudly presenting or testing a new batch of tags in front of an army of journalists).

## AUTOMATION

Technology makes daily life easier. In the same way that the invention and widespread use of dishwashers had as a result that we nowadays spend much less time in the kitchen than previous generations, EM can also take a number of tasks off our hands. The computer is the prime example of

such a shifting of tasks. It is sometimes forgotten that the word ‘computer’ originally referred to a person who solves mathematical equations. The label ‘computer’ only made the leap from person to machine around 1945 (Ceruzzi 1999). Computers now solve our mathematical equations—and in the meantime they do a great deal more than that as well, of course.

The relationship between man and machine can take various forms. The American sociologist George Ritzer (2000: 104) makes a distinction between *human technology* and *nonhuman technology*: in the first case, humans control technology (e.g. when operating a screwdriver), in the second case technology controls humans. It seems evident that, depending on how EM is applied in practice, it will be closer to one or the other. In an evaluation of the Belgian pilot project in September 1998, the Social Work Service (DSW) at the time, for example, expressed a very critical view of the controlling aspect of their duties:

If the emphasis within supervision is mainly or only on monitoring, this must be clearly stated and this has a number of consequences. The question can then be asked whether the DSW is the most appropriate organisation for this task. If social reintegration is also an objective, it is clear that the “social” part of current implementation is not sufficiently addressed. (cited in: Daems 2000: 35)

A similar observation was made a decade later, in 2009, at a symposium to celebrate the tenth anniversary of the Houses of Justice, which are *inter alia* tasked with the follow-up of community sanctions and measures, including EM. On that occasion, the then Director-General of the Probation Division Annie Devos made the following comments on the role and place of technology within EM:

Technology is a means and not an end in itself: all data provided by the electronic monitoring system must be taken into account in the supervision. For example, the National Centre of Electronic Monitoring is responsible for monitoring, to ensure formal control of compliance with the time schedules set up for each person being monitored electronically and to analyse the movements of the persons concerned on the basis of the signals received. This information is passed on to the justice assistant who is responsible for supervision, so that it can be discussed and contextualised with the individual. The information provided by electronic monitoring serves as an aid to supervision and is never used without being processed first. (...) through supervision, the current system makes individuals aware of their responsibility to meet the

requirements of the mandate, in terms of compliance with the schedule, but also with fundamental elements such as work, training, psychosocial follow-up etc. This creates an educational space, a potential learning space, which is of much greater value than ordinary control. If technology and supervision leave the human aspect behind, we lose this educational space and with it the opportunity to develop an active social reintegration strategy. Technology must remain a tool for the enforcement of the sentence and must not become an end in itself. We need to ensure that the purely technological does not get the upper hand: technology must not predominate over the human aspect. After all, it is clear that supervision is essential for the success of the measure. (Devos 2010: 31–32)

With this view of EM—where EM as a tool is subordinated to humans and where EM is therefore approached as a *human technology*—we end up in the field of another important function, namely that of reintegration and the role of professional supervision in this regard (see section “[Reintegration](#)”).

In the meantime, changes have occurred in the application of EM, so that the picture described above only covers part of reality. The share of technology in EM has increased significantly in recent years and in some cases it has almost completely eliminated the human component. This happened first in 2012 with the introduction of voice verification in the case of home detention: persons being monitored were called by a computer and were then given a number of instructions. This did not involve any form of supervision provided by a justice assistant (Ministry of Justice 2012). However, the use of voice verification was discontinued soon thereafter, because of technical issues and because it did not allow for monitoring during night time (when offenders are asleep) (Ferreira Marum 2018). Since March 2013, when the new ministerial circular came into force, supervision has been significantly reduced for convicts up to three years in the case of the traditional ankle bracelet too. Moreover, the social enquiry (which aims to gather information on an offender’s personal and social circumstances before a decision on EM is taken) only takes place exceptionally (Ministry of Justice 2013). Also in the newer applications of EM at pretrial (since 2014) and sentencing (since 2016) stages, the role of the justice assistant is either non-existent (in the case of EM with GPS as alternative for pretrial detention) or limited to an optional social inquiry (which is a discretionary decision of the judge) and providing some basic information at the start of the sanction (in the case of EM as autonomous sanction).

Rule 36 of the Council of Europe’s Recommendation on Electronic Monitoring draws attention to this automation process:



In establishing electronic monitoring systems, consideration shall be given to the respective merits of both human and automated responses to the data gathered by the monitoring centre, bearing in mind the advantages of each. (Council of Europe 2014: rule 36)

A person being monitored should not get the impression that he or she is being checked by a machine, as is explained in the commentary to rule 36:

While automated systems, by removing the human factor in transactions between authorities and offenders may have the advantage of impartiality and consistency, there is a concomitant danger of impersonality. The balance of personal and automated communication should always be given careful consideration, and as far as possible offenders should not be encouraged or allowed to feel, subjectively, that they are being monitored by a machine, divorced from professionals whose personalised approach to them can help them towards desistance and law-abiding lives. (Council of Europe 2013: 14)

The function of automation also plays a role in another way, namely the elimination of human, discretionary and therefore potentially unpredictable decision-making on matters related to EM. Current regulation in Belgium, for example, stipulates meticulously and in a binding manner what should happen in the event of non-compliance with the established time schedule: reminder of obligations (first non-compliance); warning that free hours will be recalculated for the next non-compliance (second non-compliance); recalculation of the schedule (third non-compliance); report to prison director who extends EM with three extra days (fourth non-compliance); report to prison director who extends EM with six extra days or revokes it (fifth non-compliance and subsequent non-compliance), etc. (Ministry of Justice 2013: 9). This used to be different: initially, the director of the National Centre of Electronic Monitoring had a wide margin of appreciation and discretion to issue a warning in the event of violations, to adjust the schedule, to revise or tighten up the conditions or to temporarily or definitively revoke the measure (e.g. Ministry of Justice 2002a: 15–16; 2002b: 10–11; 2006: 11). As Corbett and Marx (1991: 408) observe, this may not only affect responses to curfew breaches but also how supervision operates: ‘EM minimizes, if it does not eliminate, the discretionary judgment and complex analysis required of the treatment model and replaces it with responsibilities akin to those of a clerk/technician’.

In combination with a number of other functions (in particular sections “[Cost Reduction](#)” and “[Tackling Overcrowding](#)”, see further) and by putting nonhuman technology in the foreground and reducing or eliminating the discretionary nature of decision-making, automation can lead to a so-called ‘McDonaldisation’ of EM. Such a process of McDonaldisation—which, as the term suggests, can be observed in the well-known burger chain in ideal circumstances (Ritzer [2000](#), for applications, see e.g., Umbreit [1999](#); Bohm [2006](#); Robinson [2018](#))—has four dimensions that may also apply to EM to a greater or lesser extent:

- *Efficiency*. This concerns the process of seeking the optimal method to get from A to B: satisfy their hunger (for customers) or produce and sell burgers (for the staff);
- *Calculability*. The emphasis is on the quantitative aspects of the product (portion size, price) and the service (the time it takes to deliver the product to the customer). Quantity is equated with quality: bigger is better;
- *Predictability*. The burgers always taste the same everywhere. Do not expect surprises at McDonald’s. Employees also act in a predictable manner by complying with rules of conduct that are laid down in detail in manuals;
- *Monitoring by nonhuman technology*. The behaviour of customers is carefully monitored (queues, limited number of menus, few options, uncomfortable furniture so that people eat quickly and disappear again). Employees are increasingly being replaced by machines (e.g. for distributing soft drinks, frying chips, operating tills).

The similarities with EM are at times striking. When applying EM in 2013, the pursuit of efficiency is paramount: what is the best way to monitor as many people as quickly as possible? The numbers dominate the debate: how many are being monitored?; how long are the waiting times?; how many failures? The implementation is made predictable by meticulous guidelines that streamline application procedures and responses to breaches of curfews. Finally, the machines are increasingly taking over the role of justice assistants and, in some cases, making their input completely redundant.

Dealing with automation will always be a challenge as technology is, of course, at the heart of EM. Moreover, technology is constantly in motion

and recent innovations allow for an even more prominent role for nonhuman technology at the expense of human technology, e.g. through reducing or eliminating the need for human communication (e.g. reminding those being monitored of an impending check-up or an appearance in court by SMS [Nellis and Vanhaelemeesch 2012: 25] or kiosk reporting, where the person being monitored reports to a fixed computer, similar to an ATM, and has to answer certain questions [Nellis and Lehner 2012: 4–5]) or human interventions (e.g. monitoring alcohol consumption via ‘Remote Alcohol Monitoring’ (RAM) or tagging at source, where the ankle bracelet is applied in court or in prison and controlled persons are brought home with a ‘plug and play’ device that they can install themselves [Nellis 2013b]).

Automation tends to invite both utopian dreams and dystopian nightmares. The idea that technological progress (that is, machines doing things that human beings cannot do themselves) paves the ways for progress in the history of punishment was already there in the early dreams of Schwitzgebel et al. (1964), as we discussed in Chapter 1. Unsurprisingly perhaps, given the restlessness of technological innovation in an age of surveillance capitalism (Zuboff 2019), such dreams have never disappeared. One recent example goes as follows:

Imagine.... Electronic Monitoring is no longer based on the electronic bracelets, but rather, on a cutting-edge no-tag, self-installing solution that seamlessly interfaces with a user-friendly and flexible application that can be managed on the move. The EM programs manage all the stages of offender’s rehabilitation from in-facility tracking to location-based tracking outdoors. The EM solutions become so advanced, in fact, that now you not only can monitor offender’s whereabouts, but also health, levels of stress and mood, amounts of daily physical activity, calories consumed and burnt and much more. (...) EM becomes a domain of progress and innovation, enabling safer communities and a better world, while becoming a part of the eco-system of Smart Cities and Internet of Things. (Shelly 2016, quoted in Nellis 2018a: 138)

But automation also conjures up doom-laden prophecies, from the tele-screens constantly monitoring the actions of the citizens of Oceania in George Orwell’s *1984*, to more recent images of a future that might lie ahead of us, as, for example, in the fictitious story of Joe in Fergus McNeill’s *Pervasive Punishment*. Towards the end of his book McNeill (2019a: 158–160) tells a story of Joe being woken up by the ‘insistent,

monotous electronic bell tolling from his ankle bracelet'; how he carefully gets dressed and takes care of his personal hygiene in order to avoid his sock breaking the contact between bracelet and skin as he fears having to spent another weekend in the compliance cells as part of the new 'Swift and Certain Sanction' approach; how he communicates with 'Virpro', the virtual probation officer who speaks in 'slow, soft, maternal tones' and how he receives pep talk messages from 'future Joe', 'an avatar of Joe, looking a few years older but well-groomed, confident, contented, suited and booted'; and then there was the new GATE (Geo-Aversion Tag Enhancer) tech:

These tags could respond to remote signals by releasing nausea-inducing drugs implanted in pellets under the offender's skin. In an emergency, they could issue taser-style shocks. Both measures disabled offenders who strayed beyond their permitted spaces, or showed the classic signs of over-stimulation associated with imminent risk of offending. (McNeill 2019a: 160)

## BEHAVIOURAL CONTROL

Traditional applications of EM focus on locating the person being monitored, either through verification (is the person under EM where he should be?) or through detection, whereby movements can be followed continuously. The former is usually realized through RF technology; the latter through GPS technology. Newer applications, which have not yet been introduced in Belgium, also allow for controlling behaviour. This usually relates to cases involving substance abuse (see e.g., The Scottish Government 2019: 23–25). One variant is a 'RAM System', whereby the person being monitored has to blow into the control device via a mouthpiece. The system is somewhat similar to a breathalyser test in road traffic. This makes it possible to closely monitor the blood alcohol level of the person being monitored. Another variant, the so-called 'Transdermal Alcohol Detector', goes one step further. Here too, traditional EM is combined with alcohol intake monitoring. However, such a check is no longer done through a traditional mouthpiece, but through the skin: the body sweat of the person under surveillance reaches the ankle bracelet via a filter and allows the alcohol content to be measured. The supervisory agent is then notified or alerted of the measured values by email or text message. The latter system therefore no longer requires action by the person being monitored: the measurements are continuous and automatic.

## COST REDUCTION

State punishment usually is expensive. The cost of punishment is one of the reasons why penal philosophers invest so much energy in finding convincing arguments to justify such interventions. When this cost is too high, then we should abstain from punishing at all, so Jeremy Bentham argued, a long time ago:

...all punishment is mischief: all punishment in itself is evil. Upon the principle of utility, if it ought at all to be admitted, it ought only to be admitted in as far as it promises to exclude some greater evil. It is plain, therefore, that in the following cases punishment ought not to be inflicted. (1) Where it is groundless: where there is no mischief for it to prevent; the act not being mischievous upon the whole; (2) Where it must be inefficacious: where it cannot act so as to prevent the mischief; (3) Where it is unprofitable, or too expensive: where the mischief it would produce would be greater than what it prevented. (4) Where it is needless: where the mischief may be prevented, or cease of itself, without it: that is, at a cheaper rate. (Bentham 1780: clxvi–clxvii)

In times of crisis—or under the influence of ideological movements that argue for some form of minimal state—it is to be expected that government funding for punishment will also be called into question. For example, the American sociologist Andrew Scull (1977) believed that the high cost of segregation of the mad and the bad in the US led to the decarceration or depopulation of closed institutions and the increased reception of people with mental illnesses and convicts in the community (see section “[Decarceration](#)”). In retrospect, Scull’s study appeared at a somewhat unfortunate time, namely on the eve of the rapid rise in the prison population in the US, as a result of which the belief in segregation (as well as the willingness to finance it) seemed to have returned.

Nevertheless, the cost of punishment remains an important factor. In recent years, several states in the US have had to contend with serious financial problems—and some are on the cusp of bankruptcy. The rising cost of the criminal justice system is also reflected in this. In September 2013, the National Association of State Budget Officers (2013) calculated that in 2012, the various states of America collectively coughed up more than 52 billion dollars for the execution of punishments. The share in the government budget increased on average from 4.7% in 1986 to 7% in 2012. In certain states, this led to serious imbalances in expenditure: California

spent more on prisons than on higher education. This disastrous financial situation even made former governor (and notorious former *terminator*) Arnold Schwarzenegger decide that it could not go on like this (Steinhauer 2010; Archibold 2010).

Policymakers in Belgium are not insensitive to the cost of punishment either. At the end of 2009, the detention of one prisoner cost 126.02 euros per day, of which almost 104 euros were spent on personnel costs. This figure did not take into account other cost items, such as building maintenance, assistance to prisoners, etc. (Chamber of Representatives 2010: 132–133). The Court of Auditors calculated that the daily price for 2010 could be rounded to 130 euros, excluding the costs for construction, pension costs for prison officers and assistance by the Communities (Court of Auditors 2011: 40). In a bill that aimed to introduce EM as an autonomous punishment, it was estimated that the total daily price could amount to 170 euros. The following figures were used for this calculation: a daily price of 125 euros + infrastructure costs of 25 euros + pension costs of 20 euros (Chamber of Representatives 2011: 3). This figure is lower than that in the Netherlands: in 2010, the average daily cost was 217 euros (Nauta et al. 2011: 263). But on the other hand, detention in Belgium seems to be a lot more expensive than in the US, where the average daily cost in 2012 was 79.84 dollars for a prisoner in a state prison and 77.49 dollars for a prisoner in a federal institution (National Association of State Budget Officers 2013: 2).

Since its early inception, EM has been proposed and promoted as a cheaper alternative to the expensive prison sentence. In a 2012 pamphlet, Deloitte (2012) stated that EM is about 5.5 times cheaper than imprisonment: the daily cost in the US at that time was between 5 and 25 dollars. In some places, this bill completely falls on the shoulders of the person under supervision and, indeed, EM then becomes a source of profit for private companies charging defendants hundreds of dollars a month to cover the cost of their own supervision (Solon 2018; Kofman 2019). In Belgium, the average cost of EM via the traditional ankle bracelet was 38.65 euros per day in 2009 (cost of justice assistant + cost of National Centre of Electronic Monitoring + cost of mobile team + rent of ankle bracelet) (Chamber of Representatives 2010: 133). The member of parliament who presented these figures at the beginning of 2010 did not hide her enthusiasm: ‘Our overcrowded prisons and the budget deficit are crying out for a far-reaching expansion of the ankle bracelet!’ (Van Cauter 2010: 4). The application of GPS technology is more expensive: the equipment costs 8.75 euros per

day in 2012. If the personnel costs are also included here, we arrive at a total price of a maximum of 40 euros per day (Chamber of Representatives 2012: 27).

In Belgium, people placed under EM no longer have to contribute financially. However, this used to be different. In the project phase, a contribution of 5000 Belgian francs (approximately 124 euros) per month was envisaged (Ministry of Justice 1997: 4, 7). Later, that contribution was reduced to 100 Belgian francs (approximately 2.5 euros) per day, for those who earn an income during EM. It then also became possible to be wholly or partially exempted from paying the deposit of 5000 Belgian francs (Ministry of Justice 1998: 1, 8). From 2000, a contribution to the costs of 3000 Belgian francs per month was provided for. That sum had to be paid in advance (Ministry of Justice 2000: 21). A few months later, it was decided to stop requesting offenders to contribute to the costs of EM (Ministry of Justice 2001a). From then on, EM has been free of cost in Belgium, although the deposit of 5000 Belgian francs (Ministry of Justice 2001b: 5) or—after the introduction of the euro—124 euros (Ministry of Justice 2002a: 5; 2002b: 4; 2006: 13), still had to be paid for a while.

EM is undeniably cheaper than locking people up in a prison, but is it also cost effective? EM can only have a positive effect on public finances if it succeeds in reducing the use of imprisonment and thus tackling overcrowding (see section “[Tackling Overcrowding](#)”) and ultimately paving the way for decarceration with the closure of existing prisons as the end point (see section “[Decarceration](#)”). However, studies have been pointing for some time at the net widening effect and the hidden costs of EM (see section “[Widening the Net](#)”). If those who have now been placed under supervision would never have ended up in prison, EM would again be more expensive, the Belgian Court of Auditors (2011: 87) noted. The same applies to EM in the context of pre-trial detention: here, it is warned that EM with GPS may sooner replace current release on condition than pre-trial detention (Maes et al. 2011; Maes 2013). Twenty years of applying EM in Belgium has certainly not led to prisons being closed or the pressure on the overcrowded facilities being reduced significantly (see section “[Tackling Overcrowding](#)”).

In addition, there is also a price to be paid for cost reduction; indeed, a cheap sentence is not necessarily a good sentence. Beyens and Roosen (2013: 67) compare home detention with voice recognition, as it was briefly practised in Belgium, with the activities of a well-known Irish *low budget* airline: ‘Home detention can be regarded as the cheapest “Ryan Air option”

in the scale of modalities of EM in Belgium, where services are no longer offered'. In short, the flying experience is reduced to the bare minimum (the plane takes the traveller from A to B) and you have to pay extra for just about everything, from luggage to extra legroom to the use of your credit card. As we discussed in Chapter 1, Vander Beken (2013) introduced the terms *EM-light* and *EM-zero* for forms of EM that are cheaper, easier to administer and faster to deploy, suggesting that these are also slimmed-down versions of the original Belgian model.

## CRIME CONTROL

From a utilitarian perspective the reduction of crime is usually approached within the context of the traditional purposes of punishment: deterrence, incapacitation, reformation, rehabilitation, etc. However, EM may open up new possibilities in this area, in particular for crime investigation and prevention. Just like the data that we disclose through the use of loyalty, travel or credit cards, the information that becomes available via EM can also be used for other purposes, a process sometimes referred to as 'function creep'. For example, GPS location data may appeal to the police to prove (or exclude the possibility) that a person under surveillance was at the crime scene at the time of the incident.

In particular in the area of prevention we may see some important developments in the near future. Companies are no longer merely offering the hardware and software that allows for the tracking of people; they also promise to anticipate future behaviour, on the basis of risk-based scores that are calculated through analyzing extensive offender data gathered through RF and GPS tracking devices (Kofman 2019). The CEO of one major company recently suggested that currently EM solutions are exclusively focusing on a reactive approach, that is, interventions only take place when an alarm signals a nonconformity. The future will see the development of a 'predictive-driven approach to EM' which allows to identify problems before they occur:

Together, AI and the big-data analytics result in the identification of trends, patterns, enabling the draw of correlations, as well as risk profiles, by way of the use of all the available data, which is provided by the EM system. Such data include but are not limited to GPS position, speed, movements, motion sensors, tamper sensors; furthermore, a new AI-powered EM system could take historical data into account and mix it with any other relevant source of



data to be correlated (other offenders, a map of criminogenic zones, crime scenes, CCTV records, car speed, etc.). (Demetrio 2018: 24)

The production, collection, storage and exploitation of large amounts of potentially sensitive data pose new challenges and raise questions about where those data are stored and who can access them. This is even more complicated because of the involvement of commercial companies in these processes (on this, see Hucklesby 2018: 249–250). The Council of Europe’s Recommendation on Electronic Monitoring refers to some of the challenges ahead, but fails to make concrete recommendations in this sensitive area: ‘The handling and shared availability and use of data collected in relation to the imposition and implementation of electronic monitoring by the relevant agencies shall be specifically regulated by law’ (Council of Europe 2014: rule 12; Council of Europe 2013: 7–8).

## DECARCERATION

For decarceration to occur EM needs to be integrated into an ambitious strategy that focuses on an effective reduction of imprisonment: the goal is not merely to decrease the number of prisoners until we return to a ‘normal’ occupancy level for otherwise overcrowded institutions (see section “[Tackling Overcrowding](#)”), but rather to reduce the number of prison places *tout court*, to the point that the number of available cells decreases and prisons can be closed. Decarceration is therefore central to those old dreams and recent predictions that EM can be a transformative technology that radically challenges existing uses of the prison. Thus far there is little evidence that EM has had such a decarcerative effect—although, under the right conditions, it is possible, as can be gathered for example from the Canadian experience with conditional sentences (see Roberts 2004, 2009; Roberts and Gabor 2004).

Thinking of EM in terms of decarceration implies that it comes to be seen primarily in relation to the prison (and in that sense its fate may not be that different from those earlier generations of ‘alternative’ sanctions and measures). This may obscure how new forms of ‘e-carceration’ or ‘virtual prisons’ are created in the community which aim to mimick the prison and transform private bedrooms into cells and housemates into prison guards (see sections “[Transcarceration](#)” and “[Widening the Net](#)”).

## DEGRADATION

An important function of punishment—according to some it is the essence of punishment—is that of degradation: reducing a person’s status. Punishing, then, means treating the other as inferior, as of a lower status. Or in other words: punishing is putting people ‘in their place’ (see, for example, Radbruch 1950; Garfinkel 1956; Sellin 1976; Whitman 2003). People are also put ‘in their place’ with EM. Being supervised through EM technology implies by definition that the person being monitored is placed in a subordinate position: the person submits to the technology, to the schedule and to the instructions of the agents involved in exercising the supervision.

However, opinions differ on the extent to which EM also produces additional degrading or stigmatising effects (Nellis 2013a). On the one hand, it is undeniable that EM can be stigmatising—to the extent that the person being monitored is wearing an ankle bracelet visible to the eye or is in possession of other conspicuous monitoring equipment. Perception research demonstrates that supervised persons sometimes display avoidance behaviour (e.g. they do not go to swimming pools or they avoid using communal showers) or adjust their clothing (e.g. they avoid wearing skirts or shorts) to keep the fact that they are under EM hidden from the outside world. Compliance with the schedule can also lead to the use of all sorts of strategies to conceal one’s tainted status (e.g. suddenly ending a conversation, prematurely leaving an appointment or party, telling little white lies) (Van Gestel 1998; Robert and Stassart 2009; Vanhaelemeesch et al. 2014). On the other hand, EM also allows such stigmatising effects to be kept to a minimum: the equipment is usually—and increasingly—not very conspicuous. This is less obvious than it seems at first sight. From a punitive or communicative-expressive point of view, one could argue for extra accentuation of the visual elements of EM (somewhat similar to making offenders serving community sanctions wear orange jumpsuits): why not have fluorescent ankle bracelets or distasteful collars with led lights? With voice verification technology or newer smartphone applications that use face recognition, there is much less a question of stigma, since the person being monitored does not carry any visible equipment. Implant technology also could guarantee a discrete execution of the penalty—although, for understandable reasons (the same reasons why making offenders wear conspicuous ankle bracelets or collars is not an option in a European context), this raises ethical objections (on this, see Nellis 2013c; Council of Europe 2014). The less visible and therefore potentially less degrading quality of

EM may also explain why EM, despite its affinity with current cultures of surveillance, has so far not been a ‘disruptive innovation’ (see Chapter 1). Something seems to be missing. Lilly and Nellis highlight that EM can be best characterized as a ‘managerial form of control’ and therefore ‘...it never manages to match or challenge the more visceral and reassuring appeal of punishment and sequestration, or to symbolize the even more potent tendency to “degrade” that Whitman (2003) discerns in US penal practice’ (Lilly and Nellis 2013: 37; see also Nellis 2018b: 14).

However, both aesthetically and technologically, one could imagine EM so designed and applied that it transforms into a ‘dirty technology’, whose principal purpose is to harm and degrade (Nellis 2018b). In a recent proposal to introduce ‘technological incarceration’ on a massive scale we see a morbid mixture of utopian and dystopian elements; here degradation returns with a vengeance. Bagaric et al. (2018) hope that technology could contribute to the ending of mass incarceration and in doing so, they re-energize the old dream of EM emptying prisons, that we have encountered already in Chapter 1. Indeed, they propose ‘...a major revolution to the prison sector that would see technology, for the first time, pervasively incorporated into the punishment of criminals and result in the closure of nearly all prisons in the United States’ (Bagaric et al. 2018: 73). To realize this objective, they propose ‘technological incarceration’, which would involve the fusion of three technological systems:

First, offenders would be required to wear electronic ankle bracelets that monitor their location and ensure they do not move outside of the geographical areas to which they would be confined. Second, prisoners would be compelled to wear sensors so that unlawful or suspicious activity could be monitored remotely by computers. Third, conducted energy devices would be used remotely to immobilize prisoners who attempt to escape their areas of confinement or commit other crimes. (Bagaric et al. 2018: 73)

The use of a ‘body sensor harness’ (with microphones and an upward facing body-cam) and electro-shock capability (through remote-controlled ‘conducted energy devices’) would be necessary to achieve the two major aims of imprisonment, that is, community protection and the infliction of proportionate punishment (Bagaric et al. 2018: 77–78). Indeed, according to Bagaric et al. (2018: 101–102) classical monitoring with RF or GPS technology has two major disadvantages that need to be overcome: (1) EM, as it currently exists, is not reliable in the sense that it cannot prevent escapes;

(2) EM does not offer the same level of protection as the prison. These are revolutionary ideas which ostensibly are about mimicking some key features of the modern prison in order to better serve the goals of incapacitation and retribution; but they do much more than that and, if ever implemented in one form or another, would prove to be deeply troubling in terms of violating human rights (for some critical discussions, see e.g., Nellis 2018b, 2019; McNeill 2019b). Within a European context it would be nay impossible to propose, let alone implement, such wide-ranging proposals, as they clearly contravene rule 27 of the Recommendation of Electronic Monitoring: ‘Under no circumstances may electronic monitoring equipment be used to cause intentional physical or mental harm or suffering to a suspect or an offender’ (Council of Europe 2014: rule 27).

## DETECTION

Detection goes beyond verification (see section “[Verification](#)”). After all, this is an active form of supervision: by sending an uninterrupted signal, continuous contact is made between the person being monitored and the control post. Detection therefore allows monitoring of the body in *real time*. GPS technology is particularly suitable for this. Throughout the history of EM, such continuous control has evoked images of doom, inspired by *Big Brother* from George Orwell’s 1984 or by Jeremy Bentham’s *panopticon*, where the all-seeing electronic eyes of a greedy state penetrate into the secret corners of private homes and individuals are disciplined into obedient machines. Nevertheless, even with the use of the most advanced and intrusive technological tools, EM always encounters a limit that is nay impossible to transcend: EM cannot prevent people being monitored from ignoring their schedule or failing to comply with conditions, just because they retain their freedom and manage their own lack of freedom. In terms of incapacitation EM usually does not score very well (see section “[Incapacitation](#)”).

## DETERRENCE

Deterrence is perhaps one of the oldest and best-known purposes of punishment. In an opinion article written by a number of liberal politicians, aimed at advocating EM as an autonomous sanction, we can read the following:

This week the public prosecutor of Ghent argued that “people often make fun of electronic monitoring, but they are missing a huge opportunity here. If someone is not allowed to leave their home for eight months, except to go to work, this is enough of a deterrent; we know that from experience”. (De Croo et al. 2009)

Findings from perception studies confirm that undergoing EM is no fun, but at the same time it appears that people being monitored generally prefer EM to a traditional prison sentence (Robert and Stassart 2009; Vanhaelemeesch et al. 2014; Vanhaelemeesch 2015). That is, in itself, hardly surprising. However, at times EM comes to be portrayed and perceived as an overly lenient response to crime rather than a real punishment that is intended as a deterrent. This happens, for example when, celebrities (such as Paris Hilton or Lindsay Lohan) give the impression experiencing little inconvenience when wearing an ankle bracelet. In June 2011, for example, a British tabloid published a number of photos which featured Lindsay Lohan on the sunny roof terrace of her luxurious apartment:

Lindsay Lohan models her latest fashion accessory – an electronic monitoring bracelet as she remains under house arrest at her California home. The 24-year-old actress was pictured wearing the device as she soaked up the sun on the roof of her Venice Beach townhouse in Los Angeles while sunbathing in a deck chair. (Daily Mail Reporter 2011)

Such celebrities are not hiding their ankle bracelets; on the contrary, they show their tags off as if it were a new gadget and seem to enjoy the extra media attention they can expect by wearing them. A similar sense of ambivalence is at times at play when EM is being considered for young people: wearing a visible tag can be degrading and stigmatising but it might as well turn into a status symbol in some youth subcultures (Daems and Goossens 2019).

The risks associated with alarm signals (e.g. because of tampering with the tag; violations of a curfew; failure to keep the battery charged; etc.) may function as a deterrent and increase compliance while under EM. This is sometimes referred to as ‘short-term compliance’ (which relates to complying with the requirements of a sentence) and is to be distinguished from ‘long-term compliance’ (that is, compliance with the criminal law generally) (Hucklesby 2009, 2013). Indeed, EM increases the chance of being caught in the event of violations and thus also increases the risk of further punishment (in particular, fear of going to prison). During a period under

EM, such a deterrent effect may produce positive results in terms of further compliance (e.g. keeping a person away from a certain place), but this effect may disappear after the period under EM, that is, it may not prove to be a key to desistance.

## HARM REDUCTION

The Belgian prison law of 12 January 2005 explicitly recognises that depriving people of their freedom is harmful: ‘When enforcing the custodial sentence or the custodial measure, avoidable damage due to detention must be prevented’ (Art. 6, para 2). In the report of the Committee that prepared a first draft text for this prison law this is explained as follows:

Because the enforcement of a custodial sentence, despite all good intentions from anyone, involves a predictable risk of causing more damage than useful effects, a primary task must be to prevent damage due to detention or at least to reduce it as much as possible, both in terms of defining the function, working methods and attitudes of enforcement officers, as well as in the organisation of prisons, the elaboration of the penitentiary regime, the modalities of enforcement and early release. (Chamber of Representatives 2001: 68–69)

The acknowledgement that the prison usually does more harm than good corresponds to a u-turn in penal history; it gave a decisive blow to the optimistic belief in the positive effects of imprisonment, as expressed in Belgium in particular in the vision of the nineteenth century prison reformer Édouard Ducpétiaux who (like many of his contemporaries in other countries) believed that solitary confinement would lead to moral reform. The principle of damage limitation is now considered a necessary condition for the realisation of the other objectives that are mentioned in the prison law, such as restoration and preparation for reintegration. Against this background, it has been argued that EM can also play a role in preventing avoidable damage due to detention. In ministerial circular letter no. 1692/IX of 27 November 1998, this was formulated as follows:

The Minister of Justice is responsible for the enforcement of the custodial sentences imposed by the judiciary. Within that authority, the Minister ruled that ways must be sought to limit damage due to detention through enforcement within the prison. Electronic monitoring as a form of enforcement of the custodial sentence is in line with this option. Damage due to detention

is limited as much as possible because detainees are given the opportunity to undergo (part of) the enforcement of the custodial sentence in their familiar environment and thus to continue their family, social and economic contacts. It is therefore very important that the detainee is prepared for the measure and that its implementation is part of a programme that promotes reintegration as much as possible. (Ministry of Justice 1998: 1)

In the above passage, the limitation of detention damage is linked to the prospect of reintegration (see section “[Reintegration](#)”). This objective also appears in later circular letters. From 2000 onwards, the wording does change somewhat: from then on, damage limitation is explicitly linked to the idea of restoration (see section “[Restoration](#)”).

Thinking about EM in relation to harm reduction implies that EM comes to be associated explicitly with imprisonment: indeed, its function, then, is to reduce or avoid the harm caused by the prison. This raises an important question: what about the avoidance or limitation of the harmful effects of EM itself? There is now a burgeoning literature on the pains of community sanctions and measures that may inspire a similar ‘harm reduction’ approach towards the development of EM (see e.g., Payne and Gainey 1998; Durnescu 2011; Hayes 2015). However, if EM is primarily seen as a less harmful alternative for the prison then this might obscure the peculiar pains of EM.

## HARD TREATMENT

EM is not a ‘pleasure’, so we read (literally) in an amendment to a bill that wants to introduce EM as an autonomous punishment:

You must not underestimate the restrictive influence of the punishment under electronic monitoring on the freedom of the person: they can no longer go or be where they want, they have to be accountable for how they spend their time and they realise psychologically that they are having to carry out a punishment. So it is certainly not a pleasure, but definitely a form of punishment. (Chamber of Representatives 2013: 7)

In another bill, a senator writes about ‘a severe punishment that remains somewhat human’:

Due to the drastic restrictions and the mandatory presence of the convicted person being monitored electronically at certain places and times, this possibility is a severe punishment, which remains somewhat human. After all, convicted persons can serve (part of) their custodial sentence in their domestic environment, so that they can continue to maintain family, social and economic contacts. (Senate 2010: 2)

A little later in the bill, the senator reminds us once again that EM is ‘certainly not a mild punishment’:

In spite of the many temptations and vicissitudes of daily life, there can be no question of deviating from the imposed schedule, not even for one minute. The sanction would be inexorable: electronic monitoring would be withdrawn. (Senate 2010: 3)

It is not a coincidence that hard treatment is emphasised in bills that wish to introduce EM as an autonomous punishment. After all, in Belgium EM was originally only used according to the ‘backdoor’-principle, that is, in the final phase of the execution of a prison sentence: it was only later that the scope of EM was broadened in such a way that convicted persons could be placed immediately under EM for a short custodial sentence. As a result, EM in Belgium is still primarily perceived as a punishment execution modality that is to some extent regarded as a ‘favour’, a privilege to be awarded towards the end of a prison sentence (see section “[Deterrence](#)”).

In the execution phase other considerations about the proper goals of punishment come to the fore than at sentencing stage. This implies that proposals for EM as an autonomous punishment usually pay much more attention to hard treatment and expressing disapproval than is the case in the execution phase. This illustrates the difficulty EM has in ‘proving’ itself against the custodial sentence. EM sometimes seems to fall between two stools: on the one hand, it is not a ‘pleasure’ and it is a ‘severe punishment’, but on the other hand, the punishment has ‘undeniable advantages for the convicted person’ and the punishment remains ‘somewhat human’ (Chamber of Representatives 2013; Senate 2010). For some, EM does not offer enough in terms of hard treatment. For example, a senator criticised EM in the following terms:

The prison sentence also serves as an example. If a convicted person is able to serve a sentence at home, there is hardly any sign of dissuasion. How can a punishment add any more suffering, since sitting it out at home with an ankle bracelet leads to a few practical inconveniences at most? (Senate 2013: 43)



Retributivists will have a tough job with EM. In a recent bill, EM is placed second in the hierarchy of punishments. The proposers leave no doubt that EM belongs there: ‘Now it has been established that the restriction of freedom by a punishment under electronic monitoring is more substantial than by community service, but less than by a prison sentence, the punishment under electronic monitoring deserves the second place in the ranking of the penal arsenal’ (Chamber of Representatives 2013: 8). Intuitively, there is something to be said for this positioning of EM. But whether this concludes the debate on the relative severity of EM is very much the question. This becomes clear when we consider the application of the proportionality principle in the context of EM. For example, rule 4 of the Council of Europe’s Recommendation on Electronic Monitoring points out the importance of the proportionality principle:

The type and modalities of execution of electronic monitoring shall be proportionate in terms of duration and intrusiveness to the seriousness of the offence alleged or committed, shall take into account the individual circumstances of the suspect or offender and shall be regularly reviewed. (Council of Europe 2014: rule 4)

However, given the flexible, adaptable and multi-functional nature of EM, and the different types of technology that might be involved, the meaning of proportionality becomes extremely complex:

The meaning of proportionality in a sanction involving electronic monitoring is complex, because the technology can be used in very flexible and variable ways, in different legal frameworks and in conjunction with a range of measures. All of these affect the way an individual offender experiences this sanction or measure. The overall duration of the sanction is clearly important to proportionality (and the maximum needs to be specified in law), but the intensity, onerousness, and punitiveness of the experience can vary considerably depending not only on how long it lasts, but as crucially, on how electronic monitoring is deployed on a day to day basis. (Council of Europe 2013: 4)

By definition, such a flexible form of punishment is difficult to fit on the scale: are one hundred or two hundred hours of community service or a high monetary fine really less severe than a short period under EM with a flexible daily schedule and sufficient blocks of free time?

In terms of hard treatment EM also encounters other limits. After all, just like community service, EM requires the cooperation of the person being monitored and that is not unlimited. For that reason, some have argued that there is a critical ‘pain threshold’, somewhere between six months and one year: a longer period of monitoring would increase the risk of failure of EM (see Goossens et al. 2005: 57–61). In the light of that pain threshold, a recent bill stipulates that EM must not exceed one year (Chamber of Representatives 2013: 8). Long-term or life-long monitoring (which, for example, is practiced in some US states, see e.g., Anacker and Pinals 2016) therefore will not immediately appear on the agenda in Belgium (or, for that matter, anywhere else in Europe). This means that the custodial sentence is implicitly reconfirmed in its role as the punishment *par excellence*.

## HUMANISATION

Given its novelty EM is at times presented as a penal innovation that can be regarded as a new step forward towards a further humanisation of punishment. That is, indeed, how Schwitzgebel et al. (1964) approached EM in the mid-1960s (see Chapter 1); but also nowadays EM often comes to be associated with progress in human history: in the same way that the modern prison offered a more humane alternative to the gallows, the ankle bracelet offers a more humane alternative to the meanwhile discredited prison, so the reasoning goes.

To a certain extent, there is something to be said for that. However, two comments need be made in order to avoid falling into the trap of writing a whig history of punishment. First, speaking in terms of a ‘more humane’ alternative implies that the original form of punishment (‘B’) which is taken as a point of comparison for EM (‘A’)—*A is ‘more humane’ than B*—is included in the story. Bas and Damen (2000: 7) argue, for example, that EM can offer a more humane alternative to the prison sentence, ‘... because it limits the detrimental effects of the custodial sentence on the detainee and his/her family’ (see section “[Harm Reduction](#)”). They thereby implicitly indicate that the reasoning may not hold true when the comparison is made with, for example, a monetary fine or community service. Secondly, EM—like any other form of punishment—cannot be viewed separately from the place it occupies in the broader criminal justice landscape: if EM becomes a new and added element in a penal system which, due to its introduction and successful expansion, grows further and possibly becomes more intrusive, then the image becomes much more complex. As we will see in the next

chapter, the failure of community sanctions and measures to reduce the use of imprisonment was precisely the reason why the debate about ‘net widening’ and ‘thinning the mesh’ unfolded in the late 1970s (see section “[Widening the Net](#)”).

## REFERENCES

- Anacker, L., & Pinals, D. A. (2016). GPS monitoring for life. *Journal of the American Academy of Psychiatry and the Law*, 44(4), 497–499.
- Archibold, R. C. (2010, March 23). California, in financial crisis, opens prison doors. *The New York Times*.
- Bagaric, M., Hunter, D., & Wolf, G. (2018). Technological incarceration and the end of the prison crisis. *Journal of Criminal Law and Criminology*, 108(1), 73–135.
- Bas, R., & Damen, W. (2000). ET (we) phone (you at) home. *Orde van de Dag*, 10, 7–18.
- Benham, J. (1780). *An introduction to the principles of morals and legislation*. London: T. Payne and Son.
- Beyens, K., & Roosen, M. (2013). Electronic monitoring in Belgium: A penological analysis of current and future orientations. *European Journal of Probation*, 5(3), 56–70.
- Bohm, R. M. (2006). “McJustice”: On the McDonaldization of criminal justice. *Justice Quarterly*, 23(1), 127–146.
- Carr, N., Bauwens, A., Bosker, J., Donker, A., Robinson, G., Sučić, I., & Worrall, A. (2015). Picturing probation: Exploring the utility of visual methods in comparative research. *European Journal of Probation*, 7(3), 179–200.
- Ceruzzi, P. E. (1999). *A history of modern computing*. Cambridge: The MIT Press.
- Chamber of Representatives. (2001). Eindverslag van de Commissie ‘Basiswet gevangeniswezen en rechtspositie van gedetineerden’. Verslag namens de Commissie voor de Justitie uitgebracht door de heren Vincent Decroly en Tony Van Parys (2 February 2001). *Parl. St. Kamer* 2000–01, DOC 50 1076/001.
- Chamber of Representatives. (2010). Vraag nr. 103 van mevrouw de volksvertegenwoordiger Carina Van Cauter van 10 december 2009 aan de minister van Justitie, Kamer 2009–10. *Schriftelijke vragen en antwoorden*. QRVA 52 88, 4 January 2010, 132–133.
- Chamber of Representatives. (2011). Wetsvoorstel van 17 januari 2011 tot invoering van het elektronisch toezicht als autonome straf (ingediend door mevrouw Carina Van Cauter c.s.). *Parl. St. Kamer* 2010–11, DOC 53 1042/001.
- Chamber of Representatives. (2012). Verslag namens de Commissie voor de Justitie uitgebracht door de heer Stefaan Van Hecke (14 November 2012). *Parl. St. Kamer* 2012–13, DOC 53 2429/006.

- Chamber of Representatives. (2013). Wetsvoorstel tot invoering van het elektronisch toezicht als autonome straf. Amendement nr. 1 van mevrouw Van Cauter c.s. *Parl. St. Kamer* 2012–13, DOC 53 1042/002.
- Corbett, R., & Marx, G. T. (1991). Critique: No soul in the new machine: Technofallacies in the electronic monitoring movement. *Justice Quarterly*, 8(3), 399–414.
- Council of Europe. (2013). *Draft commentary to recommendation on electronic monitoring (PC-CP (2013) 2 rev)*. Strasbourg: European Committee on Crime Problems, Council for Penological Cooperation.
- Council of Europe. (2014). *Recommendation CM/Rec(2014)4 of the Committee of Ministers to member States on electronic monitoring*. Adopted by the Committee of Ministers on 19 February 2014, at the 1192nd meeting of the Ministers' Deputies.
- Court of Auditors. (2011). *Maatregelen tegen de overbevolking in de gevangenissen*. Brussels: Court of Auditors.
- Daems, T. (2000). Wat met het rottweilergehalte van de gecontroleerde? Begeleiding én controle: rolonduidelijkheid in elektronisch toezicht. *Orde van de Dag*, 10, 33–40.
- Daems, T. (2008). Baksteen in de maag, steengruis in de nieren. *Panopticon*, 29(4), 67–79.
- Daems, T., & Goossens, E. (2019). Elektronische monitoring voor jongeren: een volwassen reflectie. In J. Put & J. Leenknecht (Eds.), *Het Vlaamse jeugddelinquentierecht* (pp. 107–119). Brussels: Larcier.
- Daems, T., Maes, E., & Robert, L. (2013). Crime, criminal justice and criminology in Belgium. *European Journal of Criminology*, 10(2), 237–254.
- Daily Mail Reporter. (2011, June 3). Lindsay Lohan in her gilded cell: Star makes for an arresting sight as she models ankle tag on sun drenched rooftop of LA home. *Daily Mail*.
- De Croo, H., Van Cauter, C., Lahaye-Battheu, S., & Taelman, M. (2009, December 3). *Welke toekomst voor het Belgische gevangeniswezen?* <https://www.sabien-lahaye-battheu.be/nl/nieuws/1146/welke-toekomst-voor-het-belgische-gevangeniswezen.html>.
- Deloitte. (2012). *Disruptive innovation. Case study: Transforming criminal justice with electronic monitoring*.
- Demetrio, J. (2018). From a reactive to a preventive approach: What is on the horizon of electronic monitoring technologies? *Justice Trends*, 3, 24–26.
- Devos, A. (2010). Balans van het tienjarig bestaan van de justitiehuisen en perspectieven voor de komende jaren. *Tien jaar justitiehuisen: Balans en perspectieven* (pp. 13–43). Brussels: Federale Overheidsdienst Justitie.
- Durnescu, I. (2011). Pains of probation: Effective practice and human rights. *International Journal of Offender Therapy and Comparative Criminology*, 55(4), 530–545.

- Ferreira Marum, P. (2018). Testimonials about EM: Evolution and perspectives for the future. *Justice Trends*, 3, 21–22.
- Garfinkel, H. (1956). Conditions of successful degradation ceremonies. *American Journal of Sociology*, 61(5), 420–424.
- Goossens, F., Maes, E., Deltenre, S., & Vanneste, C. (2005). *Onderzoek met betrekking tot het invoeren van het elektronisch toezicht als autonome straf*. Brussels: Nationaal Instituut voor Criminalistiek en Criminologie.
- Hayes, D. (2015). The impact of supervision on the pains of community penalties in England and Wales: An exploratory study. *European Journal of Probation*, 7(2), 85–102.
- Hucklesby, A. (2009). Understanding offenders' compliance: A case study of electronically monitored curfew orders. *Journal of Law and Society*, 36(2), 248–271.
- Hucklesby, A. (2013). Insiders' views: Offenders' and staff's experiences of electronically monitored curfews. In M. Nellis, K. Beyens, & D. Kaminski (Eds.), *Electronically monitored punishment: International and critical perspectives* (pp. 228–246). London: Routledge.
- Hucklesby, A. (2018). A complicated business: The operational realities of privatised electronic monitoring of offenders. In A. Hucklesby & S. Lister (Eds.), *The private sector and criminal justice* (pp. 223–258). Basingstoke: Palgrave Macmillan.
- Kofman, A. (2019, July 3). Digital jail: How electronic monitoring drives defendants into debt. *The New York Times Magazine*.
- Lilly, J. R., & Nellis, M. (2013). The limits of techno-utopianism: Electronic monitoring in the United States of America. In M. Nellis, K. Beyens, & D. Kaminski (Eds.), *Electronically monitored punishment: International and critical perspectives* (pp. 21–43). London: Routledge.
- Maes, E. (2013). Over de diverse bepalingen van een 'vuilbakwet' en de hechtenis onder elektronisch toezicht als uitvoeringsmodaliteit van voorlopige hechtenis. *Panopticon*, 34(2), 135–142.
- Maes, E., Mine, B., De Man, C., & Van Brakel, R. (2011). Naar elektronisch toezicht in het kader van de voorlopige hechtenis? Waarom de invoering ervan, vanuit het oogpunt van een vermindering van de gevangenispopulatie, misschien toch niet meteen de meest aangewezen strategie is. *Fatik*, 129, 6–14.
- Mathiesen, T. (1990). *Prison on trial*. London: Sage.
- McNeill, F. (2019a). *Pervasive punishment: Making sense of mass supervision*. Bingley: Emerald.
- McNeill, F. (2019b). Resisting mass supervision: Reform and abolition. In P. Carlen & L. Franco Ayres (Eds.), *Justice alternatives*. London: Routledge.
- Ministry of Justice. (1997). *Ministeriële Omzendbrief nr. 1680/IX van 24 november 1997 betreffende: elektronisch toezicht*.
- Ministry of Justice. (1998). *Ministeriële omzendbrief nr. 1692/IX van 27 november 1998 betreffende: elektronisch toezicht*.

- Ministry of Justice. (2000). *Ministeriële omzendbrief nr. 1720 van 13 oktober 2000 betreffende: regelgeving inzake elektronisch toezicht als modaliteit van strafuitvoering.*
- Ministry of Justice. (2001a). *Ministeriële omzendbrief nr. 1720ter van 22 februari 2001 tot wijziging van de omzendbrief nr. 1720 van 13 oktober 2000 m.b.t. de regelgeving inzake elektronisch toezicht als modaliteit van strafuitvoering.*
- Ministry of Justice. (2001b). *Ministeriële omzendbrief nr. 1727 van 12 april 2001 betreffende regelgeving inzake elektronisch toezicht als modaliteit van strafuitvoering.*
- Ministry of Justice. (2002a). *Ministeriële omzendbrief nr. 1741 van 8 april 2002 betreffende regelgeving inzake elektronisch toezicht als modaliteit van strafuitvoering.*
- Ministry of Justice. (2002b). *Ministeriële omzendbrief nr. 1746 van 9 augustus 2002 betreffende regelgeving inzake elektronisch toezicht als modaliteit van strafuitvoering.*
- Ministry of Justice. (2006). *Ministeriële omzendbrief nr. 1784 van 10 juli 2006 betreffende regelgeving inzake het elektronisch toezicht als modaliteit van strafuitvoering.*
- Ministry of Justice. (2012). *Ministeriële omzendbrief van 18 augustus 2012. Onderwerp: Thuisdetentie met stemberkenning (Voice) voor personen veroordeeld tot een of meer vrijheidsbenemende straffen waarvan het uitvoerbaar gedeelte drie jaar gevangenis niet te boven gaat en waarvan het nog te ondergane gedeelte tot de toelaatbaarheidsdatum voor een VLV twee maanden of minder bedraagt.*
- Ministry of Justice. (2013). *Ministeriële omzendbrief nr. ET/SE-2 van 17 juli 2013. Betreft: reglementering inzake het elektronisch toezicht als strafuitvoeringsmodaliteit voor gevangenisstraffen waarvan het totaal in uitvoering zijnde gevangenisstraffen drie jaar niet overschrijdt.*
- National Association of State Budget Officers. (2013, September 11). *State spending for corrections: Long-term trends and recent criminal justice policy reforms.* Available at [https://www.prisonpolicy.org/scans/nasbo/state\\_spending\\_for\\_corrections.pdf](https://www.prisonpolicy.org/scans/nasbo/state_spending_for_corrections.pdf).
- Nauta, B., Moolenaar, D. E. G., & van Tulder, F. P. (2011). Kosten van criminaliteit. In S. N. Kalidien, N. E. de Heer-de Lange, & M. M. van Rosmalen (Eds.), *Criminaliteit en rechtshandhaving 2010: Ontwikkelingen en samenhangen* (pp. 241–270). The Hague: WODC.
- Nellis, M. (2013a). Surveillance, stigma and spatial constraint: The ethical challenges of electronic monitoring. In M. Nellis, K. Beyens, & D. Kaminski (Eds.), *Electronically monitored punishment: International and critical perspectives* (pp. 193–210). London: Routledge.
- Nellis, M. (2013b). Kiezen voor GPS-tracking? Het recente beleid met betrekking tot probatie en elektronisch toezicht in Engeland en Wales. In T. Daems, T. Vander Beken, & D. Vanhaelemeesch (Eds.), *De machines van Justitie: Vijftien jaar elektronisch toezicht in België* (pp. 127–147). Antwerp: Maklu.

- Nellis, M. (2013c). Implant technology and the electronic monitoring of offenders: Old and new questions about compliance, control and legitimacy. In A. Crawford & A. Hucklesby (Eds.), *Legitimacy and compliance in criminal justice* (pp. 159–180). London: Routledge.
- Nellis, M. (2018a). Electronically monitoring offenders as ‘coercive connectivity’: Commerce and penalty in surveillance capitalism. In T. Daems & T. Vander Beken (Eds.), *Privatising punishment in Europe?* (pp. 124–142) London: Routledge.
- Nellis, M. (2018b). Clean and dirty electronic monitoring. *Justice Trends*, 3, 14–19.
- Nellis, M. (2019). “Better than human”? Smartphones, artificial intelligence and ultra-punitive electronic monitoring. Available at <https://www.challengingcarceration.org/wp-content/uploads/2019/01/TI-and-Smart-EM-Final-.pdf>.
- Nellis, M., & Lehner, D. (2012). *Electronic monitoring: Scope and definitions (PC-CP (2012) 7 rev 2)*. Strasbourg: European Committee on Crime Problems, Council for Penological Cooperation.
- Nellis, M., & Vanhaelemeesch, D. (2012). Electronic monitoring in Europe: Report from the 8th CEP electronic monitoring conference in Balsta, Sweden, 8th–10th November 2012. *The Journal of Offender Monitoring*, 24(2), 23–26.
- Payne, B. K., & Gainey, R. R. (1998). A qualitative assessment of the pains experienced on electronic monitoring. *International Journal of Offender Therapy and Comparative Criminology*, 42(2), 149–163.
- Radbruch, G. (1950). Der Ursprung des Strafrechts aus dem Stande der Unfreien. In G. Radbruch (Ed.), *Elegantiae Juris Criminalis: Vierzehn Studien zur Geschichte des Strafrechts* (pp. 1–12). Basel: Verlag für Recht und Gesellschaft AG.
- Ritzer, G. (2000). *The McDonaldization of society* (New Century ed.). Thousand Oaks: Pine Forge Press.
- Robert, L., & Stassart, E. (2009). Onder elektronisch toezicht gestelden aan het woord: krachtlijnen uit het eerste Belgische onderzoek. In T. Daems, S. De Decker, L. Robert, & F. Verbruggen (Eds.), *Elektronisch toezicht: De virtuele gevangenis als reële oplossing?* (pp. 9–33). Leuven: Universitaire Pers Leuven.
- Roberts, J. V. (2004). *The virtual prison: Community custody and the evolution of imprisonment*. Cambridge: Cambridge University Press.
- Roberts, J. V. (2009). Elektronisch toezicht: van supervisie-technologie naar autonome straf. In T. Daems, S. De Decker, L. Robert, & F. Verbruggen (Eds.), *Elektronisch toezicht: De virtuele gevangenis als reële oplossing?* (pp. 111–126). Leuven: Universitaire Pers Leuven.
- Roberts, J. V., & Gabor, T. (2004). Living in the shadow of prison: Lessons from the Canadian experience in decarceration. *British Journal of Criminology*, 44(1), 92–112.

- Robinson, G. (2016). The Cinderella complex: Punishment, society and community sanctions. *Punishment and Society*, 18(1), 95–112.
- Robinson, G. (2018). Delivering McJustice? The probation factory at the Magistrates' court. *Criminology and Criminal Justice*. Online First, <https://doi.org/10.1177/1748895818786997>.
- Schwitzgebel, R., Schwitzgebel, R., Pahnke, W. N., & Hurd, W. S. (1964). A program of research in behavioral electronics. *Behavioral Science*, 9(3), 233–238.
- Scull, A. T. (1977). *Decarceration: Community treatment and the deviant—A radical view*. Englewood Cliffs: Prentice-Hall.
- Sellin, T. (1976). *Slavery and the penal system*. New York: Elsevier.
- Senate. (2010). Wetsvoorstel van 20 oktober 2010 tot invoering van het elektronisch toezicht als autonome straf (ingediend door mevrouw Christine Defraigne). *Parl. St. Senaat 2010–11*, DOC 5 – 359/1.
- Senate. (2013). Commissie voor de Justitie. Handelingen, 8 May 2013, 5-222COM. *Senaat 2012–13*.
- Solon, O. (2018, August 28). 'Digital shackles': The unexpected cruelty of ankle monitors. *The Guardian*.
- Steinhauer, J. (2010, January 7). Schwarzenegger seeks shift from prisons to schools. *The New York Times*.
- The Scottish Government. (2019). *Electronic monitoring: Uses, challenges and successes*. Edinburgh: The Scottish Government.
- Umbreit, M. S. (1999). Avoiding the marginalization and “McDonaldization” of victim offender mediation: A case study in moving toward the mainstream. In G. Bazemore & L. Walgrave (Eds.), *Restorative juvenile justice* (pp. 213–234). Monsey, NY: Criminal Justice Press.
- Van Cauter, C. (2010). *Nieuwsbrief van uw Volksvertegenwoordiger: Carina Van Tittelboom – Van Cauter*. Editie: voorjaar 2010.
- Van Gestel, B. (1998). *Tralies in je hoofd: een onderzoek naar de gevolgen van elektronisch huisarrest voor het alledaagse leven van veroordeelden en hun huisgenoten*. Amsterdam: Universiteit van Amsterdam.
- Vander Beken, T. (2013). Van vette vis tot dieetpil: Vijftien jaar elektronisch toezicht in België. In T. Daems, T. Vander Beken, & D. Vanhaelemeesch (Eds.), *De machines van Justitie: Vijftien jaar elektronisch toezicht in België* (pp. 11–41). Antwerp: Maklu.
- Vanhaelemeesch, D. (2015). *De beleving van het elektronisch toezicht in vergelijking met de gevangenisstraf*. The Hague: Boom Criminologie.
- Vanhaelemeesch, D., Vander Beken, T., & Vandevelde, S. (2014). Punishment at home: Offenders' experiences with electronic monitoring. *European Journal of Criminology*, 11(3), 273–287.
- Whitman, J. Q. (2003). *Harsh justice: Criminal punishment and the widening divide between America and Europe*. New York: Oxford University Press.
- Zuboff, S. (2019). *The age of surveillance capitalism*. New York: Public Affairs.





## CHAPTER 3

---

# Functions of Electronic Monitoring: I to W

**Abstract** This chapter adopts the ‘Nagel’-approach that was introduced in Chapter 1 and it continues and concludes the exploration of the functions of electronic monitoring, which was started in Chapter 2. Ten different functions are being discussed: incapacitation, profit maximalisation, protection of victims, reintegration, responsabilisation, restoration, tackling overcrowding, transcarceration, verification and widening the net.

**Keywords** Electronic monitoring · Incapacitation · Profit maximalisation · Protection of victims · Reintegration · Responsabilisation · Restoration · Tackling overcrowding · Transcarceration · Verification · Widening the net

## INCAPACITATION

Incapacitation is a well-known function of imprisonment (and even more so of the death penalty): it is made physically impossible for offenders to break the law again by detaining them within four walls (Zimring and Hawkins 1995; Malsch and Duker 2012). How does EM relate to incapacitation? Depicting EM as a ‘virtual prison’ or a form of ‘e-carceration’ gives the impression that EM can be the counterpart to the prison in terms of incapacitation. However, EM encounters an important limit: RF technology can verify whether someone is present at the agreed place or EM can detect

movements with GPS technology, but it cannot (yet) prevent a transgression from taking place (see section “[Detection](#)”). Indeed, the person being monitored can ignore the timetable, enter exclusion zones, tamper with the equipment or commit new offences. Imposing sanctions against such violations always happens—by definition—*after* the breaches or offences. Only a form of EM as proposed by Bagaric et al. (2018) may be able to mimic the prison in this respect; making EM fool-proof in terms of incapacitation is, indeed, one of the explicit intentions of their proposal which is about ‘...creating new sanctions that substitute concrete walls with technological barriers and restrictions’ (Bagaric et al. 2018: 77–78). However, to do so would, for sure in a European context, imply stepping beyond the boundaries of what is acceptable when a state exercises its power to punish (see section “[Degradation](#)”).

This limitation surfaced during the debate about the use of EM as an alternative to pre-trial detention in Belgium. Since 1 January 2014 the law of 27 December 2012 has made EM possible as an alternative to pre-trial detention. The government expressed the hope that 5–10% of the population of pre-trial detainees could in the future be monitored at home via GPS. The GPS technology, which was being introduced specifically in this context, seemed to be primarily intended to offer additional guarantees and thus to persuade sceptics, ‘... because only on the basis of this can the actual and continuous presence of the person concerned be guaranteed in their place of residence’ (Chamber of Representatives 2012a: 9). We can read the following about this in the report of the Committee of Justice:

Only a *follow-up* with GPS can ensure that defendants actually stay permanently in their place of residence, and also offers the possibility of following them on possible routes (in particular to and from the courthouse). That technology should provide sufficient reassurance to the magistrates, so that a number of people who are now in prison should be eligible for this new type of arrest warrant. (Chamber of Representatives 2012b: 7)

However, the chair of the Association for Investigating Magistrates immediately formulated a number of fundamental concerns: EM would not be able to guarantee public safety in the same way as pre-trial detention; many suspects do not have a fixed address; the short deadlines within which the investigating judge must act do not allow for sufficient information to be collected that allows EM to be decided for a specific address; checking restraining orders runs into serious practical difficulties, which means that

there is still a risk of collusion (Van Cauwenberghe 2013). A few months later, in September 2013, he added the following about the expected impact of the reform: ‘No one will apply that... I have been carrying out the exercise since June: is this suspect eligible for electronic monitoring? I did not deem the new form of pre-trial detention applicable to a single file’ (Cattebeke 2013). The Flemish Bar Association also openly doubted the usefulness of EM as an alternative for pre-trial detention: ‘It is uncertain whether this measure will really have revolutionary consequences; for example, you might wonder whether home detention can actually neutralise the risk of collusion or reoffending’ (Flemish Bar Association 2012: 1). Similar comments had already been formulated in an extensive report from the National Institute for Criminalistics and Criminology (see Maes 2012). And, indeed, in terms of numbers, EM at the pretrial stage has thus far not been a major success: on 21 October 2015 there were 79 people monitored through GPS technology (Beyens and Roosen 2016: 5). For Flanders the total number of activations for 2017 was 460, which was 12% of the total population under EM in that year (Daems and Goossens 2019: 110–111).

### PROFIT MAXIMALISATION

When punishment is approached from a monetary perspective, then this is not limited to the observation that it is usually an expensive state intervention (see section “[Cost Reduction](#)”); in the hands of commercial entrepreneurs punishment can also become a source of profit (Beyens et al. 1992; Lilly and Deflem 1996; Nogala et al. 1997; Feeley 2002, 2018). From this perspective, EM appears not only as a relatively inexpensive means of control that reduces costs for the government, but also as an attractive commercial product that increases income and profits for private security firms and shareholders (Paterson 2013; Nellis 2018). Indeed, as we saw in Chapter 1, by 2022 the market for EM in the US and Europe is expected to reach €1.0 billion. To increase their visibility and promote their products and services, companies also sponsor professional and scientific meetings, such as the EM conferences organised in collaboration with the Confederation of European Probation (CEP) (on this, see Nellis 2014; Gudders 2019).

However, the extent of private-commercial involvement differs markedly from country to country, with continental European countries usually having a much more restrictive role for the private sector. In their report on

the findings of a comparative study on EM in five European jurisdictions Hucklesby et al. (2016) make a distinction between the ‘Anglo model’ and the ‘European model’:

The extent of private sector involvement in EM falls broadly into two models. The Anglo model (England and Wales and Scotland) and the European model (Belgium, Germany and the Netherlands). The private sector is responsible for provision of all of the EM services in the Anglo model including equipment and monitoring services (including installing and de-installing equipment, contacts with monitored individuals by telephone or visits to their homes, operating control rooms, reporting violations and breaches). In the European model the private sector usually provides only the equipment and associated software and technical support, which is either bought or leased. (Hucklesby et al. 2016: 15)

Moreover, as we have seen in the previous chapter, outside of Europe payment for EM services at times falls on the shoulders of those being monitored, making it an attractive option for governments short on cash and a source of revenue for companies involved (see section “[Cost Reduction](#)”). The lure of profit also can lead to corruption and over-charging, as happened in the UK in the recent past where the government was billed for tracking ‘...the movements of criminals who had moved abroad, who were back in prison, who had had their tags removed and even, in a few cases, those who had died’ (Travis 2013).

Punishment-for-profit in general, and incidents of over-charging and other mal-practices in particular, explain why private sector involvement in punishment, including EM, is often met with a lot of opposition. However, as elsewhere, we need to be cautious for not falling prey to the ‘evil causes evil’—fallacy. Albert Cohen (1962: 79) once argued that criminologists have a tendency to look for the causes of crime in ‘bad’ places (bad education, upbringing, employment, friends). ‘Evil consequences’ have ‘evil precedents’; ‘evil precedents’ can have only ‘evil consequences’, so he wrote. But crime does not always have ‘evil precedents’ (e.g. adolescents brought up in secure families or successful businessmen also do engage in crime); and ‘evil precedents’ do not necessarily lead to crime. A similar way of reasoning is sometimes applied with respect to punishment: privatisation is then seen as inherently ‘evil’ and therefore the consequences, necessarily, are ‘evil’ too (Daems and Vander Beken 2018: 11–12). In the case of Belgium, certainly in the early years of EM, the picture is more complex: the close and intensive contacts with the commercial partner at that time

(Elmo-Tech) were much appreciated and seen as an important factor for the successful introduction of EM in Belgium (on this, see Gudders 2019).

## PROTECTION OF VICTIMS

EM is sometimes presented as a ‘virtual prison’: after all, the private home or place of residence of persons under supervision can take the character of a prison *de facto* by exercising prison-like control on their presence. This offers a lot of opportunities for expansion for a system that suffers from a lack of space or resources: in theory, just about any enclosed living space can become a place of detention (see section “[Transcarceration](#)”). In the case of bilateral EM, which is usually applied in cases of domestic violence in order to protect specific victims, a different kind of transformation of the private home seems to be taking place. Victims are equipped with a receiving device used to determine whether the person under supervision is within a certain distance of the victim’s place of residence. Such violations are reported to the control post. The victim also has an alarm button to request help if desired (Erez et al. 2004).

When EM is used to protect specific victims, the victim’s place of residence also undergoes a transformation: in this case, we are not dealing so much with a ‘virtual prison’, but rather with a ‘virtual shelter’, somewhat akin to the physical shelters and crisis centers that offer victims of violence and abuse a safe space and emotional and social support. Such forms of bilateral EM—just like traditional (unilateral) EM—therefore offer the possibility, in theory at least, of reducing the need to resort to institutional solutions: bilateral EM can form an alternative to shelters for victims of domestic violence, so that victims (and their children, if any) do not have to leave their home in their search for peace and protection against the aggressor (Erez and Ibarra 2007). As Paterson (2017: 234) suggests: ‘...victim-oriented EM has the potential to assist in the re-configuration of an individual’s appreciation of social space as their confidence and resilience is re-built in the absence of physical threat’. For Erez and Ibarra (2007) bilateral EM is not merely a verification tool that reports the proximity of the person under supervision to the victim and the control centre, but also a technology that promotes the victim’s reintegration. They write about a paradigm shift whereby the victim comes first:

The use of BEM [bilateral EM] in response to DV [domestic violence] incidents offers a case in point of broader changes in the justice system's relationship to crime victims. The new paradigm recasts the justice system, *inter alia*, into a provider of services to victims...: their needs, concerns and interests assume greater prominence, and responses to various crime categories require at least some consideration of how victim-constituents can be addressed in their very design. (Erez and Ibarra 2007: 117; see also Ibarra and Erez 2005)

## REINTEGRATION

Since the introduction of EM in Belgium reintegration has always been, in particular in the early years, prominent in the discourse on EM, initially in particular in the context of limiting detention damage (Ministry of Justice 1998: 1, see section “[Harm Reduction](#)”). Such a focus on reintegration seems obvious: after all, EM is carried out in the community and the person under supervision is generally expected to perform a useful daytime activity during the so-called free hours. Reintegration was therefore a central element in the so-called ‘Belgian model’ (see Chapter 1) which has been described as a ‘controlling reintegrative model’:

This model is put into practice through the organisation of the days of the convicted persons according to a very strict programme (timetable with specifications relating to time and activities). This is accompanied by a strict social framework, guaranteed by a relatively high frequency of visits by social workers to the place of residence of the convicted person. Activation of the convicted person is pursued through the obligation to work or to find a useful activity. In line with a penitentiary logic, there are frequent and short-term disciplinary responses in case of non-compliance with the schedule or violation of the conditions. (Beyens and Devresse 2009: 65–66)

In the previous chapter we highlighted that the Social Work Service (DSW) at the time attached great importance to the function of social reintegration and was of the opinion ‘...that the “social” part of current implementation is insufficiently addressed’ (see section “[Automation](#)”). This concerned the start-up phase of EM in Belgium. Also in subsequent years, this focus on reintegration remained strong among justice assistants involved. This explains why the growing role of technology in EM was met with suspicion: ‘If technology and monitoring leave out the human aspect, we lose this pedagogical space and therefore also the possibility of developing

active social reintegration’ (Devos 2010, see section “Automation”). The European probation rules of the Council of Europe provide support for an interpretation of EM that focuses primarily on social reintegration. Rule 57 is worded as follows: ‘When electronic monitoring is used as part of probation supervision, it shall be combined with interventions designed to bring about rehabilitation and to support desistance’ (Council of Europe 2010).

Reintegration has always been part of the discourse on EM in Belgium, but since 2012 it seemed to have faded somewhat into the background, at least for those with short prison sentences (up to 3 years). For example, the circular letter on home detention, which has since been discontinued, stated that the minimum schedule of 4 hours of free time per day (between 8 a.m. and noon) could only be relaxed with activities that ‘... contribute to social reintegration’ (Ministry of Justice 2012: 3). This turned out to be the only punishment goal that was explicitly mentioned. The word ‘reintegration’ no longer appeared in the circular letter of 17 July 2013. Here increasing the credibility of executing prison sentences became the main focus (see section “Action Function”). And, as we have seen earlier (see section “Automation”), one key transformation since 2012 has been to reduce the role of support provided by justice assistants which is usually geared towards reintegration.

On the other hand, the question remains to what extent reintegration can always be central to EM. Much depends on how and for what purposes it is being used. For those who do not spend a day in prison and experience only brief periods under EM, speaking in terms of reintegration, as was the case in the circular letter about home detention (Ministry of Justice 2012), seems somewhat surreal. In the case of EM as an alternative to pre-trial detention, the doors and windows of the place of residence of the person under supervision are virtually sealed: they only may leave their home for journeys that are necessary in the context of the investigation or the legal proceedings. In such a scenario, reintegration is completely out of the question. Indeed, technology can enable but it also can inhibit reintegration: when GPS monitoring is used to restrict one’s movements as much as possible and to turn one’s home into a ‘virtual prison’ then, unsurprisingly, this is not conducive to social reintegration.

Reintegration therefore seems to be primarily a function of EM in cases where the convicted person is removed from society for a while, as a result of which issues related to reintegration sooner or later come to the fore. Viewed in this way, the reintegration function, just like the function of

limiting the damage of detention (see section “[Harm Reduction](#)”), must be seen primarily in relation to imprisonment.

## RESPONSABILISATION

It is sometimes argued that EM helps sharpening a sense of responsibility; or at least that EM scores markedly better in this respect than the traditional custodial sentence. After all, inmates tend to become infantilized in prison: all kinds of tasks and responsibilities are taken out of their hands. This relates to the total nature of the prison (Goffman [1961](#)):

In the current state of affairs, detainees are deprived of the possibilities of taking on personal responsibility for their life and that of others (including possible family members). One of the most important obstacles to this is that prisoners, often to their own frustration, are “relieved of responsibility” for everything. The regulation and taking over of care by the prison puts the prisoner in a situation of far-reaching dependence on others. (Chamber of Representatives [2001](#): 66)

Against this background, the prison law of 12 January 2005 introduced the principle of responsabilisation. Henceforth, prisoners should no longer be allowed to undergo their punishment passively and should be involved in the decisions that concern them. However, outside the prison walls, responsabilisation seems easier to achieve. This is also evident from the way in which the supervision of people being monitored is perceived by the justice assistants. For example, a former Director-General of the Probation Division stressed ‘... that the current system, through guidance, makes the individual aware of their responsibility to meet the mandate requirements, in terms of compliance with the schedule but also of fundamental elements such as work, training, psychosocial follow-up, etc. This creates a pedagogical space, a potential learning space that is much more interesting than regular monitoring’ (Devos [2010](#), see section “[Automation](#)”).

Due to the emphasis on the personal responsibility of the person being monitored, the successful implementation of EM requires a high degree of self-discipline. Van Gestel ([1998](#)) points out that the external coercion offered by the prison makes way for internalised coercion:



During electronic supervision, strict requirements are set for the willpower and self-discipline of convicted persons. They are imprisoned invisibly in ordinary, free life, and the only thing that still exercises coercion on them is the knowledge that they will be returned to prison if they do not comply with their prescribed programme. This threat forms, as it were, the pedagogical idea behind electronic monitoring: the self-discipline that people being monitored must show during their house arrest will eventually be internalised. The coercion from outside will result in a coercion from within. (Van Gestel 1998: 61)

Beyens et al. (2007) agree with such an Eliasian interpretation of EM: the strict schedule requires a great deal of self-discipline from the person being monitored, an ‘interiorisation of the monitoring’. They place EM at the end of a long-term civilisation process in terms of punishment: ‘From an Eliasian perspective, EM is a continuation of an evolution in punishment in which the brutal violence of imprisonment or corporal punishment is replaced by a more civilised, abstract, invisible, surreptitious form of punishment’ (Beyens et al. 2007: 37).

## RESTORATION

The first steps towards restorative justice in Belgium were taken in the early 1990s through an experiment in Leuven with victim-offender mediation for adults and through developments in the search for a more constructive response to juvenile delinquency (Peters 1996; Walgrave 2000; Gudders 2019). At the end of the 1990s, restorative justice ideas also moved into the prison, when a research project was carried out under the heading of ‘restorative detention’. At that time, the then Minister of Justice was an enthusiastic proponent of restorative justice. Under his ministry, so-called ‘restorative justice consultants’ were hired to guide the process of change to a restorative prison culture within Belgian prisons (Robert and Peters 2008). Against this background, it is not surprising that EM is sometimes understood within such a restorative justice framework. In ministerial circular no. 1720 of 13 October 2000 this was expressed as follows:

In the ‘White Paper 2000’ the idea of restoration in the execution of the sentence is put in the foreground. This idea of restoration implies a limitation of damage at the level of detention. The damage caused by the deprivation of liberty must be kept to an absolute minimum. Electronic supervision as a form of execution of the custodial sentence is linked to this. Detention

damage is limited as much as possible because detainees are given the opportunity to undergo (part of) the execution of the custodial sentence in their familiar environment and thus to continue their family, social and economic contacts. It is therefore very important here that the detainee is prepared for the measure and that its implementation is part of a programme that promotes reintegration as much as possible. (Ministry of Justice 2000: 1–2; see also Ministry of Justice 2001: 1–2; 2002a: 1–2; 2002b: 1)

However, it is doubtful whether this was really an attempt to modernise criminal justice policy fundamentally. The way in which restoration was understood by the Minister was, after all, open to discussion and was not always consistent with what was understood by ‘restoration’ within the restorative justice community (see Daems 2008: 89). Suggestions made in the early years of EM to impose a number of conditions on the granting of EM that relate to restoration (such as payment of civil parties or community service activities [see Bas and Damen 2000: 17]), were never picked up. It is also noticeable that the restorative justice philosophy disappeared fairly quickly from the discourse on EM—just as the restorative justice consultants left the prisons or were mutated into other positions without a fuss. After 2006, restoration disappeared from ministerial circular letters and the political discourse on EM (Ministry of Justice 2006a: 1).

Opinions are mixed about how and to what extent EM can be useful within a restorative justice philosophy. In Sweden, people being monitored contribute 80 SEK (about 7.5 euros) per day to a crime victim fund, up to a maximum amount of 9600 SEK (about 900 euros) (Brottsoffermyndigheten 2017). It is argued that this type of financial contribution has a positive impact on the legitimacy of EM among the general public (on this, see Wennerberg 2013: 116; Council of Europe 2013: 7; Nellis and Bongerfeldt 2013: 283–284). A number of bills aimed at introducing EM as an autonomous sanction suggest that EM would increase the chance that victims will be compensated since the convicted persons can continue their professional activities (Senate 2010: 2; Chamber of Representatives 2013: 7). However, a link is no longer established here with the restorative justice model. In an early reflection Beyens was sceptical about the role restorative justice could play in EM: ‘EM... must be seen as a watered-down variant of the deprivation of liberty, with little attention to the victim. It therefore does not fit into a restoration-oriented policy, but yields more chances for a repressive criminal policy in the form of a more sophisticated, clean form of deprivation of liberty’ (Beyens 1996: 489).

## TACKLING OVERCROWDING

Since its early inception in Belgium EM has been seen as a means of reducing overcrowding in prisons. In the circular letter of 27 November 1998, this was formulated as follows:

In the 1996 White Paper on Criminal Policy and Prison Policy, the Minister of Justice clearly states that the prison sentence must be the *ultimum remedium*. Alternatives must be sought for sentencing and in the execution of the sentence. Electronic monitoring fits within that option. The development of such alternatives reduces the pressure on the prison population. (Ministry of Justice 1998: 1)

This concept of incarceration as an *ultimum remedium* returned in later circular letters (see, for example, Ministry of Justice 2000: 1; 2001: 1; 2002b: 1; 2006a: 1). However, from 2013 onwards, it seems to have given way to the so-called pursuit of the ‘credible enforcement of sentences’. Tackling overcrowding, which is in itself an (internal, inward-looking) systemic function, then connects with the (external, outward-oriented) action function (see section “[Action Function](#)”). The fight against overpopulation thus becomes a *conditio sine qua non* for the realisation of a credible enforcement of sentences. In the ‘2008 - 2012 master plan for a prison infrastructure in humane conditions’ this was put as follows:

A credible enforcement of sentences is not feasible as long as the overpopulation persists. A correct course for the alternative measures is not feasible as long as the overpopulation persists. Correct implementation of training initiatives for prison officers is not feasible as long as the overpopulation persists. In other words: this overpopulation is responsible for the failure, despite a huge amount of goodwill and expertise, of part of our administration of justice. (Ministry of Justice 2008a: 11)

Against this background, EM is presented in the 2013 circular letter as a ‘privileged means’ in the fight against overcrowding. EM contributes—according to the reasoning—towards the pursuit of an ‘effective and rapid execution of the penalties’, which is necessary in order ‘for the criminal justice system to be credible again’ (Ministry of Justice 2013: 1).

Throughout the short history of EM in Belgium, episodes in which overcrowding peaked or attracted a lot of media attention, also appear to be periods in which the number of people under EM increased rapidly.

Between 2002 and early 2006, the number of people being monitored remained virtually stable and fluctuated around 300. From May 2006, there was a sharp rise, which continued for a few months, leading to the number of people under EM peaking at over 600 by October 2006. This sudden and sharp rise can be understood against the background of interpellations about prison overcrowding in May 2006. All this led to important changes in the application of EM, so that EM could be resorted to more often and more quickly (Beyens et al. 2007). It is against that background that the Council of Ministers of 25 October 2006 decided to place certain prisoners under EM more quickly. The monitoring was limited to a minimum: 'The convicted persons must submit to an attendance check at their permanent place of residence between 8 p.m. and 6 a.m.' (Ministry of Justice 2006b; Daems 2006).

In the following years, EM stabilised again at this higher level, namely around the figure 600. This changed in the spring of 2009, when prison overcrowding was once again brought to the fore and after attention was drawn to the fact that many convicts had to wait a very long time for an ankle bracelet. Indeed, at the beginning of December 2008, the waiting list had 1550 people on it. Convicts then had to wait at least 9 months for an ankle bracelet (Verelst 2008; Hermans 2008a). This led to indignant reactions in the media about the alleged 'impunity' of the criminal justice system (Hermans 2008b). During that period, the staff of the Houses of Justice went on a strike to protest against staff shortages. In the spring of 2009, the Minister of Justice was again questioned about this, and soon thereafter the decision was taken to recruit additional justice assistants and to purchase new ankle bracelets. The numbers started to rise rapidly. At the beginning of April, it was reported that 722 people were being monitored (Justaert 2009). At the end of April, this figure was already 900 (X 2009a). A month later, the milestone of a thousand people being monitored was reached (X 2009b). Again, EM would remain more or less stable for a few years, hovering around the figure of a thousand. However, in the spring of 2013 the procedures were again thoroughly revised and relaxed. From then on, EM had to become the norm for those punished with a sentence of three years or less (Ministry of Justice 2013). The subsequent increases were spectacular: in mid-September 2013, the figure was 1664.

Based on the number of people being monitored, the successive interventions clearly bore fruit: the numbers of people being monitored increased rapidly and the waiting lists declined. But at the same time, overcrowding remained at a high level. In 2012, the average overcrowding rate

was 23.7%, which was the highest in the previous five years. In its study on overcrowding, the Court of Auditors (2011) concluded that most of the measures taken against overcrowding—including EM—failed in reducing the number of prisoners. In recent years overcrowding has become less urgent—with a decrease from 24.1% in 2013 to 9.6% in 2016 (Daems 2018: 99)—although there are still substantial problems, in particular in some of the older prisons with large populations of pre-trial detainees. The sharp increase in EM in this period may have played a role in making the problem of overcrowding somewhat less urgent (Beyens and Roosen 2016: 5).

### TRANSCARCERATION

An important explanation for the appeal of EM lies in the almost unlimited potential for growth. EM makes it possible to temporarily integrate spaces that primarily fulfil other functions (in particular the private home) into the criminal justice system. That might be an attractive idea to policy makers, especially when confronted with capacity problems or fiscal constraints. Private homes then become ‘deprivatized’ (Corbett and Marx 1991: 409). When people ‘move’ from one facility to another, the term ‘transcarceration’ is sometimes used, that is, the relocation of groups from, for example, a prison to another (closed) facility, such as a home that comes to fulfil a new, additional function through EM:

For delinquents, deviants and dependants, this means that their careers are likely to be characterized by institutional mobility, as they are pushed from one section of the help-control complex to another. For control agents, this means that “control” will essentially have no locus and the control mandate will increasingly entail the “fitting together” of subsystems rather than the consolidation of one agency in isolation from its alternatives. (Lowman et al. 1987: 9)

The transcarceral world is characterised by institutional mobility: convicted persons no longer have a fixed control point, but move between various (virtual or otherwise) enclosed spaces. To a certain extent this also applies to victims of crime who participate in bilateral EM schemes. In such cases, the victim’s place of residence is also incorporated into the monitoring process. Partly because of this, so the argument goes, victims no longer need to rely on so-called ‘shelters’ or other institutional solutions that can offer them

protection against domestic or partner violence (see section “[Protection of Victims](#)”). Moreover, as forms of EM in some jurisdictions are also available for minors (like in Flanders, from September 2019 onwards, see Chapter 1), one can expect such processes of transcarceration to start much earlier in life: young people moving back and forth between youth detention facilities and periods under some form of EM (Daems and Goossens 2019), until they reach adult life, when similar processes of moving between prisons and bracelets may, indeed, continue under a different legal regime.

Interestingly, such processes of transcarceration also lead to a decentralization of social control (Corbett and Marx 1991): next to homes becoming prisons and bedrooms serving as cells, we see how partners and parents become functional equivalents of prison guards or probation officers. According to Vanhaelemesch (2013, 2015) housemates of people under EM take up three different roles: (1) the role of ‘personal assistant’ [helper] (housemates taking care of tasks in the household, like daily shopping, putting garbage outside, bringing children to kindergarden or school, etc.); (2) the role of ‘probation assistant’ [sociaal assistent] (housemates offering (emotional) support and guidance and assisting them with finding a job or completing paperwork); and (3) the role of a ‘compliance officer’ [controleur] (housemates monitoring the time schedule and insisting on compliance with the conditions of the curfew, e.g. with respect to alcohol or drug consumption or avoidance of contacts with ex-prisoners).

## VERIFICATION

Voice verification and RF technology are used to verify whether a person is at the agreed place. This is a passive form of monitoring in which *real-time* tracking of movements does not take place. Verification therefore differs from detection, which is usually realised via GPS technology (see section “[Detection](#)”).

## WIDENING THE NET

Since the end of the 1970s, the introduction and growing use of community sanctions and measures have increasingly been viewed with suspicion. The initial optimistic belief that these would significantly reduce the use of imprisonment turned into a certain scepticism: after all, the introduction and extension of such alternative sanctions did not lead to a closure of penal institutions. On the contrary: alternatives became additives. In this

context, Stanley Cohen (1979) introduced his well-known metaphor of the fishing net. The apparatus of control is thereby visually represented as a net that becomes larger and more meshed. The terms ‘net widening’ and ‘thinning the mesh’ refer to this: more fish get caught in an ever-growing net and the ever smaller holes make it increasingly difficult to escape from it (Cohen 1979, 1985; Austin and Krisberg 1981).

Since its early inception in the 1980s in the US, EM has also come to be understood in relation to such processes of net widening. In 1985 this was already done in the following way:

...the danger of widening the correctional net should be considered. The availability of a new device should not be a reason for using it in unjustified situations. Specifically, we must be cautious about using this correctional strategy on persons who would not normally be included. Similarly, this device should not be more restrictive than the sentence ordinarily imposed for a given offense. (Berry 1985: 8)

The relatively inexpensive, easily expandable and multi-purpose monitoring technology of EM lends itself well to Cohen’s (1979) thesis of the dispersal of social control (see e.g., Mainprize 1992; Bonta et al. 2000). Instead of acting as an alternative to imprisonment, EM can replace other, less drastic, community sanctions or monetary fines. In addition, EM can be used as a monitoring surplus for existing community sanctions and measures. The Council of Europe’s Recommendation on Electronic Monitoring explicitly refers to the risk of net widening in the context of pre-trial detention in rule 3: ‘Where electronic monitoring is used at the pre-trial phase special care needs to be taken not to net-widen its use’ (Council of Europe 2014: rule 3). The following explanation is given in the commentary to this rule:

There is always a risk of net-widening with electronic monitoring, particularly when it is used as a stand-alone measure, partly because there is no consensus across, or even within jurisdictions, as to the risk level of suspects on whom it is most appropriately targeted. Although research shows clearly that the experience of electronically monitored curfew or home detention can be an onerous experience for suspects and their families, practice shows that it has been used on people who pose only low risks, merely because it is perceived as a useful additional form of control. In particular, in some pre-trial cases, the judiciary has prescribed electronic monitoring to suspects who would not normally be remanded in custody because they do not present a risk of flight or of interfering with the course of justice. This is not to be encouraged,

either at the pre-trial (or indeed sentencing) stage, particularly in view of its costs and intrusiveness. (Council of Europe 2013: 4)

There is a real risk that more people will be absorbed into the control net and that existing community sanctions become more intrusive in nature. Moreover, follow-up via electronic tools increases the chance of (detection of) curfew breaches, as a result of which the traditional custodial sentence once again comes into the picture. This explains why from this angle the humanisation function of EM (see section “[Humanisation](#)”) is viewed with scepticism: if the net expands and control in the community intensifies, EM in itself may be a softer or more humane form of punishment or monitoring than the prison sentence, the net effect is more and tighter monitoring that adds to the existing web of control.

Cohen’s net widening concept has proven to be so successful that it is also used outside the academic world, as was already shown in the previous chapter (see section “[Action Function](#)”). It is interesting to note that in Belgium the danger of net widening was initially mentioned explicitly and that for that reason EM was kept at a distance for a while. In 1995 the Minister of Justice at the time had reservations about introducing EM as an alternative to pre-trial detention and short terms of imprisonment, fearing net widening (Beyens 1996: 492–493). However, in the following years, those fears faded away: EM was introduced in Belgium at the end of the 1990s and it has since then experienced a strong quantitative growth (see Chapter 1).

The spectacular success of EM, however, has not been able to prevent the prison population from increasing rapidly (see section “[Tackling Overcrowding](#)”). In 2007, when there were around 600 people being monitored, Beyens et al. (2007: 34) commented as follows: ‘Despite all the lip service from the successive Ministers of Justice to a reductionist policy and the statement that the prison sentence should be the ultimate means of punishment, EM in Belgium is an instrument through which to pursue an expansionist punishment policy, either intentionally or unintentionally.’ More recently, and coinciding with the sharp increases of EM since 2013, there has been a decline in the prison population in Belgium. Further research is needed to understand the role of EM in this decline, so Beyens and Roosen (2016: 5) argue, but they do not rule out the hypothesis that the increasing use of EM has contributed to this decline in the number of prisoners.



The widespread and increasing availability of cheap (self)monitoring technology in current cultures of surveillance makes EM particularly vulnerable for net widening and thinning the mesh. Indeed, as we have seen previously, whereas RF and GPS technology are currently most commonly used, this may change in the foreseeable future. Newer technologies—including smartphone applications with voice and face recognition—will make surveillance cheaper and easier to deploy:

While reducing the number of people in physical prison, these seductive applications could, paradoxically, increase its reach. For the nearly 4.5 million Americans on probation or parole, it is not difficult to imagine a virtual prison system as ubiquitous — and invasive — as Instagram or Facebook. (Kofman 2019)

## REFERENCES

- Austin, J., & Krisberg, B. (1981). Wider, stronger, and different nets: The dialectics of criminal justice reform. *Journal of Research in Crime and Delinquency*, 18, 165–196.
- Bagaric, M., Hunter, D., & Wolf, G. (2018). Technological incarceration and the end of the prison crisis. *Journal of Criminal Law and Criminology*, 108(1), 73–135.
- Bas, R., & Damen, W. (2000). ET (we) phone (you at) home. *Orde van de Dag*, 10, 7–18.
- Berry, B. (1985). Electronic jails: A new criminal justice concern. *Justice Quarterly*, 2(1), 1–22.
- Beyens, K. (1996) Elektronisch toezicht. Een oplossing voor de Belgische strafrechtsbedeling? *Panopticon*, 17(5), 473–498.
- Beyens, K., Bas, R., & Kaminski, D. (2007). Elektronisch toezicht in België. Een schijnbaar penitentiair onstopmingsmiddel. *Panopticon*, 28(3), 21–40.
- Beyens, K., & Devresse, M.-S. (2009). Elektronisch toezicht in België tussen 2000 en 2005: een terugblik op de toekomst? In T. Daems, S. De Decker, L. Robert, & F. Verbruggen (Eds.), *Elektronisch toezicht: De virtuele gevangenis als reële oplossing?* (pp. 61–74). Leuven: Universitaire Pers Leuven.
- Beyens, K., & Roosen, M. (2016). *Briefing paper: Electronic monitoring in Belgium*. Leeds: University of Leeds. Available at [http://28uzqb445tcn4c24864ahmcl.wpengine.netdna-cdn.com/files/2016/06/EMEU-EM-in-Belgium\\_Briefing-report-English.pdf](http://28uzqb445tcn4c24864ahmcl.wpengine.netdna-cdn.com/files/2016/06/EMEU-EM-in-Belgium_Briefing-report-English.pdf).
- Beyens, K., Snacken, S., & Eliaerts, C. (1992). *Privatisering van gevangenen*. Brussels: VUB Press.

- Bonta, J., Wallace-Capretta, S., & Rooney, J. (2000). Can electronic monitoring make a difference? An evaluation of three Canadian programs. *Crime & Delinquency*, 46(1), 61–75.
- Brottsoffermyndigheten. (2017). *Crime Victim Fund*. Available at <https://www.brottsoffermyndigheten.se/eng/crime-victim-fund>.
- Cattebeke, H. (2013, September 4). Geen enkelband tijdens voorlopige hechtenis. *Knack*.
- Chamber of Representatives. (2001). Eindverslag van de Commissie ‘Basiswet gevangeniswezen en rechtspositie van gedetineerden’. Verslag namens de Commissie voor de Justitie uitgebracht door de heren Vincent Decroly en Tony Van Parys (2 February 2001). *Parl. St. Kamer* 2000–01, DOC 50 1076/001.
- Chamber of Representatives. (2012a). Wetsontwerp van 2 oktober 2012 houdende diverse bepalingen betreffende Justitie. *Parl. St. Kamer* 2012–13, DOC 53 2429/001.
- Chamber of Representatives. (2012b). Verslag namens de Commissie voor de Justitie uitgebracht door de heer Stefaan Van Hecke (14 November 2012). *Parl. St. Kamer* 2012–13, DOC 53 2429/006.
- Chamber of Representatives. (2013). Wetsvoorstel tot invoering van het elektronisch toezicht als autonome straf. Amendement nr. 1 van mevrouw Van Cauter c.s. *Parl. St. Kamer* 2012–13, DOC 53 1042/002.
- Cohen, A. K. (1962). Multiple factor approaches. In M. E. Wolfgang, L. Savitz, & N. Johnston (Eds.), *The sociology of crime and delinquency* (pp. 77–80). New York: Wiley.
- Cohen, S. (1979). The punitive city: Notes on the dispersal of social control. *Contemporary Crises*, 3(4), 339–363.
- Cohens, S. (1985). *Visions of social control*. Cambridge: Polity Press.
- Corbett, R., & Marx, G. T. (1991). Critique: No soul in the new machine: Technofallacies in the electronic monitoring movement. *Justice Quarterly*, 8(3), 399–414.
- Council of Europe. (2010). *Recommendation CM/Rec(2010)1 of the Committee of Ministers to member states on the Council of Europe Probation Rules*. Adopted by the Committee of Ministers on 20 January 2010, at the 1075th meeting of the Ministers’ Deputies.
- Council of Europe. (2013). *Draft commentary to recommendation on electronic monitoring (PC-CP (2013) 2 rev)*. Strasbourg: European Committee on Crime Problems, Council for Penological Cooperation.
- Council of Europe. (2014). *Recommendation CM/Rec(2014)4 of the Committee of Ministers to member states on electronic monitoring*. Adopted by the Committee of Ministers on 19 February 2014, at the 1192nd meeting of the Ministers’ Deputies.
- Court of Auditors. (2011). *Maatregelen tegen de overbevolking in de gevangenissen*. Brussels: Court of Auditors.

- Daems, T. (2006, December 20). Hier is een enkelband, prettige eindejaarsfeesten! *De Standaard*.
- Daems, T. (2008). Van teen tot kop: Beschouwingen bij meer dan een decennium strafbeleid en hervorming van de vrijheidsstraf. In K. Van Cauwenberghe (Ed.), *De hervormingen bij politie en justitie: in gespreide dagorde* (pp. 79–92). Mechelen: Kluwer.
- Daems, T. (2018). Belgische gevangenen onder toezicht van het CPT. In T. Daems & S. Parmentier (Eds.), *Europa waakt: Vrijheidsbeneming onder toezicht van het Europese antifoltercomité* (pp. 77–111). Leuven: Universitaire Pers Leuven.
- Daems, T., & Goossens, E. (2019). Elektronische monitoring voor jongeren: een volwassen reflectie. In J. Put & J. Leenknecht (Eds.), *Het Vlaamse jeugddelinquentierecht* (pp. 107–119). Brussels: Larcier.
- Daems, T., & Vander Beken, T. (2018). Privatising punishment in Europe: An agenda for research and policy. In T. Daems & T. Vander Beken (Eds.), *Privatising punishment in Europe?* (pp. 1–17). London: Routledge.
- Devos, A. (2010). Balans van het tienjarig bestaan van de justitiehuisen en perspectieven voor de komende jaren. *Tien jaar justitiehuisen: Balans en perspectieven* (pp. 13–43). Brussels: Federale Overheidsdienst Justitie.
- Erez, E., & Ibarra, P. R. (2007). Making your home a shelter: Electronic monitoring and victim re-entry in domestic violence cases. *British Journal of Criminology*, 47, 100–120.
- Erez, E., Ibarra, P. R., & Lurie, N. A. (2004). Electronic monitoring of domestic violence cases—A study of two bilateral programs. *Federal Probation*, 68(1), 15–20.
- Feeley, M. M. (2002). Entrepreneurs of punishment: The legacy of privatization. *Punishment and Society*, 4(3), 321–344.
- Feeley, M. M. (2018). Privatizing criminal justice: A historical analysis of entrepreneurship and innovation. In T. Daems & T. Vander Beken (Eds.), *Privatising punishment in Europe?* (pp. 18–44). London: Routledge.
- Flemish Bar Association. (2012). *Advies van de Orde van Vlaamse Balies met betrekking tot het wetsontwerp van 2 oktober 2012 houdende diverse bepalingen betreffende Justitie* (doc 53 2429/001).
- Goffman, E. (1961). *Asylums: Essays on the social situation of mental patients and other inmates*. London: Penguin.
- Gudders, D. (2019). *Penal policy transfer*. Ph.D. in Criminology, KU Leuven.
- Hermans, D. (2008a, December 1). Elektronisch toezicht ontspoort. *De Standaard*.
- Hermans, D. (2008b, December 1). Experts en rechters niet te spreken over falend elektronisch toezicht: ‘Straffeloosheid is gevaarlijk’. *Het Nieuwsblad*.

- Hucklesby, A., Beyens, K., Boone, M., Dünkel, F., McIvor, G., & Graham, H. (2016). *Creativity and effectiveness in the use of electronic monitoring: A case study of five jurisdictions*. Leeds: University of Leeds.
- Ibarra, P. R., & Erez, E. (2005). Victim-centric diversion? The electronic monitoring of domestic violence cases. *Behavioral Sciences and the Law*, 23, 259–276.
- Justaert, M. (2009, April 3). Systeem van elektronisch toezicht leidt tot strafeloosheid door gebrek aan enkelbanden. *De Morgen*.
- Kofman, A. (2019, July 3). Digital jail: How electronic monitoring drives defendants into debt. *The New York Times Magazine*.
- Lilly, J. R., & Deflem, M. (1996). Profit and penalty: An analysis of the corrections-commercial complex. *Crime & Delinquency*, 42(1), 3–20.
- Lowman, J., Menzies, R. J., & Palys, T. S. (1987). Introduction: Transcarceration and the modern state of penalty. In J. Lowman, R. J. Menzies, & T. S. Palys (Eds.), *Transcarceration: Essays in the sociology of social control* (pp. 1–15). Gower: Aldershot.
- Maes, E. (2012). Elektronisch toezicht in het kader van de voorlopige hechtenis. Enkele beschouwingen over een aantal juridisch-technische en praktisch-organisatorische aspecten. *Panopticon*, 33(2), 110–124.
- Mainprize, S. (1992). Electronic monitoring in corrections: Assessing cost effectiveness and the potential for widening the net of social control. *Canadian Journal of Criminology*, 34(2), 161–180.
- Malsch, M., & Duker, M. (Eds.). (2012). *Incapacitation: Trends and perspectives*. Farnham: Ashgate.
- Ministry of Justice. (1998). *Ministeriële omzendbrief nr. 1692/IX van 27 november 1998 betreffende: elektronisch toezicht*.
- Ministry of Justice. (2000). *Ministeriële omzendbrief nr. 1720 van 13 oktober 2000 betreffende: regelgeving inzake elektronisch toezicht als modaliteit van strafuitvoering*.
- Ministry of Justice. (2001). *Ministeriële omzendbrief nr. 1727 van 12 april 2001 betreffende regelgeving inzake elektronisch toezicht als modaliteit van strafuitvoering*.
- Ministry of Justice. (2002a). *Ministeriële omzendbrief nr. 1741 van 8 april 2002 betreffende regelgeving inzake elektronisch toezicht als modaliteit van strafuitvoering*.
- Ministry of Justice. (2002b). *Ministeriële omzendbrief nr. 1746 van 9 augustus 2002 betreffende regelgeving inzake elektronisch toezicht als modaliteit van strafuitvoering*.
- Ministry of Justice. (2006a). *Ministeriële omzendbrief nr. 1784 van 10 juli 2006 betreffende regelgeving inzake het elektronisch toezicht als modaliteit van strafuitvoering*.

- Ministry of Justice. (2006b). *Ministeriële omzendbrief nr. 1789 van 21 december 2006 betreffende het plaatsen onder elektronisch toezicht van veroordeelden die zich op 6 maanden van het einde van het [sic] hoofdgevangenisstraf bevinden*.
- Ministry of Justice. (2008). *Masterplan 2008-2012 voor een gevangenisinfrastructuur in humane omstandigheden*.
- Ministry of Justice. (2012). *Ministeriële omzendbrief van 18 augustus 2012. Onderwerp: Thuisdetentie met stemherkenning (Voice) voor personen veroordeeld tot een of meer vrijheidsbenemende straffen waarvan het uitvoerbaar gedeelte drie jaar gevangenis niet te boven gaat en waarvan het nog te ondergane gedeelte tot de toelaatbaarheidsdatum voor een VLV twee maanden of minder bedraagt*.
- Ministry of Justice. (2013). *Ministeriële omzendbrief nr. ET/SE-2 van 17 juli 2013. Betreft: reglementering inzake het elektronisch toezicht als strafuitvoeringsmodaliteit voor gevangenisstraffen waarvan het totaal in uitvoering zijnde gevangenisstraffen drie jaar niet overschrijdt*.
- Nellis, M. (2014). Understanding the electronic monitoring of offenders in Europe: Expansion, regulation and prospects. *Crime, Law & Social Change*, 62, 489–510.
- Nellis, M. (2018). Electronically monitoring offenders as ‘coercive connectivity’: Commerce and penalty in surveillance capitalism. In T. Daems & T. Vander Beken (Eds.), *Privatising punishment in Europe?* (pp. 124–142). London: Routledge.
- Nellis, M., & Bungerfeldt, J. (2013). Electronic monitoring and probation in Sweden and England and Wales: Comparative policy developments. *Probation Journal*, 60(3), 278–301.
- Nogala, D., Lindenberg, M., & Sack, F. (1997). ‘Social control technologies’: *Aspekte und Konsequenzen des Technikeinsatzes bei Instanzen strafrechtlicher Sozialkontrolle im nationalen und internationalen Kontext*. Hamburg: Universität Hamburg.
- Paterson, C. (2013). Commercial crime control and the development of electronically monitored punishment. In M. Nellis, K. Beyens, & D. Kaminski (Eds.), *Electronically monitored punishment: International and critical perspectives* (pp. 211–227). London: Routledge.
- Paterson, C. (2017). Tagging re-booted! Imagining the potential of victim-oriented electronic monitoring. *Probation Journal*, 64(3), 226–241.
- Peters, T. (1996). Probleemoplossing en herstel als functies van de straf. *Panopticon*, 17(6), 555–569.
- Robert, L., & Peters, T. (2008). Bruggen bouwen: over de functie van de herstelconsulent in Belgische gevangenissen. In A. A. Franken, M. de Langen, & M. Moerings (Eds.), *Constante waarden: Liber amicorum prof. mr. Constantijn Kelk* (pp. 553–561). The Hague: Boom Juridische uitgevers.

- Senate. (2010). Wetsvoorstel van 20 oktober 2010 tot invoering van het elektronisch toezicht als autonome straf (ingediend door mevrouw Christine Defraigne). *Parl. St. Senaat 2010–11*, DOC 5 – 359/1.
- Travis, A. (2013, November 4). Serious fraud office launches inquiry into G4S and Serco overcharging claims. *The Guardian*.
- Van Cauwenberghe, K. (2013). Voorlopige hechtenis nieuwe stijl: detentie onder elektronisch toezicht. *Panopticon*, 34(1), 58–60.
- Van Gestel, B. (1998). *Tralies in je hoofd: een onderzoek naar de gevolgen van elektronisch huisarrest voor het alledaagse leven van veroordeelden en hun huisgenoten*. Amsterdam: Universiteit van Amsterdam.
- Vanhaelemeesch, D. (2013). Tussen gestrafte en bestraffer: de ervaringen van huisgenoten van personen met elektronisch toezicht. In T. Daems, T. Vander Beken, & D. Vanhaelemeesch (Eds.), *De machines van Justitie: Vijftien jaar elektronisch toezicht in België* (pp. 43–74). Antwerp: Maklu.
- Vanhaelemeesch, D. (2015). *De beleving van het elektronisch toezicht in vergelijking met de gevangenisstraf*. The Hague: Boom Criminologie.
- Verelst, J. (2008, December 2). Meer veroordeelden wachten langer op enkelband. *De Morgen*.
- Walgrave, L. (2000). *Met het oog op herstel*. Leuven: Universitaire Pers Leuven.
- Wennerberg, I. (2013). High level of support and high level of control: An efficient Swedish model of electronic monitoring? In M. Nellis, K. Beyens, & D. Kaminski (Eds.), *Electronically monitored punishment: International and critical perspectives* (pp. 113–127). London: Routledge.
- X. (2009a, April 23). Weldra duizend enkelbanden. *De Standaard*.
- X. (2009b, May 28). Al duizend veroordeelden met enkelband. *De Standaard*.
- Zimring, F. E., & Hawkins, G. (1995). *Incapacitation: Penal confinement and the restraint of crime*. New York: Oxford University Press.



## Conclusion: Defamiliarizing Electronic Monitoring

**Abstract** This chapter offers a number of reflections on how an exploration of the functions of electronic monitoring is useful for understanding EM in contemporary cultures of surveillance. The functional analysis inspired by Willem Nagel's study of imprisonment is presented as a prolegomenon that helps to defamiliarize electronic monitoring, that is, it helps asking questions that '...make evident things into puzzles' (Bauman 1990: 15). Three questions are being addressed in this final chapter: do we have too little or too much electronic monitoring?; is electronic monitoring a failure or a success?; is electronic monitoring Appolonian or Dyonisian?

**Keywords** Electronic monitoring · Imprisonment · Sociology of punishment · Surveillance

Willem Nagel wrote the following about the prison in 1977:

...we certainly should not abstain from seeing imprisonment as an element in a legal order that will always remain fully worthy of our suspicious attention. (Nagel 1977: 14)

This also applies to EM. In this little book we have identified and highlighted 22 functions of EM—and, undoubtedly, there are (and will be)

many more. Our exploration in the previous chapters shows that EM creates particularly high expectations and enjoys instant attractiveness: EM is futuristic, sophisticated, and cool. It seems to be particularly attractive for governments that are eager to propagate the image of being part of the current digital age. The expectations, however, seem to be overstrained; functions sometimes work together, but they also clash; and available scientific research or warnings from the professional field fall on deaf ears. Just as with the prison, a healthy dose of ‘suspicious attention’ is certainly appropriate here. But at the same time, our exploration demonstrates how EM creates a positive atmosphere of unprecedented possibilities and this is strikingly different for the prison: the principal objective of imprisonment, according to the Belgian prison law, is fundamentally negative, that is, to prevent and limit the damage detention causes to prisoners and their social network.

EM has been around for about four decades now. From a long-term perspective, this is certainly a relatively short period, but on the other hand, EM has been long enough with us to start thinking about its near and distant future. In this final chapter we offer some brief reflections on how to move forward. In order to start understanding EM we need to know what it is about and what kind of challenges and dangers are involved when monitoring technology is being applied in the penal sphere. That was our point of departure in this little book and it explains why we chose to embark on a ‘Nagel’-inspired exploration of EM. Such a prolegomenon is particularly useful in order to defamiliarize EM, that is, it helps asking questions that ‘...make evident things into puzzles’ (Bauman 1990: 15). Indeed, as we pointed out in Chapter 1, despite the obvious affinity of EM with our current digital age and it reflecting and contributing to current cultures of surveillance there is nothing natural, self-evident or inevitable about EM. Elsewhere we have suggested three questions that might be helpful to defamiliarize punishment. These have to do with the quantity of punishment (do we punish too much or too little?); the goals and functions of punishment (is punishment a success or a failure?); and the central features of punishment (is punishment Apollonian or Dionysian?) (see Daems 2019). We will use these three questions here as a template and apply them to EM: do we have too little or too much EM?; is EM a failure or a success?; is EM Apollonian or Dionysian?



## TOO MUCH OR TOO LITTLE EM?

The numbers on EM are revealing in at least two ways. First, when we look at the uses of EM from a comparative perspective, it is striking how differently it gets applied world-wide: indeed, some countries use EM extensively but others are reluctant or have rejected so far using any form of EM. Second, from a historical perspective, it is interesting to note that nowhere—not even in the US—EM has become a dominant force shaping and transforming criminal justice practice. These are interesting findings: variation, in a comparative perspective, as well as the obstacles EM finds on its way, even in countries that have most eagerly embraced the technology, should invite reflection on why things can differ so considerably, and why EM has not become a juggernaut-like force transforming and disrupting a failing and overburdened criminal justice system that still relies so heavily, practically and symbolically, on the prison.

Some deplore this lack of a sudden take-off for EM, that is, it is felt that EM is currently being applied too little and that it is too slow in making inroads in criminal justice systems across the globe. This is in particular true for those who perceive EM as a privileged tool to reduce incarceration or to make prisons obsolete altogether. EM is then seen as a more humane, cheaper, less harmful, less degrading or less stigmatizing alternative to the prison that is geared toward reintegration and responsabilisation. Some advocates argue that EM is also capable of mimicking the prison in terms of hard treatment, incapacitation and deterrence. Systemic problems—such as overcrowded prisons—could be a thing from the past, if only EM were to be embraced more enthusiastically and unreservedly, so the argument goes, as we have seen in the previous chapters.

Expanding EM as a way forward has had its supporters throughout the recent history of penal reform, from the early dreams of emptying prisons through behavioural electronics, as Schwitzgebel et al. (1964) formulated it so eloquently (see Chapter 1), up to the recent controversial proposals of Bagaric et al. (2018) that we discussed in Chapter 2 (see section “[Degradation](#)”). In a little book with the telling title *Nos têtes sont plus dures que les murs des prisons* [Our heads are harder than the walls of the prisons] Thierry Lévy (2006) seems to be in favour of a new kind of abolitionism: if we can agree *unisono* that the prison is a grand failure for which no conceivable solution is available, why should we not embrace EM as a ‘lesser kind of evil’? Lévy does not hide his impatience towards debunking analyses of EM that focus on its intrusive character, risks for net widening, or threats

for human dignity and personal liberty. Imagining EM as a true substitute for medium and long-term prison sentences is, so he argues, indispensable to initiate a radical departure from the current status quo. In the end, as Lévy reminds his readers, it also took a lot of time and effort before people got used to the prison—an institution we nowadays feel so passionately attached to (Daems 2007: 323).

However, for many critics of EM such appeals to advocate EM as a ‘lesser evil’ do not sound very persuasive. Many remain deeply skeptical or are outright opponents. For them there is not too little but rather too much EM in the world; and, indeed, at times EM itself becomes a new target in the abolitionist struggle, such as in the ‘Challenging E-carceration - #NoDigitalPrisons’ project, led by James Kilgore (<https://www.challengingecarceration.org/>). Critics have a long list of concerns: the market-driven expansion of EM, the unwarranted profits it generates and the unethical behaviour economic competition elicits; the elimination of human intervention and discretion and the death of a probation ethos; EM being a Trojan horse that is not reducing the use of imprisonment but rather enlisting private homes, partners and parents in an ever-expanding sinister control strategy; EM as a stigmatizing and dehumanizing technology as well as a gadget useful for political posturing and populist rhetoric; etc. Indeed, several of these concerns have been addressed in the previous chapters.

Between these two positions is the more pragmatic position of those who seem to take EM more or less as a given, something that, in particular in contemporary cultures of surveillance, where monitoring technologies are ubiquitous and user-generated surveillance becomes self-evident, will not go away. Burying one’s head in the sand, then, is no option: ‘...not to engage, not to see EM as a necessary and legitimate site of political struggle is to cede authority to those who would develop EM in ways that are indifferent or inimical to probation interests and values’ (Nellis 2018: 15). And, indeed, from such a perspective some also see openings for constructive engagement with the future of EM, that is, ‘...new opportunities to re-consider how community justice practices and probation values align with 21st-century digital crime control and, perhaps, even to proactively shape future EM policy’ (Paterson 2017: 238).

## IS EM A FAILURE OR A SUCCESS?

Is EM successful? That depends on what EM is supposed to achieve, how it is being used and from which perspective its success or failure is being assessed. Our discussion in the previous two chapters reveals that hearing about the qualities of EM at times is like listening to an overzealous vendor of Chinese tea telling you it is a magical cure for about everything: from tooth decay, over skin irritation to high cholesterol. The objectives of EM are not only manifold; they also may shift over time, as happened in Belgium: whereas initially it used to be primarily a tool to fight prison overcrowding, in later years it became an essential element in a larger strategy to make the penal system credible again. Goals may also be conflicting, e.g. harm reduction *versus* incapacitation; humanization *versus* degradation; automation *versus* reintegration; action function *versus* decarceration, etc. And, of course, the beneficiaries may change: offenders (reintegration), victims (protection), prison governors or administrators (tackling overcrowding), politicians (action function), society at large (incapacitation).

This implies, inevitably, that talking about the successes or failures of EM only makes sense if we clarify what it is supposed to achieve, for whom and with what means. EM is therefore about making choices—and this also involves taking into account the boundaries within which such choices can be made. As we argued earlier, it is perfectly possible to make EM highly successful at stigmatising and degrading offenders by substituting the nay invisible ankle bracelet with a conspicuous neck collar with led lights. But such options seem to be out of the question, at least in democratic societies with a vibrant human rights culture. Indeed, it explains why the proposals of Bagaric et al. (2018) to introduce ‘body sensor harnesses’ with electroshock capability proved to be so controversial (see section “[Degradation](#)”).

Some of these concerns have in the meantime been identified and explicitly addressed within a European context. Throughout this book we have referred at several occasions to the Council of Europe’s Recommendation on Electronic Monitoring which offers a set of basic principles related to ethical issues and professional standards ‘...enabling national authorities to provide just, proportionate and effective use of different forms of electronic monitoring in the framework of the criminal justice process in full respect of the rights of the persons concerned’ (Council of Europe 2014: scope; see also Nellis 2015). Indeed, to some extent this Recommendation can be seen as an attempt to address upfront what Corbett and Marx (1991: 409) refer to as the ‘fallacy of technical neutrality’: ‘...technology is always

developed and applied in a social context which is never neutral'. More generally, David Lyon (2018: 24) formulates this as follows: '...devices and data are not somehow morally neutral but are already implicated in activities and institutions that have to be judged on whether they promote or support good or evil'.

There are three more comments that we want to make to conclude this section. First, instead of being a success EM may also exacerbate existing problems or create new ones. EM devices are cheaper than prison cells but EM will fail to reduce costs if the net widens and more fish are caught in the net. Reintegration becomes difficult if offenders are immobilized through a strict 24 hours a day curfew. And, indeed, living on a daily basis under the same roof with relatives under EM may be stressful for housemates and cause tensions in intimate relationships, in particular when those housemates transform into 'compliance officers' who want to make sure that their beloved ones fully comply with curfews and do not breach their conditions (see section "[Transcarceration](#)"). Such collateral consequences of EM escape from view if we approach EM exclusively from an instrumental, means-to-an-end perspective. Second, whereas EM might to some extent be successful one should always wonder what other means are available that might lead to similar (or better) results. Subsidiarity is also here the keyword: what is the added value of using technology for supervision within the criminal justice system? This will be an increasingly important question, as technology will become cheaper and more sophisticated in the future, thereby making it tempting ('better safe than sorry') to further extend coercive monitoring through EM. Third, EM may fail to reach its declared goals (e.g. tackling overcrowding) but that does not necessarily imply that it is not successful in other respects (e.g. in conveying messages that politicians are in control [see section "[Action Function](#)"]). In particular when discussing the latent functions of EM it becomes important to think more about the deeper transformations and the wider context in which EM is embedded. Indeed, as Émile Durkheim already suggested, to understand punishment in this way implies that we do not look for answers in the usual places (that is, the public fora and the declared intentions):

Although it [punishment] proceeds from a quite mechanical reaction, from movements which are passionate and in great part non-reflective, it does play a useful role. Only this role is not where we ordinarily look for it. It does not serve, or else only serves quite secondarily, in correcting the culpable or in intimidating possible followers. From this point of view, its efficacy is justly

doubtful and, in any case, mediocre. Its true function is to maintain social cohesion intact, while maintaining all its vitality in the common conscience. (Durkheim 1933 [1893]: 108)

### IS EM APPOLONIAN OR DYONISIAN?

For Durkheim punishment becomes a key to unlock a society's distinctive features; it reveals something about a society's shared beliefs. Or as the late Pieter Spierenburg once argued:

The aim is to explore in what way changes in punishment reflect broader, long-term developments in society; to learn, through the study of punishment, how these developments are interrelated; to find out if all this may enhance our insight into the structure of our own society and ourselves. (Spierenburg 2004: 625)

So what does EM then reveal about the world we live in—and about ourselves? Here things tend to get complicated. We can hardly infer anything from EM's presence or absence in a particular society; or better: we can only do so, if we carefully take into account the wider context in which EM functions, the specific ways in which it is being deployed, and how it relates to other ways of responding to crime and deviance. To some extent this also applies to the modern prison: Pelican Bay prison in California (as described by Bauman [2000]) is fundamentally different from Kvíabryggja prison in Iceland (as pictured by Pakes [2019]), the former being a fully automated 'super-max' prison geared toward exclusion, the latter an open institution '...that works harder on keeping people out than in' (Pakes 2019).

Is EM about rationality, power, risk, managerialism? Or is it rather about feelings, emotions, passion, rage, anger? In short, is EM Apollonian or Dionysian? (Daems 2019). Formulating the question like this makes it possible to connect the debate on EM to what Richard Sparks (2003) once referred to as the two faces of punishment:

...punishment is both a severely *practical* matter and a thoroughly *expressive* one. It is used in attempts to intervene in and to control many forms of undesired behavior. In punishing we threaten, detain, deprive, immobilize, supervise, watch, guard, enjoin, entreat, cajole, and educate. Yet we also, in punishing, act out anger, voice pain, exclude, reject, tell stories, vindicate the

authority of law, defend the state from external threat or internal subversion – real or imagined, invoke the divine, cherish, and occasionally forgive. (Sparks 2003: 21)

Our discussion in the two previous chapters illustrates that in using EM we can aspire to do many different things: act, deter, supervise, watch, reintegrate, stigmatise, degrade, protect, incapacitate, immobilize, restore, etc. Depending on why, how, when and for whom EM is being used the tools to further its understanding can be different. Classical authors within the sociology of punishment—such as Durkheim, Foucault, Marx and Elias (Garland 1990)—as well as work undertaken to understand recent penal change (see e.g., Daems 2008; Simon and Sparks 2012), become useful as ‘sources of insight’ that can facilitate the study of EM ‘...depending upon the questions asked and the characteristics being explained’ (Garland 1990: 278 and 286). When the focus is on power and control, on information and knowledge, then EM can, for example, usefully be studied from a Foucaultian perspective (see section “[Widening the Net](#)”). When the focus is on sensibilities and internalizing control, moving from *Fremdzwang* to *Selbstzwang*—then the work of Norbert Elias is an obvious point of departure (see section “[Responsabilisation](#)”). Studies focusing on the politics of law and order and penal populism should be particularly helpful to explore the uses and abuses of EM in the public sphere and the political arena (see sections “[Action Function](#)” and “[Degradation](#)”). And the commercial, supply-driven forces behind the global expansion of EM can be studied from a political economy perspective (see section “[Profit Maximalisation](#)”).

However, there is one important caveat: such a ‘punishment and society’ approach will never be sufficient to fully capture EM in all its complexity. Understanding EM implies that it is not merely seen as a late modern version or copy of the modern prison. Terms such as ‘virtual prisons’ and ‘e-carceration’ are probably useful for reformers who want to highlight the similarities between the prison and EM in the hope to further its expansion but for analytical purposes such terms are misleading as they obscure the fundamental differences which also require different tools for understanding. In a democratic society with a vibrant human rights culture EM can never be a virtual prison: in terms of incapacitation and hard treatment it will always fall short. Moreover, and more importantly, it is not a virtual prison because it is part and parcel of cultures of surveillance where watching has become a way of life (Chapter 1). EM, then, is not just a penal development but rather, and foremost, ‘a component of a more radical

shift in digital governance’ (Paterson 2017: 227). Thinking about EM ‘... occurs at the intersection of (larger, diffuse) “socio-technical imaginaries” and (smaller, focussed) “penal imaginaries”’ (Nellis 2019: 2). It would be a mistake, therefore, to study and discuss EM solely from a penal angle: the further expansion and spread of EM, as well as the future technological metamorphoses EM may experience, will need to be understood against that background, which is one of Big Data and Big Brother, Dave Eggers and George Orwell, the smart city and the modern prison.

## REFERENCES

- Bagaric, M., Hunter, D., & Wolf, G. (2018). Technological incarceration and the end of the prison crisis. *Journal of Criminal Law and Criminology*, 108(1), 73–135.
- Bauman, Z. (1990). *Thinking sociologically*. Oxford: Basil Blackwell.
- Bauman, Z. (2000). Social issues of law and order. *British Journal of Criminology*, 40(2), 205–221.
- Corbett, R., & Marx, G. T. (1991). Critique: No soul in the new machine: Technofallacies in the electronic monitoring movement. *Justice Quarterly*, 8(3), 399–414.
- Council of Europe. (2014). *Recommendation CM/Rec(2014)4 of the Committee of Ministers to member states on electronic monitoring*. Adopted by the Committee of Ministers on 19 February 2014, at the 1192nd meeting of the Ministers’ Deputies.
- Daems, T. (2007). Engaging with penal populism: The case of France. *Punishment & Society*, 9(3), 319–324.
- Daems, T. (2008). *Making sense of penal change*. Oxford: Oxford University Press.
- Daems, T. (2019). Defamiliarizing punishment. In F. Focquaert, E. Shaw, & B. Waller (Eds.), *The Routledge handbook of the philosophy and science of punishment*. London: Routledge.
- Durkheim, E. (1933). *The division of labor in society*. Glencoe, IL: The Free Press of Glencoe.
- Garland, D. (1990). *Punishment and modern society: A study in social theory*. Oxford: Oxford University Press.
- Lévy, T. (2006). *Nos têtes sont plus dures que les murs des prisons*. Paris: Grasset.
- Lyon, D. (2018). *The culture of surveillance: Watching as a way of life*. Cambridge: Polity.
- Nagel, W. H. (1977). *De funkties van de vrijheidstraf*. Samson: Alphen aan den Rijn.

- Nellis, M. (2015). *Standards and ethics in electronic monitoring: Handbook for professionals responsible for the establishment and the use of electronic monitoring*. Strasbourg: Council of Europe.
- Nellis, M. (2018). Clean and dirty electronic monitoring. *Justice Trends*, 3, 14–19.
- Nellis, M. (2019). “Better than human”? Smartphones, artificial intelligence and ultra-punitive electronic monitoring. Available at <https://www.challengingcarceration.org/wp-content/uploads/2019/01/TI-and-Smart-EM-Final-.pdf>.
- Pakes, F. (2019, August 4). *A different way of doing things*. <https://www.thejusticegap.com/proof-magazine-a-different-way-of-doing-things/>.
- Paterson, C. (2017). Tagging re-booted! Imagining the potential of victim-oriented electronic monitoring. *Probation Journal*, 64(3), 226–241.
- Schwitzgebel, R., Schwitzgebel, R., Pahnke, W. N., & Hurd, W. S. (1964). A program of research in behavioral electronics. *Behavioral Science*, 9(3), 233–238.
- Simon, J., & Sparks, R. (Eds.). (2012). *The Sage handbook of punishment and society*. London: Sage.
- Sparks, R. (2003). State punishment in advanced capitalist countries. In T. G. Blomberg & S. Cohen (Eds.), *Punishment and social control* (Enlarged 2nd ed.) (pp. 19–44). New York: Aldine de Gruyter.
- Spierenburg, P. (2004). Punishment, power and history: Foucault and Elias. *Social Science History*, 28(4), 607–636.



# INDEX

## A

Action function, 16, 23, 59, 63, 68, 79, 80, 82  
Ankle bracelet, 2, 4, 24, 27, 30, 31, 33, 37, 38, 40, 43, 45, 64, 79  
Aubert, Vilhelm, 14  
Automation, 25, 27–30, 58–60, 79

## B

Behavioural control, 31  
Behavioural electronics, 6, 77  
Bentham, Jeremy, 8, 32, 39

## C

Cohen, Stanley, 67, 68  
Compliance, 15, 26, 27, 31, 37, 40, 41, 60, 66  
Confederation of European Probation (CEP), 7, 55  
Cost reduction, 29, 32, 34, 55, 56  
Council of Europe, 8, 27, 28, 36, 37, 39, 44, 59, 62, 67, 68, 79  
Crime control, 35, 78

Culture of surveillance, 1, 8, 10, 82

## D

Decarceration, 9, 32, 34, 36, 79  
Degradation, 37, 38, 54, 77, 79, 82  
Detection, 4, 31, 39, 54, 66, 68  
Deterrence, 17, 35, 39, 43, 77

## E

E-carceration, 9, 36, 53, 82  
Electro-shock, 38, 79

## F

Foucault, Michel, 8, 16

## G

GPS technology, 9, 12, 31, 33, 38, 39, 54, 55, 66, 69

## H

Hard treatment, 42, 43, 45, 77, 82

Harm reduction, 41, 42, 45, 58, 60, 79

Humanization, 6, 79

## I

Imprisonment, 4, 13, 15, 17, 23, 33, 34, 36, 38, 41, 42, 46, 53, 60, 61, 66–68, 75, 76, 78

Incapacitation, 35, 39, 53, 54, 77, 79, 82

Incarceration, 6, 38, 63, 77

## L

Lyon, David, 8, 80

## M

Mathiesen, Thomas, 9, 15, 23

Merton, Robert, 13, 14

## N

Nagel, Willem, 4, 11, 13, 14, 16–18, 75

Nellis, Mike, 3, 4, 6–10, 30, 37–39, 55, 62, 78, 79, 83

## O

Orwell, George, 8, 30, 39, 83

Overcrowding, 2, 3, 24, 63–65

## P

*Panopticon*, 8, 9, 39

Parole, 5, 6, 10, 25, 69

Pre-trial detention, 3, 13, 34, 54, 55, 59, 67, 68

Prison overcrowding, 11, 64, 79

Probation, 7, 10, 25, 26, 31, 59, 60, 66, 69, 78

Profit, 33, 55, 56, 78

Proportionality, 44

Protection of victims, 57, 66

## R

Recommendation on Electronic Monitoring, 8, 27, 36, 44, 67, 79

Reintegration, 2, 26, 27, 41, 42, 57–59, 62, 77, 79, 80

Responsabilisation, 60, 77, 82

Restoration, 41, 42, 61, 62

RF technology, 11, 31, 53, 66

## S

Schwitzgebel, Ralph, 5

Sociology of punishment, 82

Subsidiarity, 80

## T

Tackling overcrowding, 29, 34, 36, 63, 68, 79, 80

Tagging, 3, 4, 9, 10, 30

Technological utopianism, 6

Transcarceration, 36, 57, 65, 66, 80

## V

Verification, 31, 39, 57, 66

Virtual prison, 36, 53, 57, 59, 69, 82

Voice verification, 4, 11, 27, 37, 66

## W

Widening the net, 34, 36, 46, 66, 82

Wrist band, 9