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45 Punishment

Abstract: A key question when it comes to contemporary and future practices of punishment, is how these are influenced by the continuous rise of digital technologies, and in turn, how this might affect the purpose, as well as the function of punishment. This chapter addresses digitalization of punishment in connection with three themes: first, surveillance and control, where we will zoom in on the use of electronic monitoring, which has been employed in many jurisdictions. Secondly, we will look at prisons in digitized societies, focusing on video visits, digital surveillance in prisons, internet access, and the recent introduction of smart prisons. Thirdly, we will discuss the development and possible future of punishment in light of the continuous development of digital societies.

Keywords: prisons, punishment, surveillance, electronic monitoring

Introduction

A key question when it comes to contemporary and future practices of punishment, is how these are influenced by the continuous rise of digital technologies, and in turn, how this might affect the purpose, as well as the function of punishment. How will the relationship between punishment and society develop with increasing digitization?

The purpose of punishment has changed over time and varies from one jurisdiction to another, but nevertheless tends to focus on a combination of prevention (deterrence, rehabilitation, and incapacitation) and revenge. The latter motive is often portrayed as retrospective and moralistic, while crime prevention is typically considered utilitarian and forward looking. However, having moral aims and purposes of punishment can also be understood as a way of creating justice, thereby strengthening social cohesion in a given society. Various systems of punishment have prioritized these aims very differently over time, sometimes focusing on treatment and rehabilitation of offenders, sometimes on a combination of general deterrence, incapacitation, and revenge. If we look at the execution of punishment, for example in the form of imprisonment, further motives and considerations often enter the picture. These include security concerns (maintaining order and avoiding escapes), punitive concerns (factors that strengthen the element of punishment) as well as the question of how to respect prisoners' rights. This last point is often approached through the principle of normalization and aims to create prison conditions that resemble the outside world (Engbo and Smith, 2012).

If we look at all these various purposes, motives, and concerns from the perspective of digitalization (see Digital by Wernimont), there is little doubt that security concerns have been some of those most readily open to technological advances. Digital security and surveillance technologies have quickly been incorporated into the

infrastructure of prisons and penal systems to keep prisoners and pre-trial detainees under control. In contrast, digital technologies have been employed much more reluctantly for rehabilitative purposes. Perhaps the most dramatic illustration of the very selective use of digital technology in prisons is the fact that the inhabitants of these institutions are typically still cut off from the internet, even though people on the outside rely increasingly on continuous internet access in connection with almost all aspects of their daily lives.

This chapter will be structured according to three main themes. First, we will discuss digitalization of punishment in connection with surveillance and control. Here we will zoom in on the use of electronic monitoring, which has been employed in many jurisdictions. Secondly, we will look at prisons in digitized societies, focusing on video visits, digital surveillance in prisons, internet access, and the recent introduction of smart prisons (Kaun and Stiernstedt, 2020). Thirdly, we will discuss the development and possible future of punishment in light of the continuous development of digital societies.

Electronic monitoring

Global positioning (GPS) and radio frequency (RFID) systems have a diverse range of uses, such as determining the whereabouts of persons or objects through tracking of location data. Location tracking is used in the detection, investigation, and punishment of crime, the latter of which is done through electronic monitoring (EM). EM is the practice of holding convicted or remanded individuals under surveillance outside of prison, using GPS or RFID technology, generally in the form of a 'shackle' worn on the ankle (Nellis, 2021). Offenders under EM may continue living in their homes, but can often only leave to attend work, medical appointments, or to meet a parole officer. Alcohol monitoring devices that deliver data on consumption in real time are sometimes implemented in EM devices (Nellis, 2021). EM is increasingly used in place of prison for non-violent crimes; however, the technology is also used for monitoring of persons on remand (Lehman, 2022). Additionally, victims of intimate partner violence can be given GPS-enabled 'panic button' devices that ring directly to police if triggered; 'reverse EM' devices are also used to monitor persons under restraining orders (Daems, 2020). EM can also be used to enforce restrictions on offenders granted conditional release, such as by monitoring the whereabouts of persons convicted of sex offenses (Daems, 2020).

Proponents of EM argue for its potential as an alternative punishment that reduces the harms associated with prison by allowing offenders to serve their sentence at home, maintain their occupation, and have contact with family. Hence, EM can reduce issues with overcrowding, allow sentences to be carried out at reduced cost, and separate out offenders deemed unlikely to reoffend from those convicted of more serious offenses. The main argument in favor of EM, aside from the potential economic benefit, is that it removes the institution of prison from the equation entirely, thus lessening

the associated negative effects such as stigma, increased recidivism risk, isolation, addiction, and poor mental and physical health outcomes (Kaylor, 2022; Lehman, 2022).

Opponents of EM argue that many of the problems associated with prison are also present when the 'walls' are removed, and that EM instead represents an extreme form of deprivation of liberty, 'prisonizing' the homes, private lives, and even bodies of offenders (Campello, 2023). Family members can experience EM as a kind of punishment by proxy, and EM may impinge on the right to private and family life (Lehman, 2022). In some jurisdictions, costs associated with the device are borne by the wearer, in addition to needing to keep it charged at all times (Kirk, 2021). Devices that cannot be covered or which emit noise may subject the wearer to stigma; being under constant surveillance also psychologically taxing, in addition to the physical inconveniences of EM devices (Kilgore and Dolinar, 2023). Whilst the wearer appears to be part of free society, their reality is constricted and can be socially isolating. From this perspective, EM may be as invasive and harmful as prison, as the surveillance and control mechanisms of the criminal justice system move into the private sphere. Lastly, it is still unclear whether EM improves recidivism rates compared to prison, and the increase in its use has led to concerns around net widening and increased overall surveillance (Kirk, 2021; Kilgore and Dolinar, 2023). The technology also raises questions of data privacy, as well as public safety, if trends towards increasing use of EM continue in the future.

Prisons in digitized societies

Despite the extensive use of fines, as well as alternative punishments such as EM, community service, and mediation, the use of physical incarceration in prisons remain a core element of any modern system of punishment. The prison is a centuries-old institution which has proven notoriously difficult to reform in any fundamental way since the breakthrough of the modern penitentiary during the late 18th and early 19th centuries (Smith, 2004). Despite significant changes in the surrounding societies since that time, prison life has arguably remained relatively stable in its content and character. To explore the extent to which digital technologies have had an impact on prison life in recent decades, we will in the following zoom in on video visits; surveillance in prisons; and the question of internet access in these institutions.

Video visits

Several jurisdictions include video-visits as part of their institutional setup in all or some of their prisons. The pandemic was without any doubt an enabler in that regard even in nations well known to be especially tough on crime, such as the USA (Muñiz et al., 2024: 92). As in-person visits were suspended due to the risk of contamination, many prisons and correctional services in different parts of the world began introducing

video-visits (Lundeberg and Smith, 2022; Muñiz et al., 2024). In the USA towards the end of 2021, remarkably, more than half of all states (65.7 %) offered video-visits to all their prisoners and an additional six states (11.5 %) offered video visits to some of their residents (Muñiz et al., 2024: 91). In Norway, the Norwegian correctional service also introduced video-visits on a large scale in 2020 through the use of more than 800 iPads (Lundeberg and Smith, 2022).

However, the degree to which these technologies are actually available on the ground in prisons and how they are used varies greatly. Even in Norway, in a situation where the number of iPads amounted to around one quarter of the entire prison population, access was not assured. In the first phase of the pandemic with severe lockdowns, 30 % of prisoners reported that they had not received any offer of video visitation (Lundeberg and Smith, 2022). Additionally, many of those who used the iPads experienced significant technical problems with the actual execution of video visits (Lundeberg and Smith, 2022); similar problems have been experienced by prisoners in other jurisdictions (Murdoch and King, 2020).

Additionally, the reasons for using video visits (especially before and after the pandemic) vary significantly. In the US, for example, some correctional authorities have introduced video visits primarily to reduce costs associated with in-person visitation (Murdoch and King, 2020). A different logic has to do with providing prisoners with enhanced opportunities to "maintain family relationships and engage in programs aimed at optimizing their post-release circumstances and rehabilitation" (McKay, 2022: 100). Along these lines we see recent research studying the possible effects of prison video visits on recidivism (Duwe and McNeeley, 2021).

A third line of reasoning is to implement digital technologies including video-visits not primarily to rehabilitate and fight crime, but as a way of strengthening the rights of prisoners (Smith, 2013). In other words, there is a vast difference between the rationalities behind video visits for prisoners, which will undoubtedly be reflected in future policies and practices in this area.

Digital surveillance in prisons

Surveillance and control are essential parts of the fabric of prisons. Surveillance provides intelligence to prison staff about the whereabouts, actions, and possible intentions, of prisoners at any given time. In addition to gathering intelligence and recording evidence of potential criminal activity (see Intelligence by Gundhus and Lundgaard), the concept of surveillance is also used to maintain security and enforce rules. This is illustrated by Bentham's (1791) panopticon model, which is still in use today, designed to give prisoners the sensation of potentially being under observation at all times. Guard towers and cameras can both allow for just a single officer to collect data and maintain control through observation. Relative to other societal institutions, prisons have generally been reluctant to spend resources on adapting digital technologies, except for those applicable to surveillance and control. Examples of these tech-

nologies are improved security, camera and alarm systems, and x-ray scanners for people and packages entering the prison. Said technologies tend to be most attractive if they also promise improved efficiency and reduced expenditure: for example, installing more cameras may theoretically lead to reduced staff numbers.

In the crux of both control and concerns for prisoners' welfare, everyday objects are often adapted for use in prison to prevent them being used as weapons or as a means of suicide (Hughes and Metzner, 2015). Technologies specifically aimed at preventing harm and suicide have been developed for installation in prison cells, such as electronic respiration and motion detection via RFID (hereafter ERMD), which alert prison officers to 'unusual' activity (Hayes, 2013). In the case of Norway, ERMD has been approved for use in police custody as well as in solitary confinement cells in prisons, which are often used as both disciplinary measures and to isolate prisoners under suicide watch (Kriminalomsorgensdirektoratet, 2021). How this will impact current prison practices remains to be seen; this technology also raises questions about both the efficacy (relative to other surveillance methods and in terms of harm prevention) and ethics of its use.

Internet access

The arguably most pronounced illustration of the very selective use of digital technology in correctional settings is the fact that prisoners are typically completely cut off from the internet, whilst people on the outside rely increasingly on internet access in connection with their daily lives. Normally, when discussing internet use there is talk of a digital gap in the sense that the older generations have been lagging behind the younger generations and that some parts of the world have been lagging behind other, more developed parts of the world (Jørgensen and Smith, 2012). However, we find an even more dramatic digital gap when comparing incarcerated people with those living in the free world (Smith, 2013).

According to statistics from ITU three-quarters of the world's population (10 years or older) owned a mobile phone in 2022 (ITU, 2022: 17), and two-thirds used the internet (ITU, 2022: 1). In Europe and the Americas, the figures were 89 % and 83 % internet users respectively (ITU, 2022: 2). Additionally, in Europe 98 % of the 15- to 24-year-olds use the internet (ITU, 2022: 2). Remarkably, on a global level there are now significantly more mobile cellular telephone subscriptions than inhabitants (ITU, 2022: 8). Furthermore, in recent years the growth of mobile broadband subscriptions has been explosive, so that there are now 87 such subscriptions per 100 inhabitants in the world, and 110 and 113 in Europe and the Americas respectively (ITU, 2022: 10).

In stark contrast to these statistics, prisoners can typically spend years on end without any kind of internet access. In some jurisdictions, some level of access is allowed in the more open regimes (internet cafes in open Danish prisons for example), although these remain an exception to the rule. However, the development of so-called 'smart' prisons might change this.

Smart prisons

The term 'smart' is used widely to describe networked technologies that can communicate with each other, automate and adapt to tasks, and which have an increased functionality through doing so; including objects that utilize these technologies such as buildings, environments, and devices (Kaun and Stiernstedt, 2020). A related concept is that of *datafication* (see Datafication by Chan), whereby most aspects of life are captured electronically and turned into data which happens in conjunction with mass surveillance and the extraction and creation of large amounts of user data (Sadowski, 2019). The notion of 'smart' technologies in prisons was first mentioned in 2005 to refer to Finnish prison cells containing motion sensor technology (Murphy, 2005); however, prisons were until the 2010s not generally subject to datafication. Even in the 2020s, prisons typically do not enable access to mobile telephones, internet, or streaming services. Yet, many prisons built around this time advertise themselves as 'smart,' the concept of smart prisons has thus become of interest to researchers. Policymakers have used the etymology of being 'smart on crime' to refer to less punitive punishment policies (Altheide and Coyle, 2006); and we can draw parallels with how similar language is used to justify prisons' use of smart technologies.

What these institutions seem to have in common is their purposeful use of technology incorporating various aims and purposes of punishment. These technologies are often advertised explicitly as being used for rehabilitative purposes and to improve the prison environment for both prisons and staff. This could include online booking systems for health and welfare services, videoconferencing, digital access cards to cells (which replace the authoritative rattle of officers' keys), and the training of prisoners to operate in digital societies after release, such as assisting with online banking and setting up digital identification. As stated earlier, access to internet is still a contested issue. Some smart prisons allow access to heavily monitored 'intranets' rather than unfettered access to the global internet (Robberechts and Beyens, 2020). Adoption of smart technologies in prisons appears to have been spurred on by the COVID-19 pandemic, as with video visitation mentioned earlier. However, many prison technologies can also be seen as invasive and an extension of carceral control, while creating greater physical distance between prison staff and the persons in their care (McKay, 2022). Many prisons are built panopticon-style, with centralized guard posts that allow one or few officers to observe and facilitate activity (such as opening doors) remotely. Scanning of objects and bodies entering the prison, improved drug testing, GPS and RFID for both location, motion, and respiration detection, high-definition cameras, security systems, and cloud storage of sensitive information are some of the ways in which control, security, surveillance, and deterrence make themselves known within the technological fabric of smart prisons. Theoretically, there are few limits to how punitive and controlling (or alternatively rehabilitative and humane) a prison could become with the assistance of technology. A valuable avenue for research is to assess how smart technologies impact prison practices and prisoners' experiences of incarceration in

the future; much uncertainty hinges upon how the human aspects of prison life and interpersonal relationships between prisoners and staff, often summed up as *dynamic security*, will be affected as *static security* (the physical elements of security and surveillance, such as cameras, alarms, and walls) (Smith, 2022) becomes more automated (see Automation by Mann).

Possible future scenarios

Broadly speaking, one can envisage different future scenarios concerning the potential uses of, and approaches to, digital technologies within the realm of punishment:

– A high-tech revival of the abolitionist movement, focusing on the principle of normalization. Even prisoners are always online and can reach new heights of communicative and online freedoms, whilst physically restricted.
– Technology is weaponized for punitive purposes and increased security, minimizing contact with the external world. Prisoners are only able to access 'prison cloud' intranets, and prison staff communicate and operate solely online, further increasing isolation within prisons.
– Increased diversion away from prisons through widespread adaptation of EM and other technologies, reserving prison space for those deemed most dangerous or in most need of help.

In summary, digital technologies have the potential to fundamentally rearrange the landscape of punishment. This calls for increased empirical and theoretical attention from the research community as digital societies continue to evolve.

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