

## **Commercial crime control and the electronic monitoring of offenders in England and Wales**

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# **Commercial Crime Control and the Electronic Monitoring of Offenders in England and Wales**

## **Introduction**

Since the 1980s the British government has actively promoted the role of the private security industry within the criminal justice system. Privately run prisons, young offender institutions and secure training centres for children aged 12-17 years old are now acknowledged components of the criminal justice landscape. Added to this, new immigration detention centres have been opened by commercial organisations to supplement their crime control interests and to create a broader market in incarceration. The electronic monitoring (EM) of offenders and, more recently, those subject to immigration controls represents another growth area in public sector privatisation and the extension of commercial forms of social control into domestic spaces. First used in 1989, between 17,000 and 18,000 people are now subject to a variety of forms of EM across England and Wales. Those subject to EM-based programmes include bailees, adult offenders, juvenile offenders, terrorist suspects, those subject to immigration controls and, in the near future, those who refuse to pay child support. EM represents an expanding market, grounded in criminal justice privatisation and one which permits a much more diffuse future vision of social regulation and control.

Many of the business areas where commercial criminal justice in England and Wales now flourishes are based upon original developments in the United States (Newburn, 2002) that have inspired the development of new commercial crime control markets across the globe. EM is now used in Canada, Taiwan, Singapore, Australia, New Zealand, Denmark, Finland, Sweden, The Netherlands, Germany, Belgium, Portugal, Italy, Argentina, Israel and Scotland. Commercial crime control is an international business and EM, alongside other 'techno-corrections', has become part of a global corrections-commercial complex (Lilly and Knepper, 1992). The processes of globalization

have prompted a period of reconstruction within many western governments through which the state sheds many of its peripheral functions to the commercial, voluntary and statutory sectors. Across Britain, this growth has ensured that the private security industry now provides services to the value of £4 billion per annum to the public and private sector and employs approximately 500,000 people (SIA, 2006).

This paper looks at the role of the commercial sector as service providers of EM. The paper reviews the history of EM and debates about the nature of security in relation to the struggle for sovereign control over populations and territory. It then focuses on the way in which private security firms have become part of a new commercial-public hybrid mode of sub-contracted sovereign governance through which the state generates the market space for commercial organisations to enter the crime control system. The paper subsequently outlines how multi-national corporations have come to dominate the commercial markets in techno-corrections and incarceration. In the case of EM, Premier-Serco and Group 4 Securicor have isolated their competitors through the creation of a commercial duopoly. This raises questions about the procurement process within the realm of commercial crime control, in particular, how commercial-public hybrids balance cost-effectiveness and the pursuit of profit with the delivery of a high quality service. This raises questions about the future role of the commercial sector within the criminal justice system, particularly with the recent introduction of 'contestability' into the National Offender Management Service (NOMS).

## **A Brief History of EM**

The growth of the private security industry in the period after the Second World War and within criminal justice since the beginning of the 1980s arose as the result of rising demand for security alongside the growing importance placed upon economic rationalities of crime control (Garland,

1999; Feeley, 2002). The end of the cold war in 1989 provided a further boost to the industry as private security companies were accompanied by defence contractors keen to maintain profit margins in the absence of a clearly defined threat against the western world and together they forged a new market in technocorrections. The reassertion of the role of the market within criminal justice is representative of broad changes in societies that have moved from an inclusive focus upon welfarism towards strategies of social management associated with the neoliberal ethos of combining market competition, privatised institutions, and sub-contracted, at-a-distance forms of social control. Within this context a growing emphasis is placed upon reducing the costs of crime control and encouraging other agencies that operate at a distance from central government to take a more direct role in the provision of security.

All EM programmes have an element of private sector interest, most commonly in the development and implementation of technologies, although the system in England and Wales was initially unique in allowing commercial organisations to take full control of the administration of curfew orders from beginning to end. EM has grown rapidly across the globe, yet programme development itself is by no means uniform with Australia, the United States and Canada joining European countries such as Sweden and the Netherlands in operating EM-based curfew orders through the public sector with varying degrees of commercial influence. But, while the development of EM can be viewed as being a product of global forces that emphasise neoliberal rationales, they are translated domestically within each nation state's individual social, political and economic context. A further understanding of this context can be provided through a brief review of the historical development of EM in its two largest markets; the United States and England and Wales.

The first co-ordinated, western house arrest programme began in the United States in 1971 with the organised detention of juvenile offenders in St. Louis (Whitfield, 1997:31) and since this initial programme a plethora of schemes have appeared under the initial slogan of 'Community Control'.

Unlike the initial house arrest programmes EM developed in a commercial environment as a result of the perceived need for continuing technological innovation and, because of this, its development needs to be analysed alongside that of private prisons. The first modern private prison appeared in the United States in 1975 when the RCA Service Company set up the Weaversville unit in Pennsylvania for juvenile offenders yet it was not until the 1980s that criminal justice privatisation and EM became commonplace. The prison crisis of the 1980s led to an increase in the use of private prison facilities, which grew from housing 2,500 inmates in 1984 to containing 90,000 inmates in 1996 (Lotke, 1996:2) and by 2002, private companies ran 153 facilities with an operational capacity of almost 120,000 (Tabarrok, 2003:77). Similarly, EM developed rapidly from its initial introduction in 1984 to providing around 95,000 EM units on 1,500 different tagging programmes by January 1998 (NLECTC, 1999:1). Since the 1990s growth in EM in the United States has slowed but there are still around 125,000 people on EM-based curfew orders at any one time and an additional 8,000-9,000 subject to Global Positioning by Satellite (GPS) tracking (Stacey, 2006).

In England and Wales, the Offender's Tag Association, an organisation with intimate connections to the Conservative Party, had been advocating the use of EM since 1982. In the mid-1980s the idea was picked up by John Patten MP, an ambitious junior minister in pursuit of an eye-catching policy to make his name with and Patten's political drive led to the introduction of EM in the unsuccessful trials with bailees in 1989. Despite the failure of the original trials, Patten continued to advocate the use of EM as an effective alternative to imprisonment operated through the private sector and in the mid 1990s new trials began. The evidence on the efficacy of EM-based curfew orders from the second set of trials was at best inconclusive (Mair and Mortimer, 1996; Mortimer and May, 1997) but, again, this only slowed development and the Labour party's election success in 1997 brought renewed growth to the EM industry at a time when stagnation seemed inevitable. From 1999 onwards, the number of offenders subjected to EM-based restrictions grew exponentially as successive Home Secretaries encouraged its use and technological developments introduced

biometric systems and satellite tracking. Despite this, there remained no clear evidence-base that identified what EM actually achieved. Faced with this lack of supportive evidence, it becomes essential to identify the factors that drove growth in EM in England and Wales and made it Europe's market leader in this field.

### **Commercial Corrections and Sub-Contracted Modes of Governance**

EM-based programmes have been born out of the long tradition of house arrest, an incapacitative measure that historically is linked more closely to political initiatives, and an increased focus upon the management (rather than the rehabilitation or reformation) of individuals and groups. From this perspective criminal justice systems concentrate upon the identification of risks, targeting offenders as aggregates rather than individuals, before assessing the means of their control and management utilising the most cost-effective measures (Feeley and Simon, 1992). Since being elected in 1997, this social management ethos has dominated the Labour government's public service reforms in England and Wales and encouraged a process whereby the state sub-contracts or devolves its sovereign responsibilities to commercial organisations. This 'third way' approach emphasises the role of the state as an auspice (Bayley and Shearing, 2001) or commissioner (Fisher, 2006) of governance rather than as a direct service provider. Thus, the provision of security is no longer seen principally as the function of the sovereign nation state and traditional large public sector institutions no longer maintain a privileged position in providing security; they are understood simply as one node of security amongst others in the commercial, voluntary and statutory sectors (Johnston and Shearing 2003).

This pluralisation of security provision has been given official recognition in England and Wales with the passing of the Private Security Act, 2001 which acknowledged the enhanced presence of

commercial organisations in the provision of security and the Police Reform Act, 2002, which advocated a mixed economy of policing provision. In 2004, the Home Office document, 'Reducing Crime, Changing Lives', brought the Probation Service into the market of sub-contracted service provision with the introduction of 'contestability'. This shift towards outsourcing the duties of a 100 year old institution raised wide concerns in the field of community corrections, yet, in reality, this process had begun in 1989 when the first EM trials were commissioned and made the responsibility of commercial providers. These public sector reforms in the areas of policing, imprisonment, surveillance and community corrections also extend beyond the field of criminal justice into the arenas of health, education and defence and are representative of global changes enacted through neoliberal political processes that encourage a process of sub-contracting sovereign responsibilities to the commercial, voluntary and statutory sectors.

The birth and development of EM can therefore be understood as the political construction of space for commercial organisations to enter the jurisdiction of the probation service (Paterson, 2006), a process which continues today. The introduction of commercial modes of service delivery within the jurisdiction of the Probation Service unsurprisingly generated significant resistance (Matthews, 1988; Nellis, 1991) and this helped to shape the programmes that exist today in England and Wales. Because of this, the development of EM in England and Wales cannot be understood as either governmentally inspired or as the product of market forces. Instead, it is important to recognise the conflict experienced throughout its introduction and development as a contest over who delivers and administers justice. This helps to explain the wide range of EM-based schemes that exist internationally as a product of global, national and local forces. By focusing upon the contested struggle for sovereignty at the local level it is possible to make sense of the rival agencies involved in shifting alliances with the state and the modes of governance this produces. Although the state generates the market space for commercial organisations to enter the crime control system as service providers it also struggles to retain control over policy and strategies through short-term,

formal contracts. This is why the state can be seen to act as the private security industry's pimp as much as its regulator (Zedner, 2006) in creating commercial-public hybrid agencies whose positions in the market of crime control are legitimized through national contracts and legislation whilst remaining only loosely regulated at the local level.

In England and Wales commercial-public hybrid agencies are most commonly created through public private partnerships (PPPs). PPPs heralded a period of increased commercial investment in all areas of the public sector under New Labour that represented a continuation of the private finance initiatives (PFI) that were introduced by the Conservative government in the 1990s. Under PFI, contractors pay the costs of building a prison, a school or a hospital and then rent the finished project back to the public sector, allowing governments and local authorities to provide an increase in public services without raising taxation. This form of investment has encouraged the development of eleven private prisons in England and Wales (although two of these have subsequently been returned to the public sector) over the last 15 years as well as a plethora of other commercial criminal justice projects, yet critics of the system have pointed out that the government may be mortgaging the future of the country (IPPR, 2001). Projects such as Fazackerly prison in Liverpool provide short-term benefits alongside a long-term financial commitment. In the Fazackerly case the initial costs of the project were claimed back within two years, entitling the private company involved to twenty-three years of profit (Bacon, C., 2005). Indeed, such were the profits being made by the multi-national corporations involved in EM that the re-negotiation of the contract that commenced in April 2006 led to a 40% reduction in price (House of Commons Committee of Public Accounts, 2006).

At the global level, the expansion of the commercial industry in incarceration, technocorrections and other previously publicly-provided services has been aided by international trade agreements such as the General Agreement on Trade in Services (GATS) that came into operation in 1994, plus



the influence of the World Trade Organisation (WTO). GATS provides international corporations with a greater amount of freedom to open up markets, particularly in the public sector, whilst placing a set of legal limits on what governments can do to restrict private sector growth within a variety of industries. These rules encourage the liberalisation of global trade by insisting that international corporations are entitled to the same subsidies and benefits as domestic businesses and by limiting other protectionist measures, such as tariffs. Under the GATS rules public sector industries such as health, education and criminal justice are opened up to international competition through the creation of PPPs, hence the presence of multi-national corporations with global crime control interests in the EM market, such as Premier-Serco and Group 4 Securicor.

In 1989 it was Chubb and Marconi, two international defence contractors, who became involved in the EM bail trials in England as part of their pursuit of new markets. At the same time, new EM technology originated in countries such as the United States and Israel where there was a long tradition of internal and external surveillance plus extensive military investment. Products that had initially been designed for military purposes were adapted for the new market in crime control, as we have seen with the recent development of the satellite tracking of offenders which utilises a combination of Global Positioning by Satellite (GPS) and Global System for Mobile Communications (GSM) technologies.

In order to identify potential new markets in commercial crime control the United States government played an increasingly active role in lobbying foreign countries on behalf of American defence and private security contractors throughout the 1980s and 1990s (Lilly and Deflem, 1996). The impact of this lobbying has been felt in England and Wales where the Prison Reform Trust obtained documents detailing private prison contracts between the government and international corporations such as the Corrections Corporation of America and Wackenhut, including an option to overcrowd prisons by almost 50% (Lilly and Deflem, 1996). Further evidence of the lobbying

power of international corporations became evident at a privatisation conference in the Netherlands when the director of UK Detention Services (a subsidiary of French multi-national Sodexho) acknowledged, 'it took us two or three years to finally convince the government that this (privatisation) was the way forward...UK Detention Services was very much involved in bringing forward the arguments in favour of the case' (Beyens and Snacken, 1996).

Ultimately, this lobbying meant that the decrease in demand for military hardware was off-set by the development of new commercial markets in incarceration in the mid-1980s and in EM and other techno-corrections throughout the 1990s. A range of EM products are now available to private contractors with often cost rather than technological development holding back the introduction of increasingly sophisticated systems. The global commercial drive behind expanding markets in surveillance and private security aided by the presence of law and order lobbies presents a clear challenge to the integrity of criminal justice systems. While the growth of EM in the United States has slowed since the latter part of the 1990s, England and Wales has experienced a proliferation of EM-based programmes since Labour's 1997 election victory without any evidence-base to justify this growth. Once again, this requires further investigation in order to make sense of the long term consequences of delivering new forms of commercial corrections through a sub-contracted sovereign process.

### **EM under New Labour**

Since the election of Margaret Thatcher's first Conservative government in 1979 and their commitment to the biggest prison building programme of the twentieth century, England and Wales has experienced a dramatic and relatively consistent increase in the prison population. The boom in public spending that supported growth in the penal system during the 1980s was supplemented in

the 1990s through the creation of commercial-public hybrids that kept a significant proportion of governmental debt hidden. Alongside developments in prison privatisation, central government funded the introduction of new social management technologies such as EM and CCTV that initially attracted much popular support through their promised vision of a more ordered society. Throughout the 1990s, the Home Office spent 78% of its crime prevention budget on CCTV even though it was subsequently deemed to have had little effect in reducing crime and its associated fear (Norris and Armstrong 1999). Growth in EM was initially much slower, yet it found a boost in 1999 through the establishment of the Home Detention Curfew (HDC), a system of early-release for prisoners and a means for the Home Office to manage prison overcrowding. The initial 2 month period of early release was subsequently increased to 3 months and then four and a half months, each time in response to further prison overcrowding.

By the end of 1999 EM-based sanctions issued by the courts had been rolled out across England and Wales and since then, over 225,000 people have been made subject to some form of EM (Audit Commission, 2006). During this period there was also growth in the diversity of EM-based programmes as well as new technologies; voice verification in 2001, and satellite tracking in 2004. By the financial year 2004-05 EM curfew orders were being used in around 53,000 cases with a total Home Office expenditure of £102.3 million (Audit Commission, 2006). This growth looks set to continue. The Criminal Justice Act, 2003 gave EM a central role in the future of community corrections and re-emphasised the governmental focus on social ordering practices. This techno-managerial focus has been seen with other crime control technologies such as biometrics, CCTV and Automatic Number Plate Recognition (ANPR) that have developed in an environment that markets the benefits of commercial technologies in monitoring and managing unruly and disruptive behaviour. This has proved problematic in the areas of EM and CCTV whose development has been driven by political and ideological beliefs rather than evidence-based research. George Mair's research (2005) on the extent to which EM 'works' highlights the 'pick and mix' attitude taken by

ministers and other Home Office officials with regard to the findings in official research. Good news is embraced while bad news is quietly ignored (Hope, 2006).

For example, in 2003 a Home Office commissioned evaluation on EM was aborted due to it not being cost-effective, although it eventually became apparent that the Home Office did not like the results that were coming out of the study (Mair, 2005:271). Similarly, in 2002, SNP politician John Swinney, accused the Scottish Executive of providing evidence for increased privatisation in the Scottish corrections system by subsidising Serco's profits at Kilmarnock prison. Nearly three quarters of a million pounds of public money had been given to Serco in order to make the contracting-out process look more economically attractive to potential future bidders (Nathan, 2002). As criminologists have previously warned (Loader, 2000; Zedner 2006), contractually-based, sub-contracted sovereign governance has developed in a way that *enables* the development of new markets in crime control as well as growth in systems of social control. This raises concerns about the future of crime control in an age of penal populism and mass incarceration. Moreover, the latest EM policy developments in the arenas of immigration and work and pensions potentially provide the most significant development yet in providing a clear extension in the remit of commercial influence beyond the crime control system.

Away from the official discourses of governmental savoir there is a dearth of information concerning the practices used by sub-contracted agencies in implementing governmental policy, as well as the means by which this is recorded and audited. This was finally acknowledged by the Audit Commission report on EM in January 2006. The evidence-base analysed by the Audit Commission on behalf of the Home Office is provided by the commercial contractors on an intermittent basis without any independent inspection. It is this same evidence-base that identifies how much the commercial contractors pay back to the Home Office in fines for not fulfilling obligations in their contract. The Audit Commission's report stated that future evaluations would

require real-time access to the contractor's EM databases as well as whole case analysis in order to improve the 'rigour' with which the contractors were assessed. This statement amounted to a declaration of mistrust of the information being provided by the contractors and an acknowledgement that the regulatory systems used by the Home Office were not providing sufficient oversight.

The human consequences of insufficient regulation and monitoring are all too clear. The tragic death of Marian Bates in Nottingham in 2003 involved an offender subject to EM-based restrictions. An investigation into the supervision of Peter Williams found that he had not been monitored by Premier Monitoring Services (a subsidiary of Premier-Serco) for the previous two weeks and that the relevant Youth Offending Team had only been informed that he was missing on the morning of Mrs Bates's murder (HMIP, 2005). The Inquiry team highlighted concerns about a multitude of occasions where Peter Williams had been in violation of his curfew yet no investigation had been carried out and none of these violations had been reported to the Youth Offending Team. It seemed that Peter Williams had been free to move without any monitoring of his curfew compliance.

Despite widespread concern in the media about the extent to which commercial contractors carried out supportive functions beyond surveillance in the home the Home Office had shown little interest in labour-intensive human surveillance up to this point. Instead, a stream of audit-oriented evaluations had focused upon completion rates and levels of recidivism (Mair, 2005). The Audit Commission's acknowledgement that the commercial contractors received insufficient monitoring from the Home Office presents an interesting irony when set against the Orwellian backdrop of EM and raises questions about the absence of any independent oversight of the EM industry, especially when one considers the clandestine nature of the commercial sector and the need for transparency and accountability in criminal justice. The importance of an independent regulator was further

highlighted two months after the Audit Commission's report when Premier were questioned about the failure to report breaches on time by The Committee of Public Accounts. When questioned about the failure to report breaches, the boss of Premier's Home Affairs division, Tom Riall, admitted that they '...were not subject to performance deductions under the old contract for failures to report breaches on time' (House of Commons Committee of Public Accounts, 2006). In other words, there were insufficient incentives to comply with the contract due to the absence of financial penalties.

In 2006, Home Affairs contracts constituted nine per cent of Serco's first half year's turnover of £1,075 million (Serco, 2006). This crime control portfolio includes areas such as offender management, homeland defence, immigration control and law enforcement. Serco has identified further opportunities in the offender management market of more than £0.7 billion through the building of new custodial establishments, public prison contestability, resettlement, the market testing of probation services and community punishment (Serco, 2006). Alongside Serco, the extensive commercial market in justice and security in England and Wales is dominated by three other significant players; Group 4 Securicor, Global Solutions Limited and Sodexo. Despite the political emphasis being placed upon market-led 'contestability', the number of competitors in the field of commercial crime control has narrowed, leaving the big four to fight over the Home Affairs contracts. Within the EM field, this has been reduced to a duopoly with Premier-Serco and Group 4 Securicor the only service providers. This raises significant questions about service provision in a market where competition has historically been defined by price rather than quality of service (Zedner, 2006: 271).

If criminal justice procurement is determined by cost and capacity, a factor that would consistently place the big four private security companies ahead of their smaller rivals, then the market is becoming increasingly uncompetitive. This presents considerable concerns for public safety and the

future effectiveness of commercial crime control. The cost savings produced by the re-tendering of the EM contracts in England and Wales in 2004, and in Scotland in 2005, have been generated, in part, through a decrease in the levels of human support for offenders (Paterson, 2006). This has taken place despite there being international evidence for increasing the amount of human support for EM-based sanctions in order to increase their effectiveness (see Roberts, 2004) and demonstrates the importance of cost in determining successful contract bids ahead of the quality of service provided. Within this performance-focused context, welfare practices are viewed as 'beyond the contract' (Cooper, 2007) and as costs that should be minimised. This raises questions about whether EM-based programmes represent anything beyond the extension of commercial forms of social control into domestic spaces.

The growth of EM, like CCTV, in England and Wales has taken place despite a lack of conclusive evidence that it 'works' in protecting the public and reducing re-offending (Mair, 2005) and more recent evidence, outlined in this paper, has shown that new and emerging questions about the future role of the private sector within the criminal justice system are yet to be answered. Thus far, consultation and 'evidence' have been used to legitimize rather than inform policy which helps to explain the diverse use of EM technologies in criminal justice and the lack of a coherent Home Office policy concerning how it could be used most effectively. Instead, growth in EM has been driven by a fascination with the potential of new technologies to deliver managerialist solutions to complex social problems and the broader processes of neoliberal globalization that have developed the markets in incarceration and social control. The commercial market in crime control looks set to continue to expand and to present new opportunities for organisations linked into the outsourced justice sector. The advent of the National Offender Management Service (NOMS) in 2004 opened up new areas of the criminal justice system to market competition as part of the government's desire to move towards 'a true mixed economy' in criminal justice (NOMS, 2006) and has already been identified by Premier-Serco as a future growth area. This 'true mixed economy' has been

promoted by the desire to slim down the state's functions and sub-contract its sovereign responsibilities. It is ideologically, politically and economically driven with often little concern for the wider impact upon the crime control system and the public. As Cohen (1985) once noted, failure does not halt the spread of the net of social control, instead it perpetuates a search for new and more innovative forms of intervention.

## **Conclusion**

The commercial markets in incarceration and social control have been driven by the dual forces of neoliberal globalisation and insecurity that dominate the western world in the twenty-first century. In England and Wales, despite offering the enticing promise of enhanced competition, reduced costs and improved service in criminal justice this has not been delivered. The market ideals of enhanced competition and service have been translated into an opaque, loosely accountable commercial duopoly, whilst costs have increased through a widening of the net of social control. By sub-contracting service delivery to the commercial sector central government is able to expand the crime control system, and thus meet the political demand for enhancing security, whilst also deviating around fiscal restraints. This pluralisation of governance presents new problems with regard to transparency, in particular in identifying lines of accountability within a fluid structure where relations between different agencies are perpetually negotiated and part of an ongoing political contest.

This contest over the delivery of new forms of crime control is put into its historical context by Malcolm Feeley in his work on the legacies of privatisation. Feeley (2002) highlights the important role played by private entrepreneurs in the development of new and expanded forms of social control, most clearly through the development of transportation and the prison in the eighteenth and



nineteenth centuries, which were ultimately brought under state control. EM, and other forms of commercial surveillance, potentially provide a continuation of this historical trend. Recent policy developments in the United States present a potential future vision of social control beyond the prison and through surveillance. EM technologies are now being used to monitor the whereabouts of elderly victims of dementia and also for sex offenders who have completed their sentence. This presents two new avenues for the industry in technocorrections. Whilst monitoring the whereabouts of the elderly has long been identified as a target market for the EM industry, monitoring offenders after the completion of their sentence represents a further proliferation in the use of EM-based programmes and a widening of the social control system through the lifelong surveillance of offenders. We will have to wait and see what legacy this leaves for future generations.

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