

9-11-2013

Suspect Subjects: Affects of Bodily Regulation

Kathryn Henne

Australian National University

Emily I. Troshynski

University of Nevada, Las Vegas, emily.troshynski@unlv.edu

Follow this and additional works at: https://digitalscholarship.unlv.edu/cj_fac_articles



Part of the [Criminology and Criminal Justice Commons](#)

Repository Citation

Henne, K., Troshynski, E. I. (2013). Suspect Subjects: Affects of Bodily Regulation. *International Journal for Crime, Justice and Social Democracy*, 2(2), 100-112.

<http://dx.doi.org/10.5204/ijcjsd.v2i2.108>

This Article is protected by copyright and/or related rights. It has been brought to you by Digital Scholarship@UNLV with permission from the rights-holder(s). You are free to use this Article in any way that is permitted by the copyright and related rights legislation that applies to your use. For other uses you need to obtain permission from the rights-holder(s) directly, unless additional rights are indicated by a Creative Commons license in the record and/or on the work itself.

This Article has been accepted for inclusion in Criminal Justice Faculty Publications by an authorized administrator of Digital Scholarship@UNLV. For more information, please contact digitalscholarship@unlv.edu.

International Journal for Crime, Justice and Social Democracy



Suspect Subjects: Affects of Bodily Regulation¹

Kathryn Henne

Australian National University, Canberra

Emily Troshynski

University of Nevada, Las Vegas

Abstract

There is a growing body of academic literature that scrutinises the effects of technologies deployed to surveil the physical bodies of citizens. This paper considers the role of affect; that is, the visceral and emotive forces underpinning conscious forms of knowing that can drive one's thoughts, feelings and movements. Drawing from research on two distinctly different groups of surveilled subjects – paroled sex offenders and elite athletes – it examines the effects of biosurveillance in their lives and how their reflections reveal unique insight into how subjectivity, citizenship, harm and deviance become constructed in intimate and public ways *vis-à-vis* technologies of bodily regulation. Specifically, we argue, their narratives reveal cultural conditions of biosurveillance, particularly how risk becomes embodied and internalised in subjective ways.

Keywords

Surveillance, affect, sex offenders, parolees, athletes, doping.

Introduction

Criminological literature on the use of surveillance focuses primarily around two conversations. The first discusses the efficacy of surveillance systems for crime prevention (that is, how is surveillance technology used and regulated). The second examines the rapid growth of surveillance systems within criminal justice policy as reflective of socio-political changes in liberal democracies (that is, how surveillance technology regulates us). Exploring the links between the emergence of neo-liberal policies and actuarial, risk-based criminology, scholars suggest that surveillance regimes evidence 'new means to render populations thinkable and measurable, through categorisation, differentiation and sorting into hierarchies, for the purposes of government' (Stenson 2001: 22-23). Further, in focusing on the accountability mechanisms of neo-liberal policies, they contend that, 'the powerful are required to be transparent, while the less powerful – the poor and other marginalised groups – are required to endure surveillance, even if such surveillance is meant to be a part of an ethics of care' (Johnson and Wayland 2010: 27). In essence, as these and other scholars have argued (for example,

Haggerty and Ericson 2006; Haggerty and Samatas 2010; Lyon 2009; Shklovski, Vertesi, Troshynski and Dourish 2009), the regulatory power offered by surveillance is a form of governmentality² that brings with it many negative and discursive effects.

As administrative strategies that prioritise risk management schemes have become central components of law and governance, so too have everyday forms of monitoring and intrusion (Ericson and Haggerty 1997; Feeley and Simon 1995; Hudson 2003; Loader and Sparks 2002; Scott 2007; Stenson and Sullivan 2003). Common examples include statistical algorithms and data management tools used to determine individual behaviours and scanning devices used to predict an individual's next plans, as well as 'risk and needs assessments' for individuals (including juveniles) in the criminal justice system, namely – but not limited to – those who are incarcerated or are on probation or parole. In doing so, these tactics are future-oriented; that is, they act in a preventive manner, anticipating an offence based on the presumption that an individual or group is 'at risk'. Nikolas Rose (1998: 177) notes this 'risk frame' channels 'institutional practices and systems into the following mold: assess, predict and manage' in ways that transform 'pervasive uncertainties and indeterminacies' into 'calculable probabilities of harm to be managed by rational experts'. Managing risks disregards forms of resistance outside of the governing risk frame as unnecessary and irrational, carrying far-reaching effects. The emphasis on risk, according to Clive Norris and Gary Armstrong (1999: 24), makes each person a legitimate target for surveillance because 'everyone is assumed guilty until the risk profile assumes otherwise'. In short, we become suspect previous to an offense or transgression. Given the various 'risk logics' at play (Ericson and Doyle 2003), we embrace recommendations to attend to risk as a 'heterogenous' and 'variable' technique of governance (O'Malley 2004; Valverde; Levi and Moore 2005) by examining particular manifestations in two contexts. Here, we pose the following questions:

- How do practices of surveillance inform notions of subjectivity?
- What are the broader discursive and cultural effects of surveillance schemes across populations?

Our aim is to highlight the affective contours of these practices; that is, the sensory encounters with these technologies and the emotive forces they index. In doing so, we seek to contribute to the growing academic literature that scrutinises the effects of technologies deployed to surveil the physical bodies of citizens, what we refer to in this paper as 'biosurveillance'.³ Specifically, we consider commonalities between two distinctly different populations: paroled sex offenders on GPS under Jessica's Law in California; and elite athletes subject to various surveillance techniques under the World Anti-Doping Code (WADC). This paper focuses on how populations endure biosurveillance technologies that track individual bodily activities, including physical movements and internal functions. The commonalities between these two seemingly divergent populations illuminates how biosurveillance both relies upon and instills meanings of risk and risk management while also accentuating a range of intimate implications. In particular, the logic of suspicion embedded into risk management strategies becomes transposed onto and negotiated by surveilled subjects.

Predominantly, in both cases, biosurveillance renders people as *risk-objects*: that is, not only are they subject to risk management strategies, they are also cast as the source of risk. On the surface, both paroled sex offenders and elite athletes have been characterised as 'at risk' for future offending behaviour. For sex offenders, it's the issue of recidivism; for athletes, it's the possibility of doping or banned substance use. While this preventive rationale has served to justify and perpetuate the surveillance of their bodies, we explore other prospective parallels between them. We believe this discussion is imperative. In thinking about justice, biosurveillance practices such as these evidence an important shift away from notions of guilt determined retrospectively – that is, based on evidence of actual events and activities that have taken place – to an impulse of prospective culpability that aims to detect future wrongdoings. It

is our hope that a closer look at the effects of bodily regulation in relation to a range of individuals – including ex-convicts and professional and aspiring elite athletes – will enable further critical analyses of the everyday instances of biosurveillance.

Biosurveillance itself takes many forms. For example, the use of lap bands and gastric bypass surgeries (particularly in the US), which both restrict and regulate food intake, are but some of the current technologies used to promote 'healthy' weight loss. The increased use of Buccal cheek swabs has also been endorsed as a way to not only 'save a life' by finding a future bone marrow donor/match but to also collect and process the DNA of individuals under arrest in what is publically heralded as a 'relatively non-invasive way'. Interestingly, sport has a long-standing reliance upon biosurveillance, even using analyses of Buccal smears in the 1960s to 'gender test' athletes in women's events, advertised as a 'relatively non-invasive way' of protecting fair play (Henne in press). Further, biosurveillance can also take on more preventative forms such as genetic screening in the workplace as a way of controlling for future incidences of occupational diseases. To be sure, as biosurveillance increases in sophistication so too does its regulatory scope. In fact, it even extends *into* the physical body as, for example, in the role of bodily screenings as a determinant of employment, access to insurance, and/or the 'right' to travel and cross international borders (McGuire 2012). Indeed, as this paper attests, the interplay between surveillance and embodiment demonstrates very intimate implications of risk management practices for all of us, thus providing additional insights into how surveillance informs subjectivity on a broader scale.

This analysis of parolees and athletes gleans insight into the perspectives of persons-as-risk-objects. Its attention to affect highlights how acts and emotions register in visceral ways, enabling a critical analysis of bodily encounters with social forces (Gregg and Seigworth 2010). Affective responses, explains Kathleen Stewart (2007: 40), are not so much 'units of knowledge, as they are expressions of ideas or problems performed as a kind of involuntary and powerful learning through participation'. Biosurveillance is central to the everyday lives of paroled sex offenders and elite athletes, and both groups revealed that they had internalised their suspect status. Through an analysis of their sensory and emotive responses to surveillance, this paper illustrates how they develop intimate relationships with technologies that surveil them and come to view themselves and others as 'suspect'. In attending to their experiences, we hope to move conversations about surveillance from questions concerning administrative and 'scientific' risk management to those of autonomy, subjectivity and ethics.

Relying upon narratives elicited through focus groups with parolees on GPS (N = 47) and interviews with athletes in Australia, New Zealand and the United States (N = 83), this paper, while acknowledging evident differences in these regulatory environments, discusses their shared affective consequences. Through this mode of inquiry, our aim is to reveal the tenets and particularities of biosurveillance across these two populations and contexts. The following accounts illustrate how these persons-as-risk-objects cease to be seen as individuals in need of care and support but, instead, emerge as suspect subjects, a complicated challenge to dwell on when considering how to deliver 'just' modes of regulation in these spaces.

Research background and legal context

These introductory remarks stem from a larger academic conversation suggesting that surveillance is now *the* dominant organising practice of late modernity used for a range of governmental ventures (see, for example, Gandy 1993; Haggerty and Ericson 2006; Haggerty and Samatas 2010; Lyon 2007). Drawing from two separate qualitative projects on biosurveillance,⁴ the centerpiece of this collaboration features the everyday realities of a diverse group of participants and their experiences with surveillance schemes developed for monitoring and controlling their mobility as well as managing their (future) risk. Although we contend that

biosurveillance similarly renders sex offender parolees and elite athletes as risk-objects, these regulatory environments are distinctly different and are well worth noting here.

Jessica's Law, which mandated lifelong GPS surveillance and stringent tracking of sex offenders on parole, was originally passed by the Florida legislature in 2005 (Fla. St. § 775.21) and has been adopted by 43 additional US states including California (Troshynski 2011; Troshynski, Lee and Dourish 2008). In 2006, California residents voted to pass Proposition 83, a ballot initiative statute entitled: *Sex Offenders. Sexually Violent Predators. Punishment, Residence Restrictions and Monitoring. Initiative Statute* (later renamed *The California Sexual Predator Punishment and Control Act*). Most notably, this law created severe residency restrictions, thus greatly limiting the location of where sex offenders may live or work while surveilling them for life. GPS surveillance anklets actively monitored all participating sex offender parolees before, during and after the research project. They were asked to discuss their initial reactions to Jessica's Law; to being placed on GPS; thoughts about the potential benefits and drawbacks of Jessica's Law including any changes in their relationships (with family, friends, co-workers and parole officers); and changes in everyday routines.⁵

The anti-doping movement is a global regulatory regime spearheaded by the World Anti-Doping Agency (WADA), governed by the World Anti-Doping Code and backed by the UNESCO International Convention Against Doping in Sport, which legally mandates governmental signatories to pass legislation that supports this sport-specific war on drugs. By leading this global 'hybrid' regulatory regime, WADA relies upon both legal and nongovernmental partnerships to bind athletes to regulation (Henne 2010). Athletes and support staff are, therefore, not only compelled by international and national laws in many jurisdictions but also contractually bound to comply with regulation. Otherwise, they cannot participate in most sanctioned sporting events (at least those sports that abide by WADA's rules, of which there are many). Since its establishment in 1999, WADA has implemented a multifaceted approach that crosses multiple geographic areas and sports. Random drug testing in and out of competition, monitoring high-level athletes' whereabouts and blood profiling have become common practice. WADA's activities rely upon and actively encourage innovation to detect new substances and develop new methods of surveilling athletes.

In considering these regulatory regimes and their differences, the impetus for monitoring subjects is also distinct. Whereas the use of GPS anklets targets paroled sex offenders after they have served their sentence for crimes committed, anti-doping regulation aims to deter the use in sport of prohibited substances and methods.⁶ Put another way, GPS monitors and delineates impure parolees from others in the community, while anti-doping regulation aims to preserve the purity of athletes. The composition of these populations is thus vastly different; however, their experiences are analogous in that the surveillance regimes watching over them retain a shared tenet: their justification is to prevent future offending behaviour. Therefore, a similar affective theme emerges: participants internalise regulatory messages by seeing themselves and others like them as suspect subjects, while developing intimate, and yet tenuous, relations with mechanisms of surveillance targeting their bodies.

Seeing the self and others as suspect

Parolees and athletes take deeper meanings from the forms of surveillance to which they are subject. While the parolees and athletes we spoke to commonly see themselves as suspect, they do so in ways that reflect the regulatory distinctions they face. In particular, parolees internalise a shared negative suspect status, arguably a kind of caste identification, while athletes come to find their own bodies as well as those of other competitors suspect. In other words, the surveillant gaze becomes part of their own subjective viewpoints. Parolees internalise a shared negative suspect status, while athletes come to find their own bodies as well as their competitors suspect.

The shame and anxiety of occupying a new legal category of 'Sexually Violent Predator' (SVP)⁷ brings with it a heightened awareness of parolees' social exclusion and dehumanisation. Not only do they speak of being 'stalked by the state', they also feel like they are deprived of human qualities. To borrow the words of one interviewee, 'It is very depressing. It robs a piece of my humanity. I am not trying to negate my crime; we are talking about the impact of GPS on us'. Overall, they are, as many participants reiterated, 'shit'.

One parolee mentioned, 'This thing [GPS] just keeps reminding us that we are bad, we are shit, we are outcasts in our community and we are shit in this society. That makes a tremendous impact on us, our self-esteem. It's very hard'. Another explained, 'We're the worst thing in everybody's eyes. We're looked down on. We're hated. People kill a baby and it's not as bad. People shoot someone in the head, still, not as bad'. One participant expressed, 'Now who's America's most wanted?' to which another parolee answered, 'We are!'. All parolees articulated deeply rooted feelings of social exclusion, and the struggle of being surveilled inscribed this negative sensibility.

Many parolees depicted wearing a GPS as akin having life-long physical ailments or permanent visible marks. 'It's like a disease', one participant explained. 'They might as well be tattoos', said another. A third participant expressed that 'you feel like you have the mark of Cain'. These were common sentiments, elaborated upon as being 'like, [using both hands to point to himself], I'm Freddy Kruger mother fucker! People perceive it like that. They see the monitor and they perceive me as a predator'. Similarly, other conversations centred on feelings of individual shame due to wearing GPS and how that shame prompts fear, as the unit symbolises a perceived risk to reoffend. One participant stated, 'The crime you commit should not have this on your leg, and then you show it, and people think, "Dude, this is a fucking murderer, we should kill him!"'. Another agreed, 'And the stigma everybody associates because they made such a big issue out of it—the whole GPS with child molesters' thing. I don't even want to go through that hassle of people thinking the worst of me'. Yet another participant acknowledged, 'I am fearful—everyone is after you'. Feelings of shame thus emerge as interconnected with internalised social stigma and concern about public consequences (that is, vigilante justice).

This subjective interplay is so profound that it prevents parolees from enjoying the simplest pleasures. As explained by one participant, upon being released from prison,

I wanted to go to Carl's Junior—they had been advertising that mushroom burger for three years, and I was going to have one when I got out. That day, I couldn't eat it. I was stunned. I felt so bad. I can't remember the last time I felt that bad—that day was the worst day of my life. I was like, 'Oh my God, they are looming over my shoulder constantly', and I'm making sure my pant leg was down [to hide the GPS].

He was unable to enjoy a meal because of the nagging anxiety associated with his new legal status of SVP and the wearing of a visible GPS unit. This initial shock would, in turn, become part of his everyday life.

In contrast, athletes are not compelled to physically wear monitoring technologies on an everyday basis. While they sometimes do wear GPS units, these are often to monitor their competitive performances, not to track their whereabouts. They do, however, live regimented lives shaped by many external demands, many of which orient around the pursuit of modifying their bodies for performance enhancement. Thus, as Susan Brownell (1995: 10) explains, 'the horizons of an athlete's world can never stray far beyond her body'. Anti-doping regulation shapes these horizons by mediating the boundaries of acceptable substances and methods athletes can use and by requiring them to comply with various forms of surveillance including

drug testing, blood profiling, and whereabouts reporting so that they are on call for unannounced sample collections. If an athlete tests positive for a banned substance or fails to comply with regulatory conditions, many of which are not unlike the complicated demands of parole in the US, he or she is liable for an anti-doping rule violation (ADRV).

Many interviewees acknowledged that regulation shifted their perspectives on what they ingested – and on their bodies more generally. As one rugby league athlete reflected, ‘It changed the way I look at what I eat. I have to be smart about what [supplements] I take ... I can’t be smoking that shit [marijuana], either’. Like many other athletes, he acknowledged that rules held athletes individually responsible for contaminations detected through testing (even if unintentional) and that many drugs used primarily for recreational purposes, such as cannabis, would result in sanctions if detected during competition. Similarly, a rugby union player stated:

I never used to think about what I ate being bad or if I’d test positive for something. Now I look at my body differently. When I look at stuff [supplements] on the shelf and after I take something, I am always worried about it—even when they [support staff] tell me it’s okay to use.

As most first-time sanctions result in a two-year ban from sport, many athletes recognised that an ADRV could end their athletic careers and jeopardise their livelihoods. Regulation thus compelled them to take responsibility for these risks to avoid punishment. Of the athletes who shared these anxieties, none expressed a fear of others cheating or the need to catch athletes cheating. Instead, they internalised the regulatory gaze cast onto their bodies, and their narratives prioritised feelings of self-consciousness about what they consumed.

Not all athletes conveyed this sense of responsibility. In fact, many who competed in sports with documented histories of doping (such as cycling, weightlifting and track and field) projected suspicions onto other competitors. One former sprinter who narrowly missed qualifying for the Olympics explained that he was naïve for not using performance-enhancing drugs:

I still just want to know just how fast I *could’ve* been. So many of those guys I competed against went on to the next level. They were Olympians, and almost all of them were on something. Well, at least that’s what everyone says. I guess I *really* don’t know if they did, but, by the looks of them, I am pretty sure they were! I just know that I didn’t, and I don’t know how fast I could’ve been.

He disclosed that some of his friends had used performance-enhancing drugs, prompting him to presume that the most successful runners had as well, even though he admittedly relied on anecdotal evidence.

Other interviewees reflected on competing in a sport ‘plagued by widespread doping’. One participant felt so strongly about the pervasiveness of doping in her sport that she competed for another country. (She was born in another country and therefore eligible to do so.) She expressed frustration that she failed to qualify for the Olympics, stating that she could not believe others were that much better than her, unless they were doping. Her evidence? Beyond her competitors’ improved performances, she responded bluntly, ‘Well, I could tell just by looking at them. It just didn’t look right, you know?’. With no evidence of cheating available, seemingly unnatural female muscularity served as proof.

Gendered transgressions are longstanding grounds for rendering particular women suspect. As a retired athlete explained, ‘[S]ome of those [Soviet bloc] women weren’t women any more. You could tell back in those days who was cheating. Today, with all that’s out there, it’s not so easy. You really can’t trust anyone’. This participant, among others who did not share his opinion, acknowledged that regulatory messages advance a climate of suspicion, reiterating to ‘clean’

athletes that they are 'under attack' by those who cheat by doping, even though less than two per cent of athletes tested in the jurisdictions studied here tested positive for a banned substance.

Some athletes perceived anti-doping regulation as an extension of state surveillance. This was especially prevalent among male athletes from marginalised ethnic backgrounds (young Māori and Pacific Islander men in New Zealand and Australia, mostly Latino men in the United States). Though the particularities of their expressions varied, all of them relayed that it was 'normal', as they were already viewed as suspect in other facets of social life. One player of Samoan heritage said that he expected higher levels of scrutiny:

I expect it. I should expect it, because they're always looking out anyways. You know, it's like this, they know I'm going to be good, because I am good at what I do [sport]. And, I gotta watch my back because of it. ... I got it, though.

Rather than admitting to or describing frustrations, he and many others reiterated that they could handle it, paralleling it to other challenges they faced as immigrants (in this case, to New Zealand). As discussed in the following section, these shared suspect subjectivities took shape through intimate relations with regulatory technologies.

Intimacies of surveillance technologies

Both parolees and athletes maintained close, albeit conflicted, relationships with the technologies of surveillance aimed at their bodies. For parolees, feelings of exclusion, difference and indignity were main tempers that shaped their perspectives of themselves as suspect, thus promoting a continued sense of marginality and uncertainty. Athletes shared similar concerns. In particular, they came to doubt their peers' compliance and to fear authorities while also being made to feel like a 'criminal', even though they had, in many cases, not committed an offence.

For instance, once released from prison, paroled sex offenders are equipped with a GPS unit worn around the ankle. They are then told, briefly, how the technology works (that it 'tracks' them), to charge the unit regularly, and not to get it wet or tamper with it (otherwise a parole violation would ensue). Parolees are therefore constantly concerned with the maintenance of their GPS unit, even though their technological knowledge of GPS and how it 'tracks' them varies. What is common is how the GPS unit becomes both inconvenient and risky.

Participants described how GPS was a daily hindrance that impacted how they navigated their life, thus making many so-called 'normal' activities impossible. In speaking about always being aware of the unit, a parolee, like many others, mentioned, 'You can't wear shorts, because you have to try to hide it. It's a stigma. People look at you so you have to hide it'. Feeling physically uncomfortable in public, parolees often changed their outward appearance for two primary reasons. First, they acknowledged the need to cover and safeguard the GPS unit so as to not receive violations for tampering. Secondly, they hid the unit to safeguard themselves and minimise public shame. Several participants also commented on changes in physical activity, and many elucidated that they felt a loss of freedom and mobility: 'You're not as free to go places once you're invited to do different things. You can't do as much ... It's a big life stopper'. Relationships with personal GPS units directly informed the changing nature of parolees' identity from being active, social individuals to inactive, suspect subjects.

Being equipped with GPS also prompted changes to daily hygiene routines and physical leisure activities as well as concerns about physical injuries/harm. One participant explained that parole agents 'tell you that you can't take a bath, we can't go swimming, we can't take a long shower even if you like long showers'. In discussing problems with GPS units during one focus group, a participant laughed, saying: 'Once it came up as a technical violation. They [Parole

officers] thought I was tampering with it. They came out, looked at it, opened it up and found water'. To this, another parolee responded, 'See, these things can't be too accurate. It seems like they're going to get you into trouble without you doing anything'.

Through their experiences with these fragile GPS units, parolees interpreted conditions placed upon them as not being about helping them succeed as individuals but about helping the GPS remain active and functioning. The relationship between man and machine became one of co-dependence, so much so that it hindered parolees' personal physical and emotional preservation.

Interviewees expressed intense frustration over not being able to appropriately cleanse themselves or engage in social activities. They longed for normalcy. One said, 'I just want to take a long soak in the bathtub!'. Another mentioned, 'Since the first day they put that [GPS] on, I couldn't take a bath. I had wanted one since prison'. Despite attempts to preserve devices, units caused personal injury. Burns, lesions, scabs and scars were common, as was apprehension about long-term health consequences. As one described:

I almost broke my leg getting it snagged up. But one thing I've always thought about, you know cell phones and microwaves? What affect do these have over the long term with cellular structure and microwaves? You're being exposed to something you don't want to be exposed to.

Another parolee even asked, 'What does this button mean [pointing to his GPS]? It says, "Don't touch". Does it blow you up?'. Their remarks highlighted a catch-22: though promoted as a safe and effective tool for the supervision of parolees, the limitations and physical hazards of GPS preoccupied participants.

In addition to injuries, some parolees revealed anxieties about meeting health care practitioners. One stated, 'I am embarrassed. I haven't been to a doctor since I got it'. Two other participants discussed how they normalised conversations while visiting their doctor, one lying that the unit was an MP3 player and another stating that it was a condition of bail for vehicular manslaughter, not a sex offense. Several others shared similar stories, including one that resulted in a delayed surgery because he had to go through an extended process to temporarily remove the GPS unit. In sum, the risks of the anklets had far-reaching effects.

Anti-doping surveillance also exacerbated risks for athletes, prompting criticisms that these forms of biosurveillance incentivise more dangerous doping products that evade detection. For interviewees, risk gave way to fear of authorities, not doping. Many athletes characterised anti-doping regulation as a monitoring system in place to 'catch' rather than help them. They expressed resentment toward being monitored 'like criminals', rarely acknowledging that some anti-doping agencies try to help them avoid inadvertent ADRVs. Instead, on more than one occasion, athletes asked if authorities wanted access to interview transcripts, explaining regulators 'wanted to know everything else'.⁸

Most participants complained about restricted mobility due to the Whereabouts Program, which requires athletes to provide information regarding where they are, in or out of competition. Although surveillance was not always physically present (compared to how sex offenders endure GPS units), anxieties around the scope and power of surveillance were still prevalent. For example, although anti-doping agencies provide information regarding substances, many participants were reluctant to ask them or call the information hotlines. One Australian athlete stated, 'If I call the hotline, they may start tracking me'. Even though he did not think he was doing anything wrong, he became increasingly suspicious of sport staff when high-profile doping accusations surfaced. Other athletes shared this suspicion, stating that they had already been 'treated like lab rats' – as opposed to people – for research studies and

performance evaluations. Overall, they retained a common distrust but did not express these feelings to authorities because they were nervous about possible consequences or 'just didn't see the point because it won't change things'.

Gendered distinctions also emerged, particularly regarding resistance to surveillance. For five female participants, it crystallised around urine sample collection for drug testing which, as described by one athlete, required 'being naked from the nipple down'. Almost all athletes came to accept it as a 'tradeoff' for being elite competitors, but many women reflected on the shock of their first sample collection. As one stated, 'They tell you what it's going to be like, but you don't get it until you are there naked peeing in front of someone'. Another affirmed, 'The first time felt like I was being violated'. Others described programs that sent adolescents home with cups to 'practice'. Overall, interviewees often normalised biosurveillance, suggesting that regular bodily scrutiny and intrusion are tacitly accepted duties of elite competitors today.

In bringing these case studies together, the everyday experiences of sex offender parolees and elite athletes highlight the extent to which they feel inundated with negative connotations that stem from biosurveillance (for example, what they can *not* do, where they are prohibited from physically being, how they suspect themselves and others like them to be at-risk to either reoffend or dope). Comparatively considering them gleans insights into the intimate and co-constitutive relationships formed between the subjects of surveillance and the biosurveillance processes. Together, they illuminate how biosurveillance is not simply a device placed upon bodies but, rather, a process that in part shapes who surveilled subjects become.

Conclusion

The focus on affect attests to how these surveilled subjects respond to feeling as though they are continuously watched. They internalise messages about themselves and others seemingly like them as being 'suspect'. Despite evident differences between paroled sex offenders and elite athletes, they both emerge as 'at risk' for future offending behaviour, thus justifying and perpetuating surveillance. Though preventative in aim, biosurveillance exacerbates risk and risk-taking in ways that subjects both internalise viscerally and negotiate actively. This analysis reveals some of participants' complex relationships with mechanisms of surveillance that govern their mobility, bodily behaviours and desires.

Perspectives featured here provide insight into how biosurveillance is a co-constitutive process. The picture that it presents complicates depictions of paroled sex offenders as merely predatory subjects and those of elite athletes as merely privileged persons. Participants' feelings about their engagement with biosurveillance also highlight that regulation feels constant and pressing, a tension that becomes part of who they are. Not only do the boundaries between human and surveillance become blurred, confounded and interrelated but so, too, do the boundaries of regulation. Understood through an affective lens, biosurveillance as a regulatory tactic shifts risk and responsibility onto individuals; however, in so doing, this process also implicates regulatees' embodied subjectivity. Our participants' suspect subject status therefore points to broader concerns around justice and its possibility in these spaces, three of which we highlight by way of conclusion.

First, the use of biosurveillance, by presuming and instilling suspicion, often forecloses more democratic forms of governance under the presumption that the persons subject to surveillance are inherently 'at-risk' for offending or are otherwise exceptional classes of people. In other words, participants' experiences exemplify how a range of persons cease to be seen as individuals with rights but, instead, as suspect subjects. Second, and closely related to the first point, is how the presumptive need for surveillance erodes these individuals' and groups' abilities to assert rights-claims to privacy and bodily integrity. That is, how does one affirm these rights when law and regulation has already rendered their body open to surveillance and

scrutiny, even in the absence of evidence that these technologies deter the offences that they claim to guard against?⁹

Third, these technologies, if anything, have actually enabled policymakers to expand the number of violations that can fall under these suspect categories. For sex offender parolees, they are forced to navigate a long list of new felony parole violations intimately connected to the wearing and maintenance of GPS units. For athletes, they negotiate a series of biological profiling and whereabouts requirements and face sanctions for unintentional transgressions or failure to comply with reporting requirements. In sum, biosurveillance via 'prevention' actually makes things – or life more generally – more dangerous for those being regulated. Consequently, biosurveillance becomes a preventive performance at best, one that carries enduring effects. Not only is biosurveillance itself intrusive, in the pursuit of rendering bodies more transparent to authorities, it also brings about an onslaught of more rules and innovations in order to 'see' more of individuals and groups and their whereabouts. Further, finding an offence, not simply preventing the risk of an offence, is the motivating force for this expansion.

While criminologists have brought attention to issues of 'pre-crime' as an anticipation of risk and a broader shift in temporal orientation (Zedner 2007), we still know little about how these logics come to bear on citizens and how they erode understandings of full citizenship rights and bodily integrity. Narratives about the lived realities of biosurveillance schemes help us to better understand crucial elements of the interplay of crime and law, technology and subjectivity. What happens, though, as these practices become increasingly widespread, working within our own everyday lives, not simply with those deemed criminal (like sex offender parolees) or exceptional (like elite athletes)? Indeed, there are countless examples: state policing agencies' use of information and communication technologies (ICTs) to access citizen's location; the use of ANPR cameras set alongside our public roadways to track the speed of your mobile as you drive; Facebook to find bail jumpers and confirm the whereabouts of a mother going through a child custody hearing; and Google Earth and Street View to provide extra 'eyes on the street'. Federal governments have begun to use facial recognition software to identify offending behaviour patterns, including hairstyle, eye colour and ethnicity, that are then 'matched' to risk profiles as well as Radio Frequency Identification (RFID) chips secured within the thin pages of our passports to document, confirm and track the international travels of citizens. These practices co-exist alongside the presence of closed-circuit television (CCTV) and a collection of detailed mobile-phone records, further suggesting that such surveillance is widespread and routine. What, then, are the broader effects – and affects?

Although the everyday citizen does not yet endure biosurveillance in the ways that parolees and athletes do in our analysis, a common concern around transparency emerges; not the transparency assumed to be a kind of 'check' on governing authorities but a bodily transparency that makes one more visible to both public and private agencies alike. What becomes of our 'rights', as well as our sense of self, autonomy and privacy, in light of these shifts in governance strategies? The narratives of sex offender parolees and elite athletes point to a larger issue at stake: what happens when individuals and their bodies are coerced into becoming so visible and transparent that they begin to view themselves as that thing they were proscribed as being at-risk of becoming?

Correspondence: Dr Kathryn Henne, Research Fellow, Centre for International Governance & Justice, Regulatory Institutions Network (RegNet), ANU College of Asia & the Pacific, Australian National University, Canberra ACT 0200. Email: kathryn.henne@anu.edu.au.

-
- ¹ This paper is based on research supported by the National Science Foundation (Grants No. SES-0851536 and SES-0961803) and the International Olympic Committee. We are grateful to the participants whose stories made this collaborative research article possible. We thank Elliott Currie, Justin Richland, Simon Cole, Susan Bibler Coutin and Paul Dourish for their insights and mentorship during these research projects. We also benefited greatly from feedback from Rachel Dioso-Villa, editors and anonymous reviewers as well as participants at the Crime, Justice and Social Democracy 2nd International Conference which was held at Queensland University of Technology in July 2013.
- ² Foucault maintains that the idea that modern power – that is, different forms of power that coincide in subtle ways – is not simply a negative or repressive power. It also has the potential to (and often does) assume positive functions associated with ‘taking care’ of human life. Foucault also holds that biopolitics constitute a transformation in the nature of political power: ‘For millennia, man remained what he was for Aristotle: a living animal with the additional capacity for a political existence; modern man is an animal whose politics places his existence as a living being in question’ (Foucault 1990: 143).
- ³ This is to distinguish our focus from the increasingly common medical practice of documenting vital signs of citizens, which is among the practices analysed here.
- ⁴ For the research with sex offender parolees, interviews and focus groups were conducted several times between 2005 and 2009. This research was reviewed and approved by the Institutional Review Board (IRB) and was compliant with human subjects protection rules and regulations (Human Subjects Approval, UCI HS # 2005-4681; EMOD # 3178, 2006, 2007, 2008). For the research working with athletes, interviews and participant observation took place during 2008-2011. This research was reviewed and approved by the IRB and was compliant with human subjects protection rules and regulations (Human Subjects Approval, UCI HS #2008-6153.)
- ⁵ Transcripts were created, collected, and reviewed by one of the authors. In both analyses, qualitative analysis that followed was based on an open coding scheme grounded in re-occurring themes and issues discussed by participants. All excerpts presented throughout this paper are reproduced exactly as spoken by participants and, where relevant, include group agreement, consensus, dissent, non-verbal communication (as presented in brackets []).
- ⁶ Under current rules, doping is a broad category that encompasses many more substances and methods than those believed to have performance-enhancing qualities, including drugs used primarily for recreational purposes.
- ⁷ SVP is a new classification scheme created under the enactment of Jessica’s Law, thus making more individuals eligible for a SVP conviction (and civil commitment). It does so by reducing from two to one the number of prior offenses used to qualify an individual as SVP and by making additional prior offenses, including crimes committed by juveniles, ‘countable’ towards SVP convictions.
- ⁸ At the time that this athlete expressed this concern, authorities could not compel researchers to give information based on research; however, in 2013, when the Australian Federal Parliament made changes to the 2006 Australian Sports Anti-Doping Agency Act 2006, the language of the amendment would enable authorities to do so. In part due to interventions made from a host of stakeholders, the final act, *Australian Sports Anti-Doping Agency Amendment Bill 2013*, does not include that clause. For more information, refer to:
http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=s902
- ⁹ For an overview of several studies summarising treatment, rehabilitation and recidivism rates for sex offenders, see Troshynski (2011). According to a meta-analysis of eighty-two recidivism studies, ‘most sexual offenders were not caught for another sexual offense (13.7%); on average, they were more likely to recidivate with a nonsexual offense than a sexual offense’ (Hanson and Morton-Bourgon 2005: 1154-1158). In relation to anti-doping regulation, recent research finds current rates of drug testing are ineffective and to test at rates that would deter use would be cost prohibitive. Based on a probability and cost-benefit analysis, the research team concludes, ‘anti-doping systems in sports are doomed to fail’ (Hermann and Henneberg 2013: 1).

References

- Brownell S (1995) *Training the Body for China: Sports in the Moral Order of the People’s Republic*. Chicago: University of Chicago Press.
- Ericson R and Doyle A (eds) (2003) *Risk and Morality*. Toronto: University of Toronto Press.
- Ericson R and Haggerty K (1997) *Policing the Risk Society*. Toronto: University of Toronto Press.
- Feeley M and Simon J (1995) True crime: The new penology and public discourse on crime. In Blombery T and Cohen S (eds) *Punishment and Social Control: Essays in Honor of Sheldon L. Messenger*. New York: Aldine De Gruyter: 147-180.
- Foucault M (1990) *The History of Sexuality: Volume 1*. New York: Vintage Books.
- Gandy O (1993) *The Panoptic Sort: A Political Economy of Personal Information*. Boulder, Colorado: Westview.

- Gregg M and Seigworth GJ (eds) (2010) *The Affect Theory Reader*. Durham, North Carolina: Duke University Press.
- Haggerty KD and Ericson RV (eds) (2006) *The New Politics of Surveillance and Visibility*. Toronto: University of Toronto Press.
- Haggerty KD and Samatas M (eds) (2010) *Surveillance and Democracy*. New York: Routledge-Cavendish.
- Hanson RK and Morton-Bourgon KE (2005) The characteristics of persistent sexual offenders: A meta-analysis of recidivism studies. *Journal of Consulting & Clinical Psychology* 73(6): 1154-1163.
- Henne K (2010) WADA, the promises of law and the landscapes of anti-doping regulation. *PoLAR: Political and Legal Anthropology Review* 33(2): 306-325.
- Henne K (in press) The 'science' of fair play: Gender and the politics of testing. *Signs: A Journal of Women in Culture and Society* 39(3).
- Hermann A and Henneberg M (2013) Anti-doping systems in sports are doomed to fail: A probability and cost-benefit analysis. Available at: <http://www.adelaide.edu.au/news/news63461.html> (accessed 29 August 2013).
- Hudson B (2003) *Justice in the Risk Society*. London: Sage.
- Johnson DG and Wayland KA (2010) Surveillance and transparency as sociotechnical systems of accountability. In Haggerty KD and Samatas M (eds) *Surveillance and Democracy*. New York: Routledge: 19-33.
- Loader I and Sparks R (2002) Contemporary landscapes of crime, order and control: Governance, globalization and risk. In Maguire M, Morgan R and Reiner R (eds) *The Oxford Handbook of Criminology*. Oxford: Oxford University Press: 83-111.
- Lyon D (2007) *Surveillance Studies: An Overview*. Cambridge: Polity Press.
- Lyon D (2009) *Identifying Citizens: ID Cards as Surveillance*. Cambridge: Polity Press.
- McGuire MR (2012) *Technology, Crime and Justice: The Question Concerning Technomia*. New York: Routledge.
- Norris C and Armstrong G (1999) *The Maximum Surveillance Society: The Rise of CCTV*. Oxford: Berg.
- O'Malley P (2004). *Risk and Uncertainty in Government*. London: Glasshouse.
- Rose N (1998). Governing risky individuals: The role of psychiatry in new regimes of control. *Psychiatry, Psychology and Law* 5(2): 177-196.
- Scott DN (2007) Risk as a technique of governance in an era of biotechnological innovation. In Law Commission of Canada (ed) *Risk and Trust*. Halifax: Fernwood Press: 23-56.
- Shklovski I, Vertesi J, Troshynski E and Dourish P (2009) The commodification of location: Dynamics of power in location-based systems. In *Ubicomp 2009: Proceedings of the Eleventh International Conference on Ubiquitous Computing*. New York: Association for Computing Machinery: 11-20.
- Stenson K (2001) The new politics of crime control. In Stenson K and Sullivan RK (eds) *Crime, Risk and Justice: The Politics of Crime Control in Liberal Democracies*. Cullompton, UK: Willan: 15-28.
- Stenson K and Sullivan RK (2003) *Crime, Risk and Justice*. Devon: Willan.
- Stewart K (2007) *Ordinary Affects*. Durham, North Carolina: Duke University Press.
- Troshynski E (2011) *Surveillance Technology and the Transformation of Criminal Justice: Monitoring Sex Offenders with GPS Technology*. PhD Thesis, University of California, Irvine.
- Troshynski E, Lee C and Dourish P (2008). Accountabilities of presence: Reframing location-based systems. In *ACM 2008: Proceedings of the Twenty-sixth Annual SIGCHI Conference on Human Factors in Computing Systems*. New York: ACM Press: 487-496.

- Valverde M, Levi R and Moore D (2005) Legal knowledges of risks. In Law Commission of Canada (ed) *Law and Risk*. Vancouver: University of British Columbia Press: 86-120.
- Zedner L (2007) Pre-crime and post-criminology? *Theoretical Criminology: An International Journal* 11(2): 261-281.