



Proportionality and Tracking

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Outline

- ▶ Proportionality defined
- ▶ Proportionality in abstract and in practice
- ▶ Intrusion and tracking
- ▶ Prisoners
- ▶ Tracking in care settings



Proportionality of m relative to a legitimate purpose p

- legitimate purpose: p is not human-rights violating and has been selected by a widely accepted, non-arbitrary procedure, e.g. a vote of a democratically elected legislature
 - P : Public money-raising; control of immigration
 - m : VAT at 20%; visa requirement
- m is *effective* for realizing p
- m is *necessary* for realizing p
- m is *reasonable* given the interests affected by implementing m



Proportionality: linked scales

- Seriousness of crime; severity of punishment
- Extent of benefits; expenditure
- Severity of harm of practice p; strength of obligation to avoid or prevent p
- Degree of uncertainty of outcome of plan A; degree of detail of plan B



Proportionality: process and last resort

A measure m is proportionate if m is an effective means to legitimate purpose p , m is resorted to after trying alternatives; and a legitimate authority approves a request with reasons from a relevant agent to implement m after alternatives have been exhausted.



Proportionality in real time and in conditions of uncertainty

- Measures taken in ongoing overt police operation
- Measures taken in ongoing covert police operation
- Choice between of treatments of e.g. cancer



Proportionality of intrusion

- Intrusion relative to purpose
- Zones of privacy
- Public space/private-in-public
 - Body (protected from observation)
 - Home (protected from search)
 - Mind (protected from disclosure under severe conditions –in the most extreme case, torture)
- Location tracking relatively mild



Tracking of prisoners

- Permissibility of tracking connected to purposes of punishment in the form of imprisonment.
- Ordinary presumptions against intrusion limited by conditions of security in detention, and perhaps by purposes of punishment
- Period leading to release is less subject to punitive norms
- Tracked release fits transition to liberty –trust within limits
- Prison policy aims at rehabilitation and reintegration into society and the restoration of the presumption of innocence
 - Release with discrete location monitoring might be appropriate to transition from prisoner status to liberty
 - Location monitoring less intrusive than other zonal intrusions

Qualifications

- Facts about the prisoner and his offences
- Record of absconding, if any
- Vulnerabilities of people in post-release setting



Care settings: different cases

- Trade-offs between intrusion, safety and efficiency of tracking
 - Legally competent, independent-tracking probably unjustified but at minimum by consent
 - Legally competent, independent and frail
 - Legally competent, dependent (trade-offs for individual and interpersonally)
 - Legally competent, dependent and resident in a care-home which maximizes autonomy
 - Early stage Alzheimers –ambit intrusion
 - Late stage Alzheimers

