



Prisoners' expectations of the national forensic DNA database: Surveillance and reconfiguration of individual rights

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ARTICLE INFO

Article history:

Received 13 July 2010

Received in revised form 23 November 2010

Accepted 20 February 2011

Available online 16 March 2011

Keywords:

Prisoners
Stigma
DNA profile

ABSTRACT

In this paper we aim to discuss how Portuguese prisoners know and what they feel about surveillance mechanisms related to the inclusion and deletion of the DNA profiles of convicted criminals in the national forensic database. Through a set of interviews with individuals currently imprisoned we focus on the ways this group perceives forensic DNA technologies. While the institutional and political discourses maintain that the restricted use and application of DNA profiles within the national forensic database protects individuals' rights, the prisoners claim that police misuse of such technologies potentially makes it difficult to escape from surveillance and acts as a mean of reinforcing the stigma of delinquency. The prisoners also argue that additional intensive and extensive use of surveillance devices might be more protective of their own individual rights and might possibly increase potential for exoneration.

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1. Introduction

Current state concerns with crime control and the securitisation have led an increasing number of governments to invest in a variety of new bio-information technologies to manage the risks posed by criminal elements and terrorist groups. Chief amongst these new bio-information technologies has been DNA profiling or DNA fingerprinting, frequently described as the greatest breakthrough in forensic science since fingerprinting and as the gold standard for individual identification. Following the earlier widespread adoption in many other European countries, in February 2008, the Portuguese law for the forensic DNA database for criminal identification was passed [1]. The database is expected to become operational during 2010.

The regulation of the Portuguese forensic DNA database is more restrictive in terms of data inclusion and information preservation than other European countries [2]. Unlike some countries that do not

remove profiles from the DNA database for criminal investigation purposes, Portuguese legislation sought to protect the possibility of each and every individual of having a “clean slate” in society, “free” from any sort of official record that, in a direct manner, may associate the individual with a crime committed in the past.

As one of the most effective tools in crime detection currently available, the creation and organization of forensic DNA databases also involves potential threats to a range of individual rights, such as the right to privacy, the right to liberty, the right to moral and physical integrity, the dignity of individuals and the presumption of innocence.

From the point of view of surveillance studies, DNA databases can represent one of the instances by which new and effective modes of social control have been configured and associated to political and governmental crime prevention and control strategies. The storage of individuals' DNA profiles in a database enables a greater surveillance focus on potential offenders and re-offenders within societies that are less tolerant towards suspect citizens [3] and which is made easier by public support of the fight against crime.

The adoption by state surveillance practices of scientific and technological devices for corroborating or inferring identities [4] has been examined by a considerable body of debate and research, such as the studies of history of state identification [5] and the co-production of surveillance technologies and genetic suspects [6–8] the work on the increasing use of forensic sciences in support of criminal investigations [9–11]; “dataveillance” [12]; and visibility and new forms of surveillance [13–16]. Williams and Johnson [4,17] have made fundamental contributions to describing and

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understanding the novel and powerful form of bio-surveillance offered by DNA profiling and database as a developing instrumentality of modern state surveillance. The forensic DNA databases also constitute “centres of calculation” [18] whose installation marks the expansion of bureaucratic surveillance in contemporary society as part of a bio-surveillance apparatus.

This research work is supplemented by the existence of one single published study carried out in Austria on the prisoners' knowledge about forensic DNA technologies and their expectations with regard to the inclusion of criminals' DNA profiles in the database for the purposes of criminal investigation [19]. This paper aims to provide additional understanding of the prisoners' knowledge and social images concerning the co-production [8] of surveillance and DNA profiling and databasing. In particular, we discuss how Portuguese prisoners know and what they feel about surveillance mechanisms related to the inclusion and removal of the DNA profiles of convicted criminals in the national forensic database. We argue that this represents a form of “governmentality” [20], that is, the social uses of DNA databases for forensic purposes impacts on self management of those whose actions and identities are monitored in this way under such scrutiny.

Following the seminal work on biopolitics [21] and biosociality [22], Lynch and McNally [8] proposed the concept of “biolegality”, that is, the creation of a symbiotic relationship between law and biotechnology through which an ongoing process redefines the rights and status of the suspect body and of criminal evidence. The authors discuss how biolegality operates by creating suspect identities [8]. They also argue that “*although ‘selves’ are deeply*

implicated, suspect identity is primarily an object and product of policing and forensic expertise, rather than a technically defined basis for the formation of individual and group identity” [8].

This paper aims to produce a contribution in the area of surveillance studies by considering three important aspects: first, because it takes the standpoint of the surveillance subjects [23] by inquiring into prisoners' experiences and/or expectations of state surveillance related to the information gathering and storage of DNA profiles for the purposes of criminal investigation. Second, it proceeds to understanding the heterogeneous elements that exist within surveillance practices, through a focus on the dynamics of submission and resistance to DNA forensic technologies developed by criminal bodies. Third, it deconstructs the idea that devices of surveillance and control through DNA databasing have a purely negative character, by arguing that ex-prisoners might feel more liberated and protected from control and repression by being subject to surveillance.

2. Methods

After obtaining authorization from the General Board of Prison Services in 2009, we conducted 31 semi-structured interviews to inmates in three prisons for male adults in the north of Portugal between May and September 2009. The interviews took 34 min on average and were conducted by three trained interviewers.

We devised a theoretical sample, based on representativeness by diversity and exemplariness [24], and conjugated with a convenience sampling by considering the individuals that would be more predisposed to participate in this study according to the information gathered by the administration in each prison. Thus, we obtained a diversified sample in terms of criminal record (type of crime and duration of the sentencing) and socio-demographic characterization (Table 1).

Table 1
Sample characteristics.

Prisoner	Age	Years of schooling	Professional occupation	Primary crime which led to imprisonment	Sentence
David	42	6	Construction/Manager	Attempted homicide	3 years and 10 months
João	49	4	Stonemason	Rape, assault	4 years, 13 months and 100 days
Carlos	52	4	Auto Electrician	Procurement, rape, aggravated rape, child and drug trafficking, sexual abuse	7 years and 6 months
Joel	22	9	Industrial Weaver operator/ Unemployed	Aggravated rape	5 years and 6 months
Joaquim	49	6	Joiner	Severe sexual abuse of minors	6 years
Amaro	40	4	Agriculture	Homicide and attempted homicide	20 years
Gaspar	39	9	Bricklayer's assistant/ Unemployed	Burglary, drug use, theft	5 years and 6 months
António	26	1	Pastry man	Trafficking and other illegal activities	5 years
Manuel	27	>12	Student	Homicide and drug trafficking	14 years
Martim	27	4	Ironmonger	Rape, attempted coercion, kidnapping	9 years and 3 months
Mariano	29	6	Plumber	Homicide	17 years
Jaime	29	6	Construction worker	Homicide	16 years
Daniel	36	>12	Bar bouncer	Homicide and attempted homicide, arson	24 years
Tomás	28	9	Water-proofing worker	Rape and homicide	21 years
Gil	33	7	Businessman	Trafficking and other illegal activities	6 years
Ovídio	33	>12	Plasterer/Businessman	Drug trafficking, possession of an illegal weapon	8 years
Amadeu	43	6	Bricklayer's assistant	Homicide, burglary, theft	23 years
Nelson	35	>12	Security/Vigilance	Sexual abuse of a minor, burglary, theft, perjury	9 years
Micael	31	10	Undifferentiated worker	Sexual assault with carnal intercourse and use of specially dangerous means and rape	12 years and 1 month
Emílio	32	9	Iron worker	Homicide, sexual coercion, theft	15 years
Feliciano	34	>12	Construction painter	Homicide	12 years
Artur	38	6	Electrician	Aggravated burglary, burglary, attempted aggravated theft	12 years
Frederico	54	6	Retailer	Criminal organization (leader), extortion, drug trafficking, fencing	20 years
Valter	25	6	Electrician/Unemployed	Kidnapping, rape, burglary, aggravated burglary	18 years
Luís	26	8	Carpenter's assistant/ Electrician	Aggravated burglary, motor vehicle theft, trespassing, fencing	9 years
Amândio	31	9	Driller	Homicide and attempted homicide, drug trafficking, theft, aggravated burglary	25 years
Rúben	31	>12	Computer Systems Analyst	Aggravated fraud, document forgery, illegal access to a computer system or network, credit card fraud, perjury	6 years
Olegário	31	6	Paver	Theft and perjury	3 years and 6 months
Henrique	37	4	Construction blacksmith	Burglary and forgery	3 years
Miguel	44	>12	Auto mechanic	Driving without permit	5 months
Lucílio	34	10	Construction foreman	Driving without permit	2 years

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