

Institution: University of Warwick		
Unit of Assessment: D30 – Philosophy		
Title of case study: Understanding the Ethics of Security and Policing		
Period when the underpinning research was undertaken: 2013-2018		
Details of staff conducting the underpinning research from the submitting unit:		
Name(s):	Role(s) (e.g. job title):	Period(s) employed by submitting HEI:
Tom Sorell	Professor	01/01/2013- present
John Guelke	Research Fellow	01/01/2013- present
Katerina Hadjimatheou	Research Fellow	01/01/2013-30/09/2018
Chris Nathan	Research Fellow	21/10/2013-present
Period when the claimed impact occurred: 2014-2019		
Is this case study continued from a case study submitted in 2014? N		
1. Summary of the impact (indicative maximum 100 words)		
<p>As methods used by criminals to perpetrate serious crimes are becoming increasingly sophisticated, so too are the technological interventions used by law enforcement authorities to prevent and prosecute such crimes - raising moral conflicts concerning the obligation to protect society from the most serious threats whilst upholding individual and institutional rights to privacy. Professor Tom Sorell and his research team in the Interdisciplinary Ethics Research Group (IERG) at the University of Warwick are leading providers of expert advice and guidance to government and police forces on the ethical implications of new security measures, which has resulted in direct impact on policies concerning their use.</p>		
2. Underpinning research (indicative maximum 500 words)		
<p>Researchers in the University of Warwick's Interdisciplinary Ethics Research Group (IERG) use analytic, moral and political philosophy to identify ethical issues that arise in technology, international development, and finance, and to inform policy and product design in these fields. The following research conducted by members of the IERG has been particularly influential in the development of policy pertaining to combating serious crime in the UK:</p>		
1. Ethics of Preventive Justice		
<p>Professor Tom Sorell's ESRC-funded Global Uncertainties Fellowship (2013-16), involved the identification of ethical issues in the policing of organised crime and terrorism. In particular, the project engaged questions about the coherence of "preventive justice" (the criminalisation of steps a perpetrator takes <i>before</i> the commission of a serious crime). The award was divided into 40% research and 60% leadership activities intended to raise consciousness of ethics among other researchers, specifically technology developers funded by the EPSRC for Global Uncertainties. In addition to interaction with other Leadership Fellows, especially those working on counter-terrorism law, there was significant involvement with police working in counter-terrorism and serious and organised crime.</p>		
<p>Key findings arising from Professor Sorell's fellowship (3.3) include:</p>		
<ul style="list-style-type: none"> • <i>Serious</i> crime is a matter of undermining welfare producing and politically-legitimate institutions, and not just a matter of infliction of major harm on an individual victim. This hybridity is well-adapted for explaining why common forms of organised crime, such as large-scale corruption, fraud, and trading in illicit markets are serious. • Given that the harm of organised crime is not uniform, existing preventive legislation against serious crime in the UK can be hard to make effective, and (as in the case of Serious Crime Preventive Order legislation in England and Wales), is potentially unjust. • Willing public participation in illicit markets, notably the recreational drugs trade, arguably pushes them in the direction of legitimacy, calling into question the justification of using preventive orders against those who participate in these markets. 		

- Preventive justice is radically different in cases of organised crime and terrorism, and, when questionable, questionable for different reasons. Preventive measures against organised crime in the UK are aimed at reducing its financial rewards and discouraging or disrupting career criminality. Counterterrorism measures in the UK arise from the perceived need to curtail the rights of ideological minorities as a means of preventing violence or attacks by a tiny number within these minorities. Such legislation directly restricts freedom of association and the freedom of expression.

2. Ethics of Undercover Policing

Assuming Identities Online (2014-16) was an ESRC-funded project (PI – Professor Timothy Grant, Aston University; Co-I - Sorell) which was primarily concerned with methods of simulating the online linguistic characteristics of children so that police could take over online conversations with groomers and eventually arrest them. Sorell and Dr Christopher Nathan undertook a stream of work concerning the ethics of undercover policing online, liaising with West Midlands Police and producing a video for training of undercover police.

Key findings arising from the Warwick strand of the project **(3.2; 3.4)**:

- There is an ethical distinction between taking over the online identity of a real child who is being groomed and constructing an online persona of a child to entrap potential groomers. In the latter case, the undercover officer could be viewed as complicit in cultivating a potential groomer's interest and lead to conviction for an offence which, without such intervention, may never have been carried out. In the former case, the officer is merely continuing an online dialogue between groomer and victim which had been established independently of police deception, and with the groomer's intention of eventually committing sexual assault.
- Undercover policing should be directly sensitive to the proportion of culpability of its targets; if there is good reason to believe that a person is directly involved in a crime, that person has greater liability to be targeted by undercover methods than a person merely identified as a useful connection to the individual(s) directly involved.

Complementing the Assuming Identities Online project, Dr Katerina Hadjimatheou, then a postdoctoral researcher in the IERG, undertook research on the tensions between confidentiality and accountability in undercover policing **(3.5)**:

- Recent scandals in UK undercover policing have prompted a public re-examination of the basis for continued secrecy with respect to cases in which serious historical misconduct is suspected. The current legal process requires the police to provide case-by-case risk assessments of the harm to policing threatened by disclosure; however, the police claim that such assessments will nearly always support a refusal to disclose and thus a 'neither confirm nor deny' response to requests for information about undercover policing operations.
- This blanket 'NCND' approach is contrary to the values of democracy, wherein accountability does not require disclosure of *all* information held by the state, nor even of the specific reasons why such information should be withheld, but does require some objective reassurance that such reasons do exist. Risk-assessments are designed to provide such reassurance, thus police should be obliged to undertake them.

3. Ethical Use of Surveillance Technology (3.1, 3.6)

The use of surveillance technology can be an effective and necessary measure in counter-terrorism and the fight against serious crime, but its use presents moral risks. Such risks include violation of individual privacy, identification of the wrong target(s) (particularly in the case of technologies which rely on profiling algorithms), and damage of trust in policing and intelligence authorities resulting from actual or perceived misuse. Sorell and Guelke argue that in certain circumstances, these risks can be justified in a liberal society where such use is morally proportionate to the severity of the crime in question. However, technology which has the

potential to enable governments and other organisations to intimidate or manipulate citizens (for example stifling political dissent by creating fear that one may be targeted for accessing anti-government material) cannot be morally justified without robust measures to ensure that it is not used in this way. Bulk data collection technologies, ranging from Automatic Number Plate Recognition (ANPR) to sophisticated intelligence-gathering programs used by national security bodies, may be less intrusive than placing a listening device in an individual's home; however, their ability to collect vast quantities of information increases the potential for such information to be used for purposes other than that initially intended. The moral risk associated with bulk collection is exacerbated by the difficulties of overseeing it in democracies that allow, perhaps disproportionately, a great deal of intelligence work to be conducted in secret, which impedes the effectiveness of any measures against its misuse.

3. References to the research (indicative maximum of six references)

Professor Sorell and Drs Guelke, Hadjimatheou and Nathan have published their research in peer-reviewed journals and edited volumes.

3.1 T. Sorell and J. Guelke, 'Liberal Democratic Regulation and Technological Advance' in ed Roger Brownsword, *The Oxford Handbook in Law, Regulation and Technology* (Oxford University Press; Oxford, 2017) 93-117, doi: 10.1093/oxfordhb/9780199680832.013.5

3.2 T. Sorell, 'Online Grooming and Preventive Justice' *Criminal Law and Philosophy* 11(2017) 705-724, doi: 10.1007/s11572-016-9401-x

3.3 T. Sorell, 'Organised Crime and Preventive Justice' *Ethical Theory and Moral Practice* 21(2018) 137-153, doi: 10.1007/s10677-017-9861-7

3.4 C. Nathan, 'Liability to Deception and Manipulation: The Ethics of Undercover Policing', *Journal of Applied Philosophy* (August 2016) 370-388, doi: 10.1111/japp.12243

3.5 K. Hadjimatheou, 'Neither Confirm nor Deny: Secrecy and Disclosure in Undercover Policing' *Criminal Justice Ethics* 36.3(2017) 279-296, doi: 10.1080/0731129X.2018.1424756

3.6 T. Sorell, 'Bulk Collection, Intrusion and Domination' in Andrew I Cohen ed. *Philosophy and Public Policy* (Rowman and Littlefield; London, 2018) 39-60, ISBN: 9781786605245

Funding:

T. Sorell, ESRC Global Uncertainties Leadership Fellowship: Ethics and Security: Terrorism and Transnational Organized Crime, April 2013-April 2016, Ref: ES/K000098/1. **GBP348,319**

T. Grant (PI) and **T Sorell** (Co-I), ESRC Research Grant: Assuming Identities Online: description, development and ethical implications, August 2014 – July 2016, Ref: ES/L003279/1. **GBP152,008**

4. Details of the impact (indicative maximum 750 words)

1. Guiding the training of undercover police and influencing new guidelines for covert operations

Ethical dilemmas in undercover policing work are particularly acute, due to the conflicting norms of deception and evidence-finding. IERG members organised a series of events to bring these ethical issues to the attention of policing practitioners and to give consideration to informed solutions. Such events led to reflections upon existing policies and helped to set the agenda for future investigation and reform. The events included: (a) 'Policing and Preventive Justice', open to the public, as part of the ESRC Festival of Social Science; (b) an invitation-only event organised by the Warwick team for around 40 UK policing and law professionals on 'Disruption, Ethics, and Policing', with speakers including Ian Davidson (ACPO) and Supt. Nick Walton (West Midlands Police); (c) a College of Policing Senior Leaders Masterclass on Big Data and Social Media; (d) 'Undercover policing workshop: Law, Criminology, and Ethics' workshop, October 2015, attended by several senior police officers as well as the country's leading lawyer on covert policing; (e) a meeting on counterfeiting, held in Parliament; (f) a series of Government Office for Science meetings; (g) presentations to Security and Intelligence

officials in Hong Kong and Australia joint with Hong Kong University and Centre for Applied Philosophy and Public Ethics.

The Manager of the Police Covert Authorities Bureau attended the undercover policing workshop in 2015 and attested to the impact of the group's research on the Bureau's work to develop policies which guide the work of covert police officers and operations, saying it "...caused further reflection upon what proportionate investigations should look like and how best to understand the implications of the RIPA [Regulation of Investigatory Powers Act] codes. Furthermore, [Hadjimatheou]'s work on 'Neither Confirm nor Deny: Secrecy and Disclosure in Undercover Policing' (3.5) has encouraged greater inquiry in to that policy. The 'neither confirm nor deny' stance is subject of continuous review and this work has provided a view that assists policy making in this area of business" (5.1).

In 2015 the then Home Secretary, Theresa May announced a judge-led inquiry into undercover policing in response to independent reviews by Mark Ellison QC, which had found evidence of severe misuse of power in some forces. As a result of some initial learnings from this review, which to date remains ongoing, the College of Policing established the first Authorised Professional Practice (APP) for Undercover Policing. The APP document outlines how undercover policing should be used to gather legal evidence and intelligence, and enables the public to see the arrangements to manage undercover policing and give confidence that these arrangements are robust and built on experience. In 2016, the researchers ran a joint workshop with the College of Policing for officers authorising undercover operations, which presented practitioners with hypothetical scenarios which posed possible ethical dilemmas. Warwick researchers Nathan and Hadjimatheou created a recommendations document based on the outcomes of the workshop, which was submitted to the public consultation on the first APP document. They also contributed research insights via the Undercover Policing Oversight Committee at the College of Policing. The Head of Crime and Criminal Justice at the College of Policing confirmed that the work of the group would help the College to "take the lead in proposing interpretations of proportionality that go beyond the legal requirements and make contact with officers' intuitive understandings". He was clear that their work was having a direct impact on policy, saying that "the recommendations on this topic that [the group] put forward are in the process of being incorporated in to the revised Authorised Professional Practice for Undercover Policing" (5.2). Furthermore, he confirmed that the APP development process was "informed by concerns expressed during the [2016 workshop] about ensuring authorising officers consider least intrusive options and the issues around children" (5.2).

2. Guiding the ethical use of biometric and forensic technologies at the Home Office

Biometric identifiers, such as fingerprints, palm veins, facial features, DNA, hand geometry and iris recognition characteristics, combined with dramatic advances in technology based on the use of large and complex data sets, have opened new opportunities in the fields of crime prevention, detection and security. Development of these new opportunities requires ethical consideration and guidance. The Biometrics and Forensics Ethics Group is an advisory non-departmental public body sponsored by the Home Office. It provides independent ethical advice to Home Office ministers on issues related to the collection, use, and retention of biometric and forensic material. The BFEG also advises on ethical issues in the use of large and complex data sets and projects using explainable data-driven technology.

In 2018, the Home Office appointed Professor Tom Sorell to the BFEG based on his 'very relevant research track record in ethics and technology (e.g., 3.1) and experience of working with several police forces' (5.3). The BFEG is commissioned to consider the ethical impact on society, groups and individuals in:

- the collection, retention and use of human biometric identifiers, such as DNA, fingerprints, and face recognition
- the retention and use of forensic data such as extracted digital forensic material
- policy and projects from the Forensic Information Databases Strategy Board
- relevant projects from the Home Office Biometrics programme, including advice on Data Protection Impact Assessments
- the use of large datasets within the Home Office, including the implementation of systems using machine learning and artificial intelligence

In the role of member and then Vice-chair of BFEG, Sorell has advised on matters including the fusion of databases for crime detection, the use of DNA profiles from commercial genealogy data bases, and the Home Office biometrics programme as it relates to users such as border control and prisons. Additionally, he has been active in BFEG sub-committees and routinely represents BEFG in other government research. Testifying to his contribution to the committee's work, the Head of Science Secretariat at the Home Office said: "His contributions have been of great value to the development of policy and operations in the use of biometrics by many relevant stakeholders" (5.3).

3. Guiding the ethical use of data and operational strategies within West Midlands Police

Professor Sorell's substantial expertise in the ethics of security and policing and the strong relationships established with West Midlands Police (WMP) over the course of the research described in this case study, are resulting in significant influence on aspects of policing in the West Midlands. In 2019, the West Midlands Police & Crime Commissioner (PCC) and WMP appointed Sorell to key strategic committees which work to ensure that WMP operates in an ethically responsible manner. The Data Ethics Committee was established in 2019 to consider work proposed by WMP data scientists aimed at using data more intelligently in crime prevention and emergency response, advising on the ethical and legal implications of such proposals. The Strategic Advisor to the West Midlands Police and Crime Commissioners Office credits Sorell as being "one of the most active contributors to discussions" and having "played an influential role in committee deliberations" (5.4). The West Midlands Police and Crime Commissioner himself attests that Sorell's "significant involvement has and will continue to impact the national landscape for years to come, and is extremely vital in raising ethical issues within policing technology and advanced analytics" (5.5).

In early 2020 he was also appointed Chair of the general ethics committee of the WMP, which affords him a leading voice in shaping the direction of WMP activity. The committee considers pilots of new operational strategies in direct policing of communities, including addressing particular kinds of offending in different parts of WMP's jurisdiction. Regarding this appointment, the Strategic Advisor to the West Midlands Police and Crime Commissioners Office commends Sorell for being "at the forefront of devising procedures for the committee, streamlining the application process for projects to be considered, and advising on dividing lines between openness and confidentiality in the name of security" and notes that thanks to the "very high calibre contributions" made by members such as Sorell, the committee's work "features in a range of UK government and leading think tank reports as an example of outstanding practice, and has been directly involved with central government strategy and policy setting for the future of ethics governance around modern technology in policing" (5.4).

In conclusion, covert security measures, be they undercover policing operations or data-driven surveillance technologies, present complex moral risks for organisations utilising these methods in the fight against serious crime. Understanding these risks and how they can be mitigated is crucial to the development of ethically-sound and effective security policies. IERG research is supporting the UK government and regional law enforcement bodies in paying due regard to the potential ethical consequences of the policies and procedures they put in place to protect citizens.

5. Sources to corroborate the impact (indicative maximum of 10 references)

5.1 Letter from the Warwickshire Police Covert Authorities Bureau Manager

5.2 Letter from the Head of Crime and Criminal Justice, College of Policing, August 2019

5.3 Letter from the Head of the Home Office Science Secretariat, March 2019

5.4 Letter from the Strategic Advisor to the West Midlands Police & Crime Commissioner, March 2020

5.5 Letter from the West Midlands Police & Crime Commissioner, January 2021.