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10 The meaning of the limitation of the use of the Internet for criminal punishment from the perspective of extended mind thesis

Kamil Mamak

10.1 Introduction

Since the broad deployment of the Internet, there has been discussion of how it has changed our lives (see, e.g., Sparrow, Liu, and Wegner 2011; Floridi 2015). One of the many ideas discussed about the role of technologies in general, and the Internet, in particular, is that they become a literal part of us. This chapter explores such an idea by referring to the extended mind thesis (Clark and Chalmers 1998). It is a view according to which external artifacts could be counted as part of the extended mind. If we treat this thesis seriously, then there are ethical and legal consequences, including the discussion of the right to access the Internet and the right not to use the Internet. This chapter gives special attention to the consequences of adopting this view in relation to criminal punishment, showing that manipulating access to the Internet is a relevant issue from that perspective.

This chapter is structured as follows. After the introduction, there is a brief explanation of the extended mind thesis. Then, the focus shifts to the role of the Internet from an extended mind perspective. The following section is concerned with the ethical consequences resulting from the acceptance of the discussed philosophical thesis. Then, there is a section that focuses on the relevance of this thesis for the discussion on the right to access the Internet and the right not to use the Internet. The following section discusses the extended mind thesis in the context of punishment, specifically on imprisonment. This chapter ends with conclusions.

10.2 The extended mind thesis

The extended mind thesis is an idea that proposes a non-intuitive explanation for the interaction of humans with external, non-biological artifacts. In short, according to the extended mind thesis, cognitive processes are not locked up in the physical boundaries of the body but extend into the external environment. Andy Clark and David Chalmers formulated the most recognized version of this way of thinking about the mind. They start their seminal paper with the sentence, "Where does the mind stop and the rest of the world begin?" (Clark and Chalmers 1998, 7). They

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express skepticism as to whether the boundaries of the body are the boundaries of the mind.

In their paper, the authors use examples that allow them to illustrate the problems; the most famous example from that paper is the one about Otto and Inga. Otto and Inga want to go to an exhibition at the Museum of Modern Arts in New York City. Inga, in order to get to the museum, recalls its location from her biological memory. Otto has Alzheimer's disease, and in order to get to the museum, he consults the location of the museum with his personal paper notebook, in which he wrote various pieces of information, including the location of the concerned institution. Authors claim that Otto's notebook serves the same role for him as biological memory for Inga. Thus, Otto's mind is extended to this external artifact (the notebook).

According to Clark and Chalmers, not every artifact could be considered an extension of the mind, but only one that could become coupled with the mind and be part of the cognitive loop. To be considered as part of the mind, the artifact needs to fulfill some criteria; they show those criteria in the example of Otto's notebook, formulating four of them. First, the notebook is an element of Otto's mind because it is a constant element in Otto's life, and Otto treats the notebook as a relevant element of taking action. Second, there is easy and direct access to the notebook. Third, when Otto finds information there, he automatically endorses (approves) it. Fourth, the information in the notebook was at some point endorsed by him in the past (Clark and Chalmers 1998, 17). Those criteria are sometimes referred to as "trust and glue" criteria (see, e.g., Record and Miller 2018, 106). Clark and Chalmers acknowledge the differences between the biological memory and the external artifacts, but they think that those differences are shallow, and more or less, the mind and the notebook play the same roles.

The paper referred to was published in 1998, about a decade before the smartphone revolution. The thesis advanced in the paper has gained more attention in recent times. Clowes et al. point out two main reasons for its recent popularity (Clowes, Smart, and Heersmink, 2024). First, it has explanatory power regarding the relations between humans and the technologies they use (see, e.g., Carter et al. 2018). Many people never give up their smartphones, smartwatches, personal computers, and so on. And what is important in the context of this chapter, as Clowes et al. point out, is that many of these smart devices have networking capabilities that enable them to be connected to the Internet. The second reason they point out is that in contemporary cognitive science, there is a strong ani-Cartesian direction (rejection of dualism that separates mind and body, treating them as distinct matters), and the extended mind thesis follows this trend. In that context, it is usually presented as part of 4E cognition, which stands for four words – embodied, embedded, enacted, and extended (see, e.g., Newen, Bruin, and Gallagher 2018). In short, the popular take on cartesian dualism suggests that mind and body are distinct and separable matters. The 4E framework points out that our cognitive processes are shaped by our bodies (embodiment) and the environment in which humans are living (embedment). Enactivism refers to the dynamic relations between organisms

and their environment. The cognition arises through the interactions. Finally, the extended part, which is the focus of this chapter, allows for extending the cognitive process on the external artifacts. Together, those concepts are an alternative to dualist thinking (Rowlands 2013, 51; but see, e.g., Adams and Aizawa 2010).

10.3 The extended mind thesis and the Internet

Since the publication of the extended mind thesis more than 25 years ago, the concept has developed, and various aspects have been discussed (for overview, see, e.g., Gallagher 2018; Telakivi 2023). One of the specific subjects of interest is the Internet and its relationship with the mind. Could the Internet be part of the extended mind? Clark, one of the co-authors of the original paper that formulated the extended mind thesis, raised skepticism over treating the Internet as a part of extended cognition (Clark 2008).

However, not the whole Internet must be considered as a part of the extension, but it could be "some small piece of the Internet", as long as the conditions for extension, which are accessibility, relevancy, and trust, are met (Dempsey, Coin, and Dubljević 2024, 158). Later in this chapter, when I refer to the Internet as an extension of the mind, I mean that some parts of the Internet might constitute the mind, not that the whole Internet should be treated as part of someone's mind.

As mentioned, contemporary devices could be considered to constitute the self, and those devices are often connected to the Internet. I use the terms extended mind and extended self interchangeably. If the mind is part of myself, my mind is extended, and I am a whole extended. In some cases, access to some parts of devices is dependent on use to the Internet. For example, pictures that allow us to remember past events could be stored in the cloud. The typical way to access them is through a smartphone, but sometimes, this requires having access to the Internet. From that perspective, the smartphone, without access to the Internet, could not be seen as complete extension of the mind. In other words, the term "smartphone" is used here not as a sum of material components that are exclusively inside of the device but as something more significant that, together with the services and infrastructure, can be fully functional. For example, we could have access to some of the memories through our device, but to use that information, the device needs to be charged, and there must be access to the Internet, which allows us to connect to the service that is in the cloud.

For example, Heersmink discusses this idea in the context of autobiographical memory. He noticed that to access some of our past memories, we are dependent on access to the services that contain information about our past, and in that context, he claims that our autobiographical memory could be extended and distributed (Heersmink 2022). To use Facebook *via* smartphone and check the photos from vacations posted there a couple of years earlier, we need to have a device that is connected to the Internet. In his other work, he claims that personal identity cannot be reduced to psychology or biology, but it needs to be seen as an environmentally distributed and relational construct; he talks about "distributed selves" (Heersmink 2017a). He points out the ethical consequences. We should have a

broader concept of self by including the social and external structures, focus on the external memory systems in studies of personal identity, and add that we should not interfere with one's distributed minds and selves. In other work, he notices that the more we depend on external information in cognitive functioning on an everyday basis, the more those artifacts are integrated into our cognitive system (Heersmink 2017b). We could read the above notions as the endorsement of the role of technology in constituting what the human self is. It shows the entanglement of humans with technology. The refusal of the role of technology for contemporary humans could not give a full description of who we are in a technologically textured world.

Another scholar who analyses the role of the Internet in the context of the extended mind thesis is Smart. He initially introduced the Web-Extended Mind hypothesis, which is the idea "that technological and informational elements of the web can (at least sometimes) serve as part of the mechanistic substrate that realizes human mental states" (Smart 2013, 447). In his later work, Smart proposes a slightly different definition of the "Web-extended Mind," which is "an extended cognitive system whose processes supervene on a set of constituent material elements that include one or more Web resources" (Smart 2017, 362). Smart considers whether the Web (current or future) can be part of the extended cognitive system and uses criteria ("trust and glue") that Chalmers and Clark used in their paper on the extended mind to answer the question of whether some artifact could be considered as an element of the extended mind. He concludes that the nature of our interaction with today's Internet allows for a variety of forms of Internet-extended cognition (Smart 2017, 369). Smart points out that the general trajectory of technology development reinforces the possibility of including the web in the cognitive system. He uses an example of Otto++. The most important aspect of this example for this chapter is that instead of a notebook, Otto uses a smartphone with an app that contains information in the cloud, and to have access to this information, there is a need to have access to the Internet (Smart 2018, 280). Smart believes that notebooks and apps connect to the Internet and fulfill the same function, and we could treat them as functionally equivalent to those realized by biological models (like biological memory).

Heersmink and Sutton believe that the "parts" of the Internet might be relevant for an extended mind thesis. They analyze the impact of the Web on cognition from various perspectives, including the extended one. They focus on the relations between the Web and users and conclude that while most current Web apps are not deeply integrated with the mind, they argue that some highly personalized Web applications accessed on wearable digital devices might have the capacity for deep integration (Heersmink and Sutton 2020, 139).

For clarification, accepting the extended mind thesis does not mean that every human is extended into technological devices in the same way, but rather that there could be people for whom external artifacts are important to such an extent that they should be treated as an extension of their minds, and by that, an extension of themselves. This reservation also concerns use to the Internet. For some people, the Internet could be an essential element that enables them to be truly themselves, and for others, it might be a relevant aspect of their lives.

10.4 Ethical risk and extended mind thesis

If we accept that the extended mind is a plausible explanation of the relationship of humans with external artifacts, such a statement entails legal and moral consequences. Those consequences are discussed in this section. Clark and Chalmers note that sometimes "interfering with someone's environment will have the same moral significance as interfering with their person" (Clark and Chalmers 1998, 18). For example, Søraker points out that the information in Otto's notebook could have moral status and, as such, deserves to be protected (Søraker 2008). Clowes et al. consider ethical risks more systematically and point out three areas of ethical concern related to the extended mind: mental privacy, mental manipulation, and agency (Clowes, Smart, and Heersmink 2024). Now, I will briefly unpack them.

Mental privacy is concerned with access to information. In short, the content of our memories that are stored in biological minds is hidden from the external observer, while the memories that are stored in external artifacts are exposed to risks of access to it, like in the case of Otto's notebook, which others might get unauthorized access to (see also, e.g., Carter, Clark, and Palermos 2018). Vold illustrates this in relation to criminal procedures (Vold 2018). In many legal systems, one could remain silent when accused of a crime. In other words, there is no way to access the content of the mind of the person accused of committing a crime. If we accept the extended mind thesis, then there is a problem with accessing personal technologies, such as smartphones. Should we treat the content of the smartphone in the context of a criminal investigation in the same way as we treat the content of the biological memory, to which there is no access? Should the right to remain silent extend to smartphones?

Palermos, in his recent paper about mental privacy, calls for making it impossible, legally and practically, to obtain such data (Palermos 2023). Clowes et al. point that privacy concerns are especially prominent in case of devices or services that are online or connected online, where the content is accessible to various social actors, including individual hackers, corporations, and governmental bodies (Clowes, Smart, and Heersmink 2024).

Related to privacy issues are risks of manipulation. Those who might have access to the information could not only see this information against the will of the owner but also could manipulate it (Clowes, Smart, and Heersmink 2024). Carter identifies two categories of risks related to manipulation: acquisition manipulation and eradication manipulation. The first is concerned with the possibility of creating new beliefs, and the second is with deleting memories (Carter 2021).

The third ethical group of risks discussed by Clowes et al. is related to autonomy. Cited authors base this risk on the observation that cognitive extension might impact mental autonomy. They refer to these risks, in particular, in the work of Vold and Hernández-Orallo on AI Extenders (Vold and Hernández-Orallo 2022; Hernández-Orallo and Vold 2019). In short, AI extenders are tools that constitute an extension of cognitive states resulting from the deployment of AI systems. Human agents that are going to make decisions might be impacted by the AI tools

they use. Vold and Hernández-Orallo provide a definition of AI extenders (Vold and Hernández-Orallo 2022):

> An AI extender is a cognitive extender that is "fueled" by AI. This means that some AI technology is directly responsible for the cognitive capability that the extender is able to deploy, in conjunction with its user.

The mentioned issues regarding autonomy and responsibility are, for example, related to risks related to the fact that the tools could impact the way in which people who use them act, or there is a problem with who could be responsible for malfunctions or keeping up with systems that become some extension (see also on that topic: Telakivi et al. forthcoming). The problem with autonomy and responsibility for the effects of the deployment of AI systems is one of the most discussed problems within AI ethics (on issues with responsibility with AI see, e.g., Matthias 2004; Sparrow 2007; Müller 2020; Gordon and Nyholm 2021). The extended mind thesis applied to this problem makes it even more problematic due to the intimate connection of tools (in this case, AI-based) with humans.

The above categories of risks do not exhaust the list of potential ethical issues related to adopting the extended mind thesis. The presented issue shows, at least, the multidimensionality of ethical consequences related to that thesis. Some of the ethical risks are relevant from the perspective of the law. The following two sections further clarify this. First, the relevance of the extended mind thesis is presented for the discussion on the right to use the Internet as well as related issues of the right not to use the Internet. Second, access to the Internet is discussed from the perspective of the philosophy of punishment.

10.5 Right to use/not to use the Internet and the extended mind thesis

It was already mentioned that the Internet might be an element of the infrastructure of the extended self. Even if the Internet does not, as a whole, constitute the extension of the person, it might be a necessary ingredient of the personal technologies that are integral parts of the person. Such observation makes it a natural candidate of interest for those who are interested in the right to use the Internet and the right not to use the Internet. At the outset, it might be said that the extended mind thesis is relevant to both of them.

Kloza points out that over the years, there has been a change in the way in which access to the Internet is presented, which was accelerated by the public health crisis. Instead of being an option, it becomes an obligation. He wonders to what extent people could be forced to use it and argues that citizens should not be obliged to use the Internet. He formulates it as the right not to use the Internet (Kloza 2024). He reviews the main groups of arguments that could support the right to non-use of the Internet. The main arguments are the lack of willingness to use the Internet, second, that people could not afford the necessary hardware that allows them to use the Internet, and third, that some people are unable to use it. The extended mind thesis is the most relevant to the first group of reasons, which I am now focusing on.

Kloza, while discussing the reasons why people might not want to use the Internet, points at different possibilities, including religious beliefs, civil disobedience, and concerns about the environment. He also mentions concerns about privacy.

The extended mind perspective is especially relevant to privacy concerns. People might not want to use the Internet in specific contexts. Those are not people who do not use the Internet at all; quite the contrary. We are speaking now about people whose access to technology and the Internet constitutes who they are. However, when some institutions enforce the use of the Internet in some contexts, they might be worried that someone could get access to their data. It was mentioned that there are ethical risks related to the possibility of reading and analyzing personal data, and there are related risks of manipulating those data by erasing or changing them. In other words, some people might prefer to use the Internet on their own terms, not to connect to it in a context where they do not feel fully comfortable. This could mean a lack of willingness to use the Internet when they might worry that their data would be vulnerable to access, manipulation, or eradication.

It seems that the more clear relevance of the extended mind thesis is to the right to Internet access (see, e.g., Pollicino 2020; Pollicino and Susi 2019; Tully 2014; Reglitz 2020). If the technologies constitute who citizens are, there might be a formulated expectation that the state provides the necessary infrastructure that allows for the undisrupted use of technologies that constitute an extension of selves. People develop relationships with technologies on their own, but the state could be an actor who has the power to maintain the safety and continuity of its use. There is also another aspect related to that. There is a context in which the state deprives people (almost entirely) of access to technologies, which is connected with criminal punishment of deprivation of liberty. In the next section, more focus is placed on that aspect of use of the Internet.

10.6 Use of the Internet, extended mind, and philosophy of punishment

In this section, I want to focus on the use of the Internet in the context of punishment. Issues regarding unauthorized access to personal data or the possibility of manipulating content that is part of the extended mind have been presented. Consequences could also be found on the grounds of criminal law. Carter and Palermos wonder how we should treat the physical attack on the devices that constitute an extended mind, like personal computers. The idea is that the default legal classification of such attacks, which is attached to the property, does not reflect the nature of the wrong. According to them, the right approach is to treat attacks on the devices that count as extensions of the minds as personal assaults that underline the connection of devices with the owners (Carter and Palermos 2016). In other words, the destruction of personal devices should be treated as an attack on the person, not a mere act that interferes with the property of the owner.

Inspired by that paper, I considered whether it is possible to apply this thinking to punishment (Mamak 2021, 2024). When someone steals money and causes financial loss, then it is a crime, but when the same amount of money is imposed by the criminal court as a fine, it is considered a punishment. When someone is

holding another person in some place against their will, it is a crime, but when the same person is against their will in prison, then it is a punishment. Going back to the idea of Carter and Palermos, they believe that when a wrongdoer interferes with someone's elements of their extended mind, it should be considered a crime. I ask whether the interference with elements of the extended mind could be treated as punishment when imposed by a criminal court. I frame it as a limitation of access to personal technologies and propose to recognize it as pain/hardship that is an element of punishment. If accepted, then it has consequences in various aspects of punishment and allows the formulation of normative notions.

Now, it is time to go back to the use of the Internet. As it was mentioned, the Internet might be a necessary element of technologies that are integrated with human beings in a way that could be considered an extension. Then, influencing the use of the Internet might indirectly impact someone's extended "infrastructure." There are at least three ways in which, at the ground of punishment, access to the Internet could be relevant, taking into account the perspective of the extended mind thesis.

First, when imposing the punishment of imprisonment, the court should take into account the fact that the person in most contemporary prisons will be deprived of access to personal technologies, which entails access to the Internet. If access to personal technologies and the Internet is not an option, the calculated punishment of imprisonment should include the hardship of limitation of access to technology. Bagaric et al. propose to calculate the punishment for the lack of the use of the Internet (Bagaric, Fischer, and Hunter 2018). One of the basic rules of imposing punishment is that it should be proportional; the gravity of the crime should be proportional to the severity of punishment (see, e.g., Bagaric 2014; Hirsch and Ashworth 2005). The court imposing punishment is obliged to reflect on the severity of negative consequences, which is derived from the principle of proportionality. If the court decided that the punishment that is adopted is imprisonment, the court should take into consideration the fact that some people would be deprived of access to their personal technologies as a consequence of imprisonment. The fact of deprivation of access to technologies, including access to the Internet, should be calculated by the court at the stage of imposing the length of the punishment.

Second, and it also concerns the punishment of imprisonment, access to the Internet in prisons should be provided. In contemporary practice, the norm is the lack of or limited access to the digital technologies (see, e.g., Järveläinen and Rantanen 2021; Reisdorf and DeCook 2022; Reisdorf and Jewkes 2016). There are different reasons for providing (some) access to the Internet in prisons, including rehabilitation, teaching to live in society, providing skills for the job market, education, connecting with families, and reducing misbehavior in prisons (for overview, see e.g., Järveläinen and Rantanen 2021; Bagaric, Fischer, and Hunter 2018; Reisdorf 2023). The extended mind gives additional justification for providing use of the Internet.

The subject of the punishment from an extended mind perspective is the "whole" person, which consists of the biological parts as well as non-biological

artifacts that are not fully physically connected with the body of the person. The current dominant view on that matter is marked by dualism and allows no notice of the extended nature of the person. As mentioned, the extended mind thesis's popularity could not only be reduced to its explanatory power for humans' relationship with technology but also because it constitutes the replacement for cartesian dualism.

Dualism (of mind and body) is present in the law as an underlying theory of some institutions, not in an apparent way as a philosophical declaration of the lawgivers but more as a hidden assumption that needs to be revealed. Benforado points out that the distinction of the body and the mind is the language of the law and it is in the core of our culture (Benforado 2010, 3; see also on dualism and law Fox and Stein 2015; Shen 2013). The process of abandoning the dualist thinking force to find a better view on the subject of punishment and the extended mind thesis provides such an alternative view. To put it simply, the second point, out of the three presented in this section, is about imprisonment and argues for incarcerating the "whole" person, which includes their technologies, also connected to the Internet.

Third, the manipulation of access to technologies, including the Internet, might be considered punishment (Mamak 2024). Based on that, new forms of punishment might be formulated, or it gives additional support for formulated ideas. For example, Bagaric et al. propose deprivation of the Internet (Bagaric, Fischer, and Hunter 2018). I elsewhere formulated cyber banishment (Mamak 2023; see also 2021), which does not cover, as deprivation of the Internet, the whole access but is limited to specific areas of the online environment.

10.7 Conclusion

In this chapter, the main focus was on using the Internet as the necessary condition for being fully oneself and the meaning of such a view for criminal punishment. For some, the Internet might be an integral element of their existence, and such a position is relevant to criminal punishment. In order to consider the constitutive meaning of technologies for human beings, there is a need to look at humans from a non-intuitive philosophical perspective. The extended mind thesis is the view that allows a look at the relationships between humans and technologies in a more unified way. According to this thesis, external artifacts could be counted as elements of the mind. As an example, the smartphone might be considered our extension. This chapter considers especially the relevance of access to the Internet. If we accept that Internet access allows the artifacts to function as human extensions, then the manipulation of access to technologies has relevance to ethics and law. There is a discussion on the impact of the extended mind perspective on the discussion on the right to use the Internet and the right not to use the Internet. Finally, the relevance of criminal punishment is shown. First, the lack of access to technologies, including the Internet, should be counted as a hardship for the convicted while imposing proportional punishment. The second issue is a call for allowing the use of the Internet in prisons as a condition to be fully self while serving punishment.

Third, the limitations of the use of technologies, as well as the Internet, might be the basis or support for alternative punishments.

This chapter aimed to show how a change in the underlying philosophical assumption about the subject of punishment might impact the thinking about the current justice system practices. The extended mind thesis is interesting not only due to the coherence with intuitions of many about the transformative role of technology for humans but also because it allows us to show immediately, after its application, how institutions of criminal law could change. Alternatives to the dominant philosophical perspective also shed new light on the discussion on the right to use/not to use the Internet.

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11 Digitalisation of public services in Belgium

Enshrining the right not to use the Internet in the Constitution[1]

Elise Degrave

11.1 Introduction

Human rights were designed to be exercised in a human context. They are now threatened by the widespread digitalisation of society and, in particular, of public services. In this chapter, we argue for the right to choose how we exercise our human rights, whether online or offline, and for the importance of enshrining a new fundamental right in the Belgian Constitution: the right not to use the Internet (Degrave 2023, 2024).

First, the paper examines the benefits and risks of digitising public services. It then sets out the reasons why it is important to enshrine the right not to use the Internet. Finally, we explain why it is important to enshrine this right in the constitution rather than in legislation.

11.2 The benefits and risks of digitising public services

In the relationship between citizens and public services, digital technology is both a solution and a problem.

Digital technology is a *solution*, because behind the scenes of the public sector, the so-called "back office", administrations can work together with just a few clicks. It was this observation that led Belgium, as early as the 1990s, to become more efficient by developing the re-use of citizens' data between institutions, making the country a pioneer in the development of e-government.[2]

Administrative procedures are simplified[3] thanks to the "only once" principle, also known as the "single data collection" or "tell us once" principle.[4] This principle is binding on many administrations, whether federal, community-level or regional.[5] It means that citizens can only be asked once for the information that concerns them, unlike in the past, when individuals had to communicate their data to each administration with which they came into contact. In other words, once a citizen has provided information to one authority, other authorities can no longer ask for identical data. For example, if citizens move house, they no longer need to provide their new address multiple times. Instead, the information will automatically circulate between the administrations that need it. In legal terms, this principle

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