

Deepa Kansra, [Neuro rights, the new human rights](#), 2021  
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# Neuro rights, the new human rights

The *human mind* has been a subject matter of study in psychology, law, science, philosophy and other disciplines. [i] By definition, its *potential* is power, abilities and capacities including *perception, knowledge, sensation, memory, belief, imagination, emotion, mood, appetite, intention, and action*. [ii] In terms of role, it creates and shapes societal morality, culture, peace and democracy.

Today, a rapidly advancing *science–technology–artificial intelligence (AI)* landscape is able to reach into the inner realms of the human mind. Technology, particularly neurotechnology enables *access to the human mind* for research, treatment and other purposes. This *enabling feature* is now a growing concern. Lenka and Andorno write, *while the body can easily be subject to domination and control by others, the mind, along with thoughts, beliefs and convictions, are to a large extent beyond external constraint. Yet, with advances in neural engineering, brain imaging and pervasive neurotechnology, the mind might no longer be such unassailable fortress... emerging neurotechnologies have the potential to allow access to at least some components of mental information*. [iii]

In the field of human rights, this human-science–technology interface is leading to articulation of new human rights to safeguard against *modern threats*. [iv] The wider usage of expressions like *neurolaw* [v] and *mental autonomy* [vi] reflects on the emerging field of standards to protect the human mind from interference, manipulation and control. [vii] Growing literature on the subject sheds light on the *human-rights-based approach* to the challenge.

McCarthy-Jones evaluates the situation in light of the *freedom of thought*, as provided under international and regional human rights instruments. Freedom of thought, according to Jones, is one right through which *mental autonomy* within existing human rights law can be protected. The only concern being that *freedom of thought* lacks material content and articulation in terms of claims and responsibilities. [viii] Alegre discusses the three elements emanating from the freedom of thought and opinion. First, the right to keep your thoughts and opinions private. Second, the right not to have your thoughts and opinions manipulated. And third, the right not to be penalised for your thoughts and opinions. [ix]

A discussion on *neuro rights* broadly includes reference to specific rights and ethical principles. Ethical principles are advocated for regulatory and other purposes. [x] They include free will, augmentation [xi], freedom from bias, consent and privacy. [xii] On the other hand specific neuro rights include freedom of thought, right to identity, mental privacy, cognitive liberty, right to equal access to brain augmentation advances, and protection from algorithmic bias. [xiii] Sommaggio, Mazzocca, Gerola and Ferro define cognitive liberty as an all-

encompassing *core right* and *principle* to regulate neurotechnologies. It is both a *new human right* and a *necessary condition* to build a set of *neuro-rights*. The authors also argue for a Universal Declaration on Neuro Rights. [\[xiv\]](#)

The *human-rights-based* approach is also propelling legal reforms. Chile, for instance, is referred to as the first country to propose the constitutionalization of neuro rights. The Chile *Commission for the Challenges for Future* proposed to undertake a robust constitutional reforms project to incorporate “neuro rights” as human rights in order to protect human beings from the threats emanating from advancements in science and technology. [\[xv\]](#) The *Global Neuroethics*, a Human Rights Global Coalition, proposes a *Neuro Specific Human Rights Bill* in Canada. The Coalition also advocates for reforms in all countries to prevent future harms to human beings. [\[xvi\]](#)

In the future, one can anticipate new *understandings* of the vulnerabilities of the human mind. In the meanwhile, the human rights language is evolving to offer the legal and moral *justifications* for constitutionalization and regulation.

## Notes

[\[i\]](#) Jacqueline A. Sullivan, “Is the Next Frontier in Neuroscience a ‘Decade of the Mind’?”, in C.T. Wolfe (ed.), *Brain Theory* (Palgrave 2014).

[\[ii\]](#) Michael S. Pardo and Dennis Patterson, *Minds, Brains and Law* (OUP 2013).

[\[iii\]](#) Marcello Lenka and Roberto Andorno, “Towards New Human Rights in the Age of Neuroscience and Neurotechnology”, 13:5 *Life Sciences, Society and Policy*, 2017. <https://lssjournal.biomedcentral.com/articles/10.1186/s40504-017-0050-1>

[\[iv\]](#) Neuro Rights Initiative, Columbia University

[\[v\]](#) *Ibid.*

[\[vi\]](#) Simon McCarthy Jones, “The Autonomous Mind: The Right to Freedom of Thought in the Twenty-First Century”, *Frontiers in Artificial Intelligence*, 2019. <https://doi.org/10.3389/frai.2019.00019>

[\[vii\]](#) See *Declaration on the Manipulative Capabilities of Algorithmic Processes*, Council of Europe, 2019. [https://search.coe.int/cm/pages/result\\_details.aspx?ObjectId=090000168092dd4b](https://search.coe.int/cm/pages/result_details.aspx?ObjectId=090000168092dd4b) [\[viii\]](#) *Supra* note vi.

[\[ix\]](#) Susie Alegre, “Regulating around Freedom in the ‘*Forum Internum*’”, *ERA Forum* 21, 591–604 (2020). <https://doi.org/10.1007/s12027-020-00633-7>

[\[x\]](#) See BRAIN Initiative, U.S. Brain Research through Advancing Innovative Neurotechnologies Initiative. The Initiative aims to revolutionize the understanding of the human brain. Also see Khara M. Ramos, Christine Grady, Henry T. Greely, Winston Chiong, James Eberwine, Nita A. Farahany, L.Syd M. Johnson, Bradley T. Hyman, Steven E. Hyman, Karen S. Rommelfanger, Elba E. Serrano, James D. Churchill, Joshua A. Gordon, and Walter J. Koroshetz, “The NIH BRAIN Initiative: Integrating Neuroethics and Neuroscience”, *Neuron* 101, 2019.

[\[xi\]](#) Augmentation can be referred to as the ‘cognitive and physical improvements created as an essential part of the human body’.

[xii] Rafael Yuste and Others, “Four Ethical Priorities for Neurotechnologies and AI”, *Nature*, 2018. <https://www.nature.com/news/four-ethical-priorities-for-neurotechnologies-and-ai-1.22960>

[xiii] <https://www.editorji.com/story/tech-advancement-mandates-need-for-neuro-rights-ethicists-1607159078807>

[xiv] Paolo Sommaggio, Marco Mazzocca, Alessio Gerola, and Fulvio Ferro, “Cognitive Liberty. A First Step Towards a Human Neuro-rights Declaration”, *BioLaw Journal*, 2017. [https://www.research.unipd.it/retrieve/handle/11577/3266203/220169/Cognitive\\_liberty.\\_A\\_first\\_step\\_towards.pdf](https://www.research.unipd.it/retrieve/handle/11577/3266203/220169/Cognitive_liberty._A_first_step_towards.pdf)

[xv] Report on Commission on Chile, *English version* at <https://nri.ntc.columbia.edu/news/chile-could-turn-first-country-has-law-protects-neurorights-originally-spanish>

[xvi] The Bill defines selected neuro rights as follows; “cognitive liberty”, *a conceptual update of freedom of thought that takes into account the power we now have, and increasingly will have to monitor, manipulate, and alter cognitive functions.* “Mental privacy”, *the right to protect brainwaves not only as data but also as data generators or sources of information. It would cover conscious brain data as well as data that is not under voluntary and conscious control.* “Mental integrity”, *the protection from potential neurotechnology-enabled interventions involving the unauthorized alteration of a person’s neural computation and potentially resulting in direct harm to the victim.* And “psychological continuity”, *which aims to prevent is the induced alteration of neural functioning. The right to psychological continuity will protect the mental substrates of personal identity from unconscious and unconsented alteration by third parties through the use of invasive or non-invasive neurotechnology.* See Global Neuroethics, The Human Rights Global Coalition. <https://globalneuroethics.com/neurorights/>

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