

## **Dominium in the Age of Neurotechnologies: Who Is the Subject of Neurorights?**

Many scholars expressed concerns about how potential misuse of neurotechnologies may threaten some basic rights such as right to privacy, freedom of thought, freedom from self-incrimination, right to fair trial, prohibition of discrimination, etc. In order to ensure an effective protection against these potential threats concrete proposals, such as reconceptualizing already existing rights or creating new rights, are set forth. Nevertheless, the academic debate on how to protect effectively the domain of cognitive liberty from potential violations is conducted without any explicit or implicit reference to the theoretical foundations of human rights. More precisely, in this debate there is no open discussion on who should be the subject of neurorights. This is not surprising at the first glance, for there is a quasi-unanimity on the content of the notion of “human” as the subject of human rights. The proposed categories of neurorights, especially that of cognitive liberty do not contradict the existing human rights concept in this respect.

The recently flourishing scholarship on the history of human rights, however, offers a critical study of the abstract concept of human as the subject of human rights. The present paper, in line with this scholarship, attempts to introduce a historiographic perspective to the debate on neurorights by asking whether the concept of human as maintained in the theory of human rights is suitable for defining a subject of rights in the age of neurotechnologies. First, the paper offers a historical account on how the concept of human was formed theoretically at the dawn of modernity. Secondly it explains the concept of dominium from a historical perspective and links it to the modern theory of human rights. Finally, it discusses whether neurotechnologies present a challenge to the theoretical constellation around the subject of human rights originating from the notion of dominium.

### References:

- Bublitz, Jan-Christoph (2013). My Mind is Mine!? Cognitive Liberty as a Legal Concept, in: Elisabeth Hildt & Andreas Francke (eds.), *Cognitive Enhancement*. Springer, Chapter 19, 233-264.
- Douglas, T., Forsberg, L. (2021). Three Rationales for a Legal Right to Mental Integrity. In: Ligthart, S., van Toor, D., Kooijmans, T., Douglas, T., Meynen, G. (eds) *NeuroLaw*. Palgrave Studies in Law, Neuroscience, and Human Behavior. Palgrave Macmillan, Cham.
- Ienca, Marcello and Andorno, Roberto (2017). Towards new human rights in the age of neuroscience and neurotechnology, *Life Sciences, Society and Policy* 13: 5.
- Lavazza, A. (2018). Freedom of thought and mental integrity: the moral requirements for any neural prosthesis. *Front. Neurosci.* 12:82.
- Ligthart, Sjors (2020). Freedom of thought in Europe: do advances in ‘brain-reading’ technology call for revision? *Journal of Law and the Biosciences*, v. 7, Isaa048.
- Pagden, Anthony (2003). Human Rights, Natural Rights, and Europe's Imperial Legacy. *Political Theory* 31: 2, 171-199
- Pendas, Devin O. (2012). Toward a New Politics? On the Recent Historiography of Human Rights. *Contemporary European History*, 21 (1), 95-111.
- Perelló, Carlos Amunátegui (2022). Natural and Artificial Neural Networks: The Chilean Legal Framework, *J. Civ. L. Stud* 14.
- Todescan, F. (2017). From the “Imago Dei” to the “Bon Sauvage”: Francisco de Vitoria and the Natural Law School. In: Beneyto, J., Corti Varela, J. (eds) *At the Origins of Modernity*. Studies in the History of Law and Justice, vol 10. Springer, pp 21–43
- Yuste, R., Genser, J., and Herrmann, S. (2021). It’s time for neuro-rights. *Horiz. J. Int. Relat. Sust. Dev.* 18, 154–165.