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OPEN PEER COMMENTARIES

Designing New Neurorights: Tasking and Translating Them to All Humanity

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As Herrera-Ferrá et al. (2023) carefully explain, the contentious legacy of human rights should not prevent the re-crafting of particular ethico-legal responsibilities and obligations focal to the use of current and emerging neuroscientific and technological (neuroS/T) developments, in light of the social challenges they can—and likely will—generate. Respect for diversity, both ethnocultural and neurocultural, needn't be inconsistent with forming an inter-cultural, transnational consensus about those ways in which neuroS/T should (or should not) be employed for particular ends in various social settings and circumstances.

We offer supportive recommendations toward translating cultural sensitivities and vulnerabilities into novel rights. Universal rights applicable to the use of neuroS/T (i.e. "neurorights") primarily pertain to one's Mentality that protects neuro-psycho-mental identity and integrity, along with one's Identifier, Neuroimaging, and Data-semblence—thus, MIND should be protected by MIND-neurorights.

Neurorights aspiring to humanity-wide recognition must respect humans everywhere. While human rights should be transnational to be substantive and applicable within global contexts, they shouldn't be so transcultural so as not to translate into terms acknowledgeable by the very peoples such rights are posited to serve. Where rightful terms sound self-evident in some cultures, other cultures may disagree about their practical necessity, and certain people may perceive yet another authority seeking to regiment them. So-called inherent rights, when materially implemented, have often proven to inhere only in a human specifically situated within or fitted to this or that economic/civic order.

New rights protecting people rather than contorting them are recommendable, especially as the near future looks so unpredictable, and policy is lagging behind scientific and technologic advancements. Many laws do address and protect aspects of data collection, transfer, access, privacy, and use, but their thin restrictions are nowhere close to tight regulations of information. As important as such laws are today, the need for more expansive rights can't be met merely by stronger enforcement. Prior calls for legal guidance and governance of neurologically relevant information were admirable, and prescient in their view and proposed intent (such as Kostiuk 2012). However, legal gaps and enforcement lapses tend to be discovered after breaches and misuses of S/T probity are revealed to a bewildered public; and, far too often, corporations lobbying for regulatory directions tend to favor profit motives. These lapses can incur laxity sustaining protections to mitigate or prevent idiosyncratic as well as systemic burdens, threats, and harms (Desai, Shook, and Giordano 2021).

Previously, we have noted that in the United States (and its internationally collaborative partner nations) contemporary engagements of neuroS/T do not explicitly violate human rights and civil liberties (Kraft and Giordano 2017). This current situation is neither guaranteed nor universal. (1) Rights and liberties can fluctuate and differ within various cultures and societies, and (2) further developments of brain (and supportive) sciences are such that possibilities—if not probabilities—for uses treading upon regnant norms of rights and liberties are becoming ever more viable (Lanzilao, Shook, Benedikter and Giordano 2013). As Herrera-Ferrá et al. enumerate, many proposed digital/neuro rights are the focus of current discourse, inclusive of: protection from privacy violations;

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respect for personal autonomy; guarantees for access to treatments (and enhancements); shielding from discriminatory practices; preventing the imposition of social ableism; averting the perpetuation of injustices; and similar extensions of established human rights, civil rights and liberties, and legal protections.

Nowhere on the planet should feel safely aloof from a need for neurorights. The Digital Divide is rapidly overtaking the geo-political significance of any global West-East or North-South divide. No culture is so privileged that its members—including techno-elites—have an adequate comprehension about how the terms and conditions of neuro (and data/-computational) S/T may apply. Anyone may have vague ideas about what autonomy, privacy, property, or security could practically mean in a digital world, but those ideas wouldn't necessarily sound coherent if one person were asked to explain them, and would hardly be consistent with the next ten (or ten million) people similarly asked. Soliciting answers from a hypothetical human about conceptions of neuro-digital matters would therefore be little more than an exercise in eliciting one's own preconceptions.

In alignment with Herrera-Ferra and colleagues, we concur that a new foundation about rights for humans inhabiting a world manifestly influenced by neuro-digital S/T has become a necessity. We initially propose that it is time to put the "personal" back into "personal property" so as to revive a perennial and transnational idea that one's productivity should be one's own property instead of becoming a master's appropriation. The right of ownership and control over one's body and brain (and its functions, viz. 'mind') should not attenuate to the point of disappearance.

To ground neurorights, we have advocated a cosmopolitan standpoint for ethical—and legal—guidance and governance of neuroS/T (Shook and Giordano 2014; Giordano and Shook 2018; Shook and Giordano 2020; Shook and Giordano 2024). This cosmopolitanism insists that servility is inhuman and inhumane. It is a basic human right to never be transformed into any sort of slave (unfree production), serf (unfair productivity), or simulacra (unfeeling duplicate to produce). Therefore, capturing the "form and likeness" of an individual person and mentality (i.e. a computational [e-] representation), and then claiming it as servile property, is a wrongful transformation of what is human into a sort of slave, serf, or simulacrum. The ownership by others of such an e-representation (as an e-slave, e-serf, or e-simulacrum), and/or the ownership of their patenting or productivity, is a rights violation against its human source and genesis. It follows that the personal ownership of one's own e-products and productivities is a universal property right. That right is inherent but not unlimited, since certain modalities and means of creating and deploying them will require supervision and regulation.

These principles do not classify e-slaves, e-serfs, or e-simulacra as humans or persons, and they are not rights-bearers. Instead, these principles focus on the transformation of what is human to what is servile property, rather than first classifying that (illicit) property as human or not. Turning something human into property, and then claiming that property can't be human so this enslavement wrongs no one, was the "logic" of the slave holder. E-servility isn't wrong because some authority defines what has humanness, but rather because something human is being transformed into servile property.

Translating and explaining the neuro-digital world and its threats and dangers will take time; yet this will not be time wasted, as the worry over servility is nowhere absent. In the interim, while people around the world have varying conceptions of selfhood, identity, freedom, autonomy, productivity, ownership (and so on), having the "right" terminology or conceptions should not be able to determine human rights. To avoid ethnocentric domination, refrain should be exercised against requiring a crafted conception or term; conversely, each culture's own attitudes, arrangements, and aversions should be heeded. All human beings deserve the same equal rights, even though (1) humans generate productivity and property in innumerably different ways; (2) they didn't all invent or apply a particular conception of a right; (3) only one portion of humanity advanced a right first, or more recently, or not at all; and (4) some portions of humanity haven't yet appreciated that right. No portion of the globe dictates what may or may not count as rights. Racism, ethnocentrism, colonialism, or commercialism anywhere cannot be a pretense for blindness to human rights everywhere.

Banning e-servility with finality requires neurorights. Technologies applying, linking, or merging data and/or computational (ML/AI) S/T with brain activity should be covered by a primary neuroright to one's Mentality. This neuroright protects neuro-psychological/mental identity and integrity as experientially and behaviorally manifested (without navigating into anything metaphysical). Three additional neurorights relate to matters of personal identification: these are one's Identifier, Neuroimaging, and Data-semblence. Examples are personal identifiers,

unique IDs, namings, recordings, scans, modelings, profilings, simulations, simulacra, animations, avatars, deepfakes, replicants, and the like. Attention to the way that an individual's features can be personal property protectible by rights will surely grow, as illustrated by the NCAA's 'NIL' policy for college athletes (NCAA 2023).

MIND-neurorights are inalienable: they are inherent to persons and cannot be diminished or lost. These rights cannot be exchanged, sold, gifted (etc.). As fundamental neurorights, they are neither held as property nor pertain to property, but only to persons. One's MIND-neurorights serve to prevent detecting, recording, modifying, generating, manipulating, or repurposing those MIND-matters beyond one's control, and hence prevent the creation of property for another. Protected by neurorights, explicit permission would be required for the creation of these sorts of matters, they are generatable only for approved uses as understood by that person through informed consent, and they are covered fully by data privacy protocols and data protection guarantees. Additional neurorights, which are not necessarily universal, but may vary across nations and jurisdictions, would specify the range of permissible use of, and scrutiny about, MIND-matters.

In sum, we believe that such MIND-rights illustrate how to ground neurorights in a manner satisfying the admirable criteria set out by Herrera-Ferrá et al. for well-grounded and humanity-wide applications in real-world, and globally-relevant settings and practices.

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