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THE NEW CHILEAN CONSTITUTION AND THE BILL ON NEURO RIGHTS: NEW PERSPECTIVES IN CONSTITUTIONAL LAW, REGULATION, AND IN THE METAVERSE

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After a constitutional referendum having taken place in October 2020, Chile is now working on a new Constitution replacing the one dating back to Gen Pinochet's military rule, after an overwhelming majority of 79% voted in favour. At the same time, a bill (Boletín N° 13.828-19) promoting neuro-rights is under discussion, and it aims at granting constitutional protection to these new rights. In concrete, the overall purpose of the law concerns the protection of the physical, and mental integrity of individuals (art. 1, lett.a) against the interference of human-computer interfaces (e.g. brain implanted chips). In this regard, if the bill was approved, it would represent a word precedent. The object of the next considerations refers to the convenience of this reform in the light of the legal discourse, and the societal changes produced by technological advances.

From a legal perspective, the protection of neuro rights does not appear to be justified on the grounds that the creation of new human rights does not contribute to guard against new threats to old human rights.

By contrast, new fundamental rights would inflate the hard core of traditional fundamental rights enshrined in constitutions, and

international declarations by limiting their scope when balancing them (Pollicino, 2021). By way of example, the emergence of new ways of intrusion does not alter the content of the right to privacy, nor is it a basis for the legal creation of new rights.

In principle, the existing set of fundamental rights would suffice to grant an adequate level of protection. In this sense, the adjustment to new situations is performed by the hermeneutic activity of courts. Nevertheless, it should be valued the legislative proactivity towards the protection of the human identity due to the implications produced by the Fourth Revolution. More precisely, the more technology advances, the more our lives are influenced by artificial agents performing tasks. Beyond the countless benefits produced by algorithms, resulting in more time to look after other assignments, serious implications follow. For instance, autonomous weapon systems cast light over the tragic outcomes of algorithmic determinism. In concrete, when establishing a comparison with domesticated animals, their independence is tempered through extensive training. Nonetheless, it is not sufficient to reduce their peculiar inflexibility given the interests at stake. Overall, it should be remembered that algorithms process bulks of Data in an ahistorical, and atemporal manner. By contrast, human-based decision-making (e.g. a court's decision) operates a deductive choice wherein the temporal dimension plays a central role for the qualification of facts.

In view of this, it is arduous to harmonise the algorithmic predictivity with the law's prescriptive trait. To continue, the human-machines collective intelligence appears to conflict with the traditional approach within legal regulation. The latter does consist of mutually exclusive modes of conducts pertaining to the rigid Roman taxonomy of *imperare vetare permittere punire* (D.1.3.7). From one hand, it is indisputable that the zero-sum-game patterns of regulation may provide a certain decree of legal protection. On the other, they may prevent the full development of opportunities, identities, and human dignity, as they are limits.

This being said, it is possible to grasp the ambivalence of both the law, and its prospective objects of regulation. Therefore, decision makers ought to develop a new, more fluid, dialectic approach for tackling the

Fourth Revolution challenges. More specifically, humans, as organisms living in the ecosphere, are now adapting to the additional environment of the infosphere (Floridi, 2021).

In support of these claims, the new nature of the Metaverse may provide valuable clues for the future of law. In sum, the Metaverse could be considered as the ultimate result of the full integration between analogical, and digital dimensions. According to Meta, it «is a set of virtual spaces where you can create and explore with other people who aren't in the same physical space as you». Moreover, it can be compared to a bundle of virtual experiences, environments, and assets. In this respect, Metaverse may represent the ultimate accomplishment to date of media convergence processes given its features. They involve the hybridisation of many tools for delivering information, enabling the usage of a single interface for all information services.

However, experts point out the dangerous outcomes of these interfaces. In a recent interview with the New York Times, Eric Schmidt, former Google's CEO, warned against AI effects as follows «All of the people who talk about metaverses are talking about worlds that are more satisfying than the current world — you're richer, more handsome, more beautiful, more powerful, faster. So, in some years, people will choose to spend more time with their goggles on in the metaverse. And who gets to set the rules? The world will become more digital than physical. And that's not necessarily the best thing for human society».

From a media convergence's standpoint, it firstly emerges how an interface can influence the behaviour of individuals (e.g. automatic purchasing hints in e-commerce platforms), with the dreadful effect of hindering the free exercise of the will. Namely, every factor of such a nature turns out to be a restraining factor of the freedom of self-determination. At the same time, the law is getting shaped by this phenomenon similarly to other media. We can glimpse the fading between the public, and the private spheres, also in the perspective of Global Governance patterns.

Indeed, the manners in which machines (as interfaces) are set prove to be decisive for the qualification of the human experience in the infosphere. It

initially regards the relations between private individuals, and then it plays a central role when it comes to the discourse upon sovereignty.
In particular, the advent of social media is a «revolution of historic proportions», and online platforms are the digital equivalent of public spaces like parks, and streets where people can freely communicate (*Packingham v. North Carolina, 137 S.Ct. 1730, 1736 (2017)*)
Bearing this in mind, it is possible to agree with the contention of neurolaw doctrine (Picozza, *Neuralaw. An introduction* 2014) whereby a «conceptual reformulation of current legal notions and theories, a reformulation informed precisely by cognitive neuroscience » is deemed to be necessary.
Thus, the harmonisation of the law to the current state of the affairs can be drawn from its implementation.
At this stage, it is possible to conclude that the creation of neuro-rights within the new Chilean Constitution may appear superfluous. Nonetheless, this attempt should be praised by constituting a form of legislative activism aiming at informing future pieces of regulation.
To this end, the constitutional pairing between the internet (along with human-to system interface), and sustainable places might represent a viable compromise.
In particular, the Chilean Constituent could analogically extend the constitutional protection to the environment within the realm of Information, and Communication Technologies. For this purpose, the Bolivian Constitution of 2009 may provide a valid methodological basis. Under a practical point of view, its *semantic transfer* can contribute to grant constitutional protection to unprecedented situations.
More precisely, the addition of a provision like Article 30, fist sect., no. 10, to «live in a healthy environment, with appropriate management and use of ecosystems» may *concur* and not compete with existing fundamental rights. Put differently, the analogical broadening would settle collective rights, *not directly* inflating fundamental rights, in principle solely related to the individual sphere.
Consequently, the status of neuro rights as collective rights, can contribute to enhance the legal protection, particularly in the light of

privacy harms' high contextuality.
Analogously, autonomy, understood as an extension of private life (cf. *Tysiac v. Poland, Application no. 5410/03, ECHR, 2007*) would receive an additional frame of reference for legal protection.
Moreover, the collective rights' paradigm would provide another set of principles for the overall infosphere's sustainability in virtue of data as «a reinterpretable representation of information in a formalized manner, suitable for communication, interpretation or processing» (ISO/IEC 2382-1).
From this angle, the width of collective rights protection could create a more suitable foundation in epistemic terms, while recalling the in-progress intersection between ecosphere, and infosphere.
In practice, this new set up could at least lead to a reduction of both internal, and external constraints hampering the freedom of choice. Ultimately, this approach would contribute to first establish a *rational limit* to the prospective unpredictable developments within technological applications. Secondly, it would set a connection among existing fundamental rights, opting out procedures (cf. art. 22 GDPR), and future developments.