

Is Mental Self-Determination Needed as a New Right?

- related to the Development of Neuroscience
and Korean Legal Rights

Choi Min-Young¹ & Kay In-Kook²

¹ Korean Institute of Criminology and Justice ² Korea University

Legal Challenges in Neuroscience Development

- So far, law has not paid much attention to protecting minds. First off, there was no reason to. Second, the binding nature of law has made it desirable not to.¹
- However, the advancement of neuroscience proves through many cases that legal protection for mind is necessary.²
- In this regard, the slides of this presentation aim to review whether mental self-determination or cognitive freedom that has emerged as a new right along with the development of neuroscience is needed in Korean legal systems.³

1) Bublitz, C. (2020). The Nascent Right to Psychological Integrity and Mental Self-Determination. In Arnould/Decken/Susi (Eds.), *The Cambridge Handbook of New Human Rights*. Cambridge : Cambridge University Press.

2) Bublitz, C., Merkel, R. (2014). Crimes against Minds: On Mental Manipulations, Harms and a Human Right to Mental Self-Determination, *Criminal Law and Philosophy*, 8.

3) Boire, R. G. (2003). On Cognitive Liberty, Part I-V. *Journal of Cognitive Liberties*; Sententia, W. (2004). Cognitive liberty and converging technologies for improving human cognition, *Annals of the New York Academy of Sciences*, 1013; Ienca, M., Andorno, R. (2017). Towards new human rights in the age of neuroscience and neurotechnology, *Society and Policy*, 13:5.

Korean Fundamental Right and Mental Self

- Determination as a New Right

- The proposal for the creation of the right to mental self-determination has an important meaning in that it views the new risk situation and case resulting from the use of neuroscience.
- However, a careful approach is required to determine whether new basic rights in Korean Constitutional Law are needed. This is because, even through the interpretation of the existing basic rights, it is possible to protect the mind that is emerging as a new issue.
- At present, protection of the mind seems to be possible through the basic constitutional rights (human dignity, right to bodily integrity, right to conscience, right to privacy and right of self-determination to personal information) and judicial judgment regarding them.

Korean Criminal Law and Mental Manipulation

- Even though the right to mental self-determination is not clearly established as a new basic right, it is clear that there is a legal interest to protect the mind through existing rights.
- Mental manipulation might be regulated by coercion or fraud under Korean Criminal Law. However, there is a possibility that a new criminal-component(*Tatbestand*) will be added in view of the broader scope of the relevant acts.
- In advance, it is necessary to review whether there is any room regulating the relevant acts through legal means other than the criminal law, and still, there is another issue remaining where the standards and types of illegal acts in question must be clearly established.

Open Conclusion: Towards Better Mind Protection

- This slide proposes that an issue of mental manipulation can be addressed through interpretation of existing rights and laws rather than through the introduction of new rights.
- However, at the same time, it is acknowledged that the standards and limits of mind manipulation subject to arguments may vary depending on the speed of technological development and the degree of implementation.
- In conclusion, what is most important here is that the current legal norms in Korea need to be given a new angle going forward as neuroscience continues to develop. Neuroscience technology urges a discussion on the scope and limit of our “right to mind.”

Thank You!

- Research Supported by the National Research Foundation (NRF) Funded by the Korean Government (MSIT) (No.2019M3E5D2A02064503)
- Correspondence: minyoungchoi@kicj.re.kr
- Disclosures: none