REVISTA *ARGUMENTUM*

THE NEED TO ATTRIBUTE A LEGAL NATURE TO ARTIFICIAL INTELLIGENCE AS A DIGITAL ASSET IN LIGHT OF HUMAN RIGHTS, CONSTITUTIONAL GUARANTEES, AND HUMAN DIGNITY FROM THE PERSPECTIVE OF BRAZILIAN LAW

A NECESSIDADE DE ATRIBUIÇÃO DA NATUREZA JURÍDICA À INTELIGÊNCIA ARTIFICIAL COMO BEM DIGITAL À LUZ DOS DIREITOS HUMANOS, DAS GARANTIAS CONSTITUCIONAIS E DA DIGNIDADE DA PESSOA HUMANA NA PERSPECTIVA DO DIREITO BRASILEIRO

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ABSTRACT

This article analyzes the need to define the legal nature of artificial intelligence within the domain of property law, classifying it as an intangible asset. Based on an analysis of the Brazilian civil-constitutional legal system, it argues that granting civil personality to artificial intelligence is unnecessary. The perspective adopted is ontological and grounded not only in the essential characteristics of AI as an intangible asset but also in the understanding that legal personality is not a necessary criterion for resolving legal conflicts involving AI. The article employs a qualitative bibliographic-documentary research method and applies the dialectical method to problematize potential solutions regarding the legal recognition of AI, ultimately proposing the future recognition of AI as an intangible asset as a unifying legal criterion. It concludes that artificial intelligence is, and should be, recognized as a legal good, and that civil legal personality should not be attributed to it as a means of safeguarding human and constitutional rights.
KEYWORDS: Artificial intelligence; Legal nature; Civil personality; Civil and procedural liability.

RESUMO

O artigo analisa a necessidade de delimitação da natureza jurídica da inteligência artificial situada no mundo do direito das coisas e a qualifica como bem imaterial. A partir de uma análise do ordenamento jurídico civil-constitucional entende que é desnecessária a atribuição de uma personalidade civil à inteligência artificial. A perspectiva é ontológica e baseia-se não só pelas suas características essenciais de bem imaterial que é, como também porque é desnecessário atribuir uma personalidade como um critério jurídico que

fosse solucionador da solução dos conflitos nas relações jurídicas. O artigo utiliza uma pesquisa bibliográfico-documental qualitativa e do método dialético de problematização das opções de solução do reconhecimento da natureza jurídica da inteligência artificial propondo pela reconhecimento futuro de um bem imaterial como critério uniformizador. Conclui que a inteligência artificial é e deve ser reconhecida como um bem e não deve ser atribuída a ela uma personalidade civil jurídica para a proteção dos direitos humanos e constitucionais do ser humano.
PALAVRAS-CHAVE: Inteligência artificial; Natureza jurídica; Personalidade civil; Responsabilidade civil e processual.

1 INTRODUCTION

At the outset, the evolution of artificial intelligence developed through computational learning. It advanced via human-supervised learning, in which the computer is provided with various solutions to paradigm situations and seeks to respond based on a process of adaptation, comparison, and innovation.

According to Pimentel, in supervised learning, machines receive a large number of examples of correct answers to specific problems, provided by their programmers.For him, it is challenging to determine the extent to which responsibility should fall on the developer, the user, or even on the machine itself (Pimentel, 2018, p. 16-39; 56).

With new technologies comes the need for the Brazilian legal system to adapt to principles specific to a new digital era. Therefore, the development of a digital legal framework is advocated—more specifically, a body of digital civil law, which, in our view, must be guided by principles and rules established exclusively through specific legislation, given the dynamic and evolutionary nature of the digital world.

Every country's hermeneutical construction must follow one of two structurally opposing paths: (i) to create specific legal norms and liabilities within the context of human relations in the digital world; or (ii) to opt for an interpretive approach by adapting existing norms in such a way that human relations in the digital or non-digital world may be harmonized, without the need for a foundational normative restructuring—perhaps establishing only certain principle-based norms applicable to the digital environment, such as those involving security, transparency of information, and taxation in virtual settings, among others.

This represents a fundamental decision facing contemporary legal systems, one that must determine the most appropriate path to resolving the problems and broader questions raised by virtual legal relationships.

Should the choice be the creation of specific norms for the digital world, some even advocate—albeit implicitly—for the construction of an autonomous normative system. This includes the possibility of recognizing legal personality for AI[1] or, alternatively, adopting new interpretations within the field of civil liability. This raises the dilemma of whether to apply subjective liability, objective liability, or even to adopt a notice-and-take-down mechanism.[2] This last approach is also subject to criticism, as it may create a chilling effect[3] by allowing a user to remove compromising content via notification to a social network, for instance, without judicial intervention—potentially resulting in the mass removal of online content and thereby undermining freedom of expression, which has been a foundational value of the digital universe since its inception.

Alternatively, one may choose to adapt and reinterpret existing normative structures, paying careful attention to foundational hermeneutic concepts and undertaking a structural rereading of existing laws to achieve similar regulatory outcomes within cyber-legal relationships. This approach would preserve the rationale behind the original dogmatic legal constructions—such as those relating to legal capacity, personality, and object—without disregarding, of course, certain principle-based norms required by the virtual environment, particularly when dealing with artificial intelligence.

In this context, human personality is an ontologically complex structure and the subject of multiple controversies, especially among biologists and psychologists (Sousa, 1995, p. 110).

The human being is an intelligent entity and, as taught by Goffredo Telles Junior, belongs to the category of spiritual beings and embodies the existence of non-material assets of intrinsic value, since:

> [...] man belongs to the order or category of intelligent beings. Some prefer to call them spiritual beings—a term that seems appropriate because it highlights the difference between human intelligence and that of other intelligent entities. Human intelligence, in fact, includes spiritual

[1] In Saudi Arabia, the legal system recognized the status of citizenship for the technology known as "Sophia," endowed with artificial intelligence, according to STONE Zara. *Everything you need to know about Sophia, the world's first robot citizen*. Forbes, 2017.

[2] Literally translated, it means "to observe and remove," but in a broader sense, it refers to the communication to the content provider to verify the existing data and remove it in the face of a possible illegality of the conduct practiced in the virtual environment.

[3] It refers to a mitigating or palliative effect concerning the freedom of expression; however, when information or content that causes harm is identified, the victim may request the extrajudicial removal of that information, thereby alleviating any damage resulting from the very exercise of freedom (which is not, by itself, absolute—that is, it must not cause harm arising from unlawful acts to others). This expression is initially feasible through the internet precisely because the digital world, due to the ease of networks, allows everyone, in principle, to express their thoughts or opinions.

> intelligence, which is capable of idealization, invention, and planning. It is an intelligence that formulates ideals, an intelligence inclined toward goals higher than those already achieved.
> Consequently, spiritual or ideal goods must necessarily exist for the improvement of the human being—that is, for the realization of human nature in its fullest form. They must indeed exist because the human being needs them to access the forms that define them.
> What are these goods? Without a strict classification, they may be referred to as moral, scientific, or aesthetic goods. These include respect for human personality, recognition of the essential equality of all human beings, guarantees of physical freedom and freedom of thought, the security of justice, recognition of honesty, and adherence to the rule of law in legislation and governance (Junior, 2016, p. 149-150).

Law, as a normative science, should not focus on such human characteristics, motivations, or behavioral patterns, which are instead the object of other disciplines. Anthropology, for example, examines humanity's evolution in light of its beliefs and culture. Sociology addresses society and the interrelations of individuals within groups, institutions, and associations, aiming to maintain or alter existing power dynamics. Philosophy, in its methodological dimension, seeks to uncover and analyze the rationale behind human choices, based on human nature as it is—rather than how it ought to be (a notion that is characteristic of legal regulation through the lens of normative obligation). Nearly all areas of human knowledge can, in some way, be the subject of philosophical inquiry.

Bioethics, in turn, undertakes the task of formulating philosophical and moral reflections on life itself—evaluating its benefits, drawbacks, and risks for humanity's future (Diniz, 2017, p. 15). It must also be examined through the lens of personality rights, as the other sciences must contribute to ethical and philosophical progress alongside legal science, ensuring that technology and artificial intelligence align with human dignity (Diniz, 2017, p. 296). [4]

The role of legal science and legal norms is precisely to safeguard those non-material assets that are essential to the dignity of individuals and to society. These are

[4] Free translation by the author: The challenge will be to develop a liberating ethos for bioethics and biolaw, which includes the conviction: of the transcendence of life; of the capacity to live life in solidarity, accepting it as a divine gift or blessing; of the inadvisability of the overriding of selfish individual interests; of the obligation to replace the technical-scientific imperative "I can do" with the ethical imperative "I must do"; of cultivating a wisdom that challenges not only the ethical imperialism of those who use force to impose their truth on others, but also the ethical fundamentalism of those who refuse to engage in open dialogue; of the necessity to move beyond a technocracy that dominates man toward a technology that serves the humanity of man himself; of the positive use of scientific discoveries and new technologies, provided that one remains alert to the dangers of the deification of technique and the irrational radicalization of its use; and of the demand to respect "human dignity," a driving concept of the Democratic Rule of Law, in medicine, embryology, human genetics, and molecular biology.

known as personality rights, which in Brazil are governed by Articles 11 to 21 of the 2002 Civil Code, along with other specific or principle-based regulations.

Personality rights encompass physical integrity (such as life, the right to one's living or deceased body, freedom of movement, etc.); moral integrity (e.g., image and likeness, privacy and intimacy, honor, name, tranquility); and intellectual integrity, which includes artistic, literary, and scientific works.

These non-material goods are subject to different normative dimensions depending on the legal system that governs them. It is possible to speak of a threefold dimension concerning the effectiveness of personality rights—that is, dimensions of applicability.

When addressed in civil legislation, such as the 2002 Civil Code, these non-material rights are regulated from a horizontal perspective, with protection and enforcement occurring in private relationships (between individuals). In civil contexts where such rights are violated, one must identify the specific non-material asset that was infringed in order to apply appropriate legal remedies—whether preventive (such as anticipatory, incidental, evidentiary, urgent, or precautionary measures) or repressive, meaning the award of compensation for moral damages resulting from unlawful acts.

Conversely, when personality rights are established in constitutional texts—as in Article 5, item X of the 1988 Federal Constitution, which guarantees the inviolability of intimacy, private life, honor, and image, as well as the right to compensation for material or moral damage—the same non-material assets are recognized, but with vertical efficacy. That is, the Constitution mandates the State's duty to protect and safeguard these rights both preventively (by declaring their inviolability) and repressively (by guaranteeing redress for violations).

Nevertheless, one must recognize that not all fundamental rights are personality rights, nor do all fall within the category of individual rights and guarantees. An example is Article 5, item LXX of the 1988 Constitution. Thus, it is correct to state that not all rights are equivalent in nature or interpretation.

The State's duty, as established by the 1988 Federal Constitution, extends to all three branches of government: the Executive, the Legislative, and the Judiciary. Infraconstitutional legislation must unconditionally preserve and guarantee the inviolability of these non-material rights. When a violation is brought before the Judiciary, it must determine which specific right was infringed and, through the weighing of

conflicting interests, pursue either preventive measures or financial compensation[5] in favor of the injured party, based on the unlawful nature of the act.

Finally, a third dimension must be acknowledged—what may be termed the circular or global aspect. This pertains to the State's responsibility and its commitment to other nations and the international community, particularly when these non-material assets are enshrined as rights in international treaties or agreements to which a country is a signatory. In such cases, the State is obligated to cooperate, monitor, and enforce the rights contained therein as human rights.[6]

The significance of these international commitments lies in the State's duty, at both the global and domestic levels, to implement and guarantee such rights—not only through effective public policy across its branches of government, but also by advancing and upholding human rights protections, especially in accordance with the principle of non-retrogression.

Accordingly, when rights are established in international treaties or declarations—such as the Universal Declaration of Human Rights, adopted and proclaimed by the United Nations General Assembly (Resolution 217 A III) on December 10, 1948—they represent the clearest social values for the preservation and protection that the signatory State must incorporate into its governance and legislative processes. The effective realization of these rights must also be guaranteed through judicial activity, both domestically and internationally.

For this reason, it must be recognized that personality rights share the same legal nature as human rights, with their differentiation lying solely in the context of their applicability—whether in individual-to-individual relations, State-to-individual relations, or State-to-international community relations. In all instances, the State plays a role—whether through the enactment of legislation by the Legislative branch, the

[5] This terminology better reflects the reality when it comes to moral damages, despite the constitutional text itself in Article 5, item X, using the term "compensation," which is also widely used by legal doctrine and jurisprudence.
[6] It is important to note that when a country is a signatory to international treaties, agreements, or pacts—whether or not directly or indirectly involving human rights issues—this does not, in any way, place that country at a disadvantage compared to countries that have not signed such international treaties or agreements. In truth, it is a relationship of international cooperation and mutual assistance among countries to uphold human rights, avoid the catastrophes of the two world wars, and ensure the protection of humanity against crimes arising from any local war provoked by any country. The perspective should be exactly the opposite and deserves reflection and study. It is precisely those countries that do not sign such international agreements and treaties that should always be questioned worldwide for their lack of cooperation and international unity, especially countries of greater social and economic relevance, such as the USA, China, Russia, and India.

implementation of policies by the Executive, or the adjudication of disputes by the Judiciary.

Hence the importance of revisiting the concept of personality rights in light of new technologies, especially with the use of artificial intelligence and the modern digital era, as the right to information and the right to internet access increasingly take on the character of global (ONU, 2011) human rights. In domestic law, these developments demand the recognition of individual and social rights that preserve and protect human dignity.

Artificial intelligence enables the creation of technological mechanisms through which certain solutions may be applied or enhanced via an algorithmic process of reasoning deemed "artificial," as it can generate new information or solutions and comprehend questions or instructions previously presented by human intervention—relying on algorithms or databases either populated by humans or self-fed by AI using internet content.

The aim of this article, based on the dialectical method proposed by Miguel Reale—including his tridimensional theory of law, which acknowledges its evolutionary dynamism—is to undertake a brief analysis of the necessity of maintaining the conceptual construction of the legal nature of things and persons. This must be done without resorting to a completely parallel pathway that would entail granting legal personality to artificial intelligence. The mere fact that this technology may generate innovative solutions previously unimaginable by human beings cannot justify its civil liability—nor, ultimately, the exemption of its creator, programmer, or the natural or legal person who owns, possesses, or controls this novel technological resource.

2 THE FOUNDATIONAL STRUCTURE OF PROPERTY LAW AND LEGAL RELATIONSHIPS

In the field of civil law, it is a traditional understanding that a thing is everything that exists, excluding the human being. A good is a species of thing, insofar as it is susceptible to appropriation. Maria Helena Diniz defines property law as a set of rules that govern legal relationships concerning material or immaterial goods susceptible to human appropriation (Diniz, 2025, p. 1).

In our view, it must be understood that, from a legal perspective, the concept of thing encompasses everything that exists, excluding human beings. Thing is the genus;

goods are the things that are capable of appropriation, and thus represent the species, based on their utility or rarity. It is well known that some consider thing to be the species and goods the genus.[7] However, such an inversion leads to considerable confusion, particularly given that both the Civil Code of 1916 and that of 2002 specifically regulate corporeal and incorporeal things that may be subject to legal relationships and, especially, to appropriation by human beings or by entities composed of human beings, endowed with legal personality and civil capacity. At times, even non-personified entities are granted the ability to hold legal subjectivity, such as the unborn child (nascituro), condominium entities (which are considered anomalous or formal personalities),[8] the estate (or succession estate), or a bankrupt estate (massa falida), notwithstanding doctrinal disagreements regarding what should or should not be considered a person—including the nascituro in utero and, furthermore, in light of genetic manipulation techniques conducted outside the womb, as contemplated by the Biosafety Law (Law No. 11.105/2005), which the Federal Supreme Court has deemed constitutional (ADI 3.526).

[7] According to Ricardo Fiuza (Novo Código Civil comentado, 3rd ed., São Paulo, Saraiva, 2004), following the thought of Joel Dias Figueira Júnior: For a long time, the title of Book II of our Civil Code, "Property Law" (Direito das Coisas), has suffered severe criticism from contemporary doctrine, which seeks to demonstrate that the expression used appears restrictive and incompatible with the breadth of the Book itself, insofar as it deals with possession (considered a socio-economic potestative fact and not a real right), as well as regulating all real rights. On the other hand, the word "things" (coisas) denotes only one of the species of "goods" (the genus) of life, which is why it would be manifest legal technicism to continue conferring on one of the Books of the Civil Code the title Direito das Coisas, since it regulates factual and legal relations between subjects and the goods of life susceptible to possession and real rights. Thus, considering that the 2002 Civil Code sought to confer better terminology to legal institutes, titles, chapters, and sections, Joel's suggestion is manifestly appropriate, imposing the correction of this lapse by conferring on Book III the proper denomination: "POSSESSION AND REAL RIGHTS" (DA POSSE E DOS DIREITOS REAIS). However, we cannot forget that, despite doctrinal divergences, possession for the majority of our civilists is conceived as a real right for several reasons: i) it is enforceable erga omnes; ii) no intermediary is necessary for its exercise; iii) it is the legal relationship between the subject and the object; iv) in light of the gravitation theory, its legal nature is a real right; v) it is a degraded or provisional real right; vi) by the very topographical position in the 1916 and 2002 Civil Codes included in property law; vii) it is subsumed in all the other mentioned real rights that involve it as set forth in article 1,225 of the 2002 Civil Code, especially the provisional immission in possession by public entities, item XIV, as amended by Law 14,620 of 2023. Article 1,225, in our view—respecting contrary understandings—confirms, in light of the principle of taxativity, that possession is conceived as a real right, as defended by Ihering through his objective theory, since, by indirect means, possession exists and is exercised in all the other mentioned real rights, such as those of the owner, usufructuary, pledge creditor, holder of habitation rights, superficiary, servient owner, etc. Although possession is sometimes called a socio-economic potestative fact by others, in truth, it confirms its nature as a right, according to Miguel Reale's tridimensional theory, due to its legal protection by the legal system as an autonomous right. For these reasons, we understand that the expression "property law" (direito das coisas), enshrined in the 1916 and 2002 Civil Codes, as it prevailed in the 1896 BGB (German Civil Code), should be maintained, since a "thing" is everything that exists as an object to which a right in favor of a holder applies, including possession. This perspective best suits the construction of the concept of real right (the classical dualist theory adopted in Brazil), which establishes a legal relationship between subject and object, where direct possession is sufficient for its exercise, regardless of third-party intervention, such as the debtor in obligation relationships. And when possession or another real right is violated by third parties, its erga omnes enforceability arises, which is characteristic of real rights.

[8] Some hold the view that the recognition of legal personality for the condominium is necessary whenever it proves essential for the achievement of a purpose in the interest of the community of condominium owners.

The distinction between thing and good lies precisely in the economic interest that arises over all objects in the universe, whether corporeal (material) or incorporeal (immaterial), that possess patrimonial value. The object of law is the same as that studied in political economy, according to the understanding of most legal scholars. The legal good is an economic good (Azevedo, 2019, p.23-24). Excluded from this concept are only non-patrimonial goods, which are protected by personality rights, as they relate to physical integrity (life, freedom of movement, physical body, etc.), moral integrity (image, honor, peace, psychological state, privacy, etc.), or intellectual integrity (artistic, literary, or scientific works).

In the classification of goods, not only may economic interests (whether immediate or mediate) be relevant, but also existential or social interests, depending on the individual or collective utility the good may provide.

The holders of legal relationships are precisely the persons or legal subjects, whether under personal or real rights.

It is important to recall the view of Teixeira de Freitas, as cited by Paulo Lôbo, who preferred to use the expression "persons of visible existence" rather than natural persons, to distinguish them from legal persons (which he referred to as having ideal—or non-visible—existence), as found in his Draft Civil Code of 1916. Although never enacted, it had a profound influence on civil law throughout Latin America. Others opted for the term natural person, likely due to confusion between the legal and natural concepts—a designation adopted by both the 1916 and 2002 Civil Codes (Lôbo, 2017, p. 152). In this vein, Paulo Lôbo observes:

> It is not the most appropriate term, for, as Teixeira de Freitas correctly criticized, it leads to the paradox of considering a legal person as non-natural or artificial. For legal purposes, personality is a legal attribute and not conditioned by nature. Thus, the legal person is just as 'natural' in legal terms as the physical person. The expression natural person has gained widespread usage in various branches of law. The Constitution does not refer to a 'natural person,' preferring simply person in the sense of one who holds rights and duties; the terms human person and individual are used in the Constitution for matters relating to citizenship. We agree with Pontes de Miranda, who noted that no term is perfect, but that 'the best path is to refer to the person corresponding to man as physical, and to the others as legal—understood in the strict sense' (1974, v. 1, p. 156). (Lôbo, 2017, 152).

The term natural person, commonly used in tax law, also fails to reflect the full ontological reality of human existence, insofar as the human being is composed not only of physical attributes externalized through the human body, but also by intellect and

consciousness, will and spirituality, beliefs and worldviews, values and reflections—all of which transcend the legal domain and are the subject of other branches of human knowledge, such as philosophy, anthropology, sociology, biology, medicine, and psychiatry.

In civil law, many of these values and attributes intrinsic to human dignity have been recognized by civilist doctrine as non-patrimonial goods, as mentioned above, which constitute the elements of human personality.

Pontes de Miranda recognized the right of legal persons—whether civil, commercial, or public—to a name, treating it as a personality right and as immediate, since personality and name arise simultaneously. The individual commercial name is a variant or extension of the civil name, without any necessary modification. It functions similarly to a pseudonym used for commercial purposes (Miranda, 2000, p. 34-35).

Article 52 of the 2002 Civil Code adopted the view that personality rights may also be extended to legal persons, where applicable. The legal protection of personality rights spans constitutional, civil, and criminal domains. The foundational principle underlying such protection is the principle of human dignity, enshrined in Article 1, item III, of the 1988 Federal Constitution. Since legal persons are structured by individuals, it seems both logically and legally coherent to extend protection to certain personality rights of legal entities, such as the trade name, in view of the importance of safeguarding their reputation and the objective honor necessary for their commercial activities.

The controversy established by the 2002 Civil Code concerning the extension of personality rights to legal entities stems from the phrase "where applicable" (no que couber). It must be acknowledged that such protection cannot encompass personality rights related to physical integrity, as legal entities possess no such structure. They are composed of a set of material and immaterial assets (a universality of fact and law). Nor can they suffer psychological damage, which is inherent solely to the human beings that comprise them, each with a distinct civil personality. On the other hand, the protection of certain goods, such as name or objective honor, is legally justified given their significance for the entity's activities in society.

Legal personality is the capacity of a legal entity to acquire rights and assume obligations. Such rights are granted by law in recognition of the human foundation of these entities.

With these reflections in mind, excluding both natural and legal persons—as defined in the 1916 and 2002 Civil Codes—and the cases in which legal subjects are

created based on their direct or indirect composition by human beings (reflecting the need to regulate their individual and social interests within legal relationships), it follows that all else that exists in the universe, within the current stage of scientific knowledge, must be understood as part of the realm of things. These may be sentient (such as animals—legally referred to as semoventes, along with other living beings) or non-sentient (inanimate or lifeless goods).

For this reason, the structure governing personal and real legal relationships within the science of law must be preserved and assessed with rigorous hermeneutic methodology, especially in light of the emergence of new technologies in the modern era—most notably in relation to the subject at hand: artificial intelligence.

3 THE CIVIL-CONSTITUTIONAL INTERPRETATION OF THE PERSON, HUMAN DIGNITY, AND ARTIFICIAL INTELLIGENCE

The 1988 Federal Constitution of Brazil establishes the protection and preservation of human dignity, as set forth in Article 1, item III.

Article 225 enshrines the right to an ecologically balanced environment, considered a common good for the people. The Constitution recognizes that the environment, composed of fauna and flora (item VII)—and therefore including both domestic and wild animals as part of fauna—is a good of common use by the people (persons), wherein the goal is to ensure an essential quality of life. It imposes on both the State and society as a whole (that is, all individuals and legal entities) the duty to defend and preserve it for present and future generations.[9]

Thus, the constitutional text seeks to ensure the preservation of both current and future communities, where the ownership of rights and duties belongs solely to persons endowed with legal personality or, where applicable, to depersonalized entities that may qualify as legal subjects—strictly composed of human beings, even if still in formation, such as the nascituro (unborn child) or depersonalized entities that, according to

[9] From an ontological perspective, sentience is a characteristic of its nature, just as it is. It is not a legal qualification. Nothing prevents the law from recognizing animal sentience, as it concerns a living being, deserving legal protection of interests balanced with social and economic realities. In light of the 1988 Federal Constitution (CRFB/88), Article 225, Clause VII, only those could be qualified as goods, since an ecologically balanced environment is a "GOOD" for common use; therefore, fauna and, consequently, all animals, whether wild or domesticated (given that, in ancient times, they were also wild), are common goods for the use of the people.

prevailing legal doctrine and case law, are granted formal personality, as in the case of condominium associations.[10]

Any interpretation or definition provided by the science of law with respect to new technologies—particularly artificial intelligence, information technology, and robotics—must be in accordance with current civil and constitutional law. Failing to do so risks the loss of critical perspective amid the uncritical enthusiasm for technological advances and jeopardizes the conceptual and hermeneutic structures necessary to protect and preserve human dignity.

In this regard, Norberto Bobbio emphasized that a satisfactory definition of law is only possible from the standpoint of the legal system (Bobbio, 1997, p. 22). Following this line of reasoning, we must consider the legal system's point of view—especially its foundational and conceptual structures—in alignment with the perspective of a normative order of ends, in which a conceptual value such as human dignity can never be replaced by any form of technology.[11]

Thus, under the lens of protecting human dignity, would it be viable and necessary to confer legal personality upon artificial intelligence, or to recognize AI as a subject of rights in order to assign legal duties? And ultimately, should civil liability be attributed to conduct arising from the use of artificial intelligence?

Historically, the world has undergone four so-called “industrial revolutions.”

The first occurred in the second half of the 18th century (1760–1840), with the rise of large-scale production through the introduction of machines, transforming artisanal models into the industrial production models that still exist today. The second industrial revolution (1850–1945) saw the development of the chemical, electrical, petroleum, and steel industries, alongside advances in transportation (via automobiles) and communication.

The third revolution (1950–2010), known as the shift from the analog to the digital age, was marked by the emergence of microcomputers and the internet (1969), with the

[10] For this reason, we understand that the interpretation that domestic animals could be granted recognition as subjects of rights is unconstitutional, since every living being, excluding human beings, is part of the environment in which we live. The science of law is the science that establishes the rights and duties we have an interest in regulating, such as the interest in preserving species, ensuring the health and well-being of any animal, but within an ecologically balanced environment that guarantees a healthy quality of life and the prevalence of certain legally protected interests, such as the constitutional guarantee of cultural and religious practices, since the greater interest deserving constitutional protection, in this case, is that of the human being.

[11] According to Immanuel Kant: In the kingdom of ends, everything has either a price or a dignity. When a thing has a price, it can be replaced by something equivalent; on the other hand, the thing that is above all price, and therefore admits no equivalence, possesses dignity (Kant, 2002, p. 65).

creation of ARPANET, the digitization of archives, and advances in robotics. This period also introduced new energy sources, such as nuclear, solar, and wind energy, along with developments in genetic engineering and biotechnology—including innovative methods in agriculture and agribusiness, enhanced by new technologies and computing. In 1973, the invention of the first mobile phone marked the beginning of a new era in communication.

Today, we are living through the fourth industrial revolution (2011 onward), according to Klaus Schwab (Schwab, 2019, p. 16-17).[12] Based on research conducted by the World Economic Forum and the work of various Global Agenda Councils, Schwab identified the key technologies that define this new era of the information society—referred to as the "Industry 4.0" revolution. This model aims to use all available technologies interactively to generate new knowledge and productivity and encompasses the use of computing and innovation through artificial intelligence. The near-future projection involves an even greater symbiosis—structurally, a collaborative relationship between humans and machines, particularly when assisted by AI.

Although still in its early stages compared to societal expectations, the use of artificial intelligence will soon take on a scale of reality that is perhaps unimaginable—especially due to its social, legal, economic, and behavioral impacts, both personally and professionally.

Since the first industrial revolution, the science of law has continuously sought to adapt to new realities, as the needs of society demanded new legal constructs—particularly in the realm of civil liability.

At the time, subjective civil liability was the only framework for assigning liability to agents. However, this approach became unsatisfactory during the first industrial revolution, given that the use of production machinery—then still rudimentary and in constant development—posed risks to the physical safety of workers.

Under this framework, an employer could only be held liable for damage caused to an employee during the course of employment if fault (culpa) or intent (dolo) could be

[12] For the author, the rapid progress of robotics will transform collaboration between humans and machines into an everyday reality. Furthermore, due to other technological advances, robots are becoming more adaptable and flexible, as their structural and functional design has come to be inspired by complex biological structures (an extension of a process called biomimetics, whereby patterns and strategies from nature are imitated). Advances in sensors enable robots to better understand and respond to their environment and engage in a variety of tasks; for example, household chores. Unlike in the past, when they needed to be programmed by an autonomous unit, robots can now access remote information through the cloud and thus connect to a network of other robots. When the next generation of robots emerges, they will likely reflect a growing emphasis on collaboration between humans and machines.

proven. These elements—along with the causal link between the act and the damage, and evidence of the damage (whether material or, more commonly, physical)—have traditionally justified the continued application of subjective liability. However, the burden of proving intent or fault often made it difficult for workers to receive compensation for harm caused by employers. This, at a certain point in history, slowed the evolutionary progress of large-scale machinery use, as it discouraged economic sectors and, paradoxically, undermined the economic interests of major producers and manufacturers due to a shortage of skilled labor capable of operating production machinery.

It was at this juncture, spurred by economic interests, that the initial discussions emerged around constructing a new form of civil liability—one that could, under certain circumstances, restore balance in labor relations, encouraging industrial productivity and machine usage. At the same time, advancements in safety technology were sought, and new protective labor laws were introduced, including the employer's duty to enforce safety measures and equipment usage. Initially seen as laws to protect workers' physical and psychological integrity, these rules effectively introduced a new form of civil liability designed to maintain a skilled labor force for operating machinery.

Thus emerged the concept of objective civil liability for employers in cases of work-related accidents—a model that remains in force today, based on the existence of a causal link and actual damage.

However, it was not sufficient merely to create a new theoretical foundation for civil liability. It became necessary to determine the criteria that would justify replacing subjective liability (based on intent or fault) with objective liability. Civil law doctrine, originating in French legal thought, began to adopt the theory of risk in activities—whether risk for profit (direct profit from the legal relationship) or created risk (indirect advantage, as seen in environmentally impactful business practices).

This theory became a powerful legislative driver, supporting the idea that in certain circumstances, objective civil liability better serves the public interest. As a result, legislation began to specify, case by case, where objective liability would apply. This phenomenon also occurred in comparative law. Examples of objective civil liability include:

i) In the 1988 Constitution, Article 37, §6 establishes objective liability for acts committed by the State; Article 225, §3 recognizes strict liability for environmental damage.

ii) In infraconstitutional legislation: the Consumer Protection Code (Law No. 8.078/90); Article 927 and its sole paragraph of the Civil Code of 2002; parental liability; and liability for damages caused by animals, among others.

Importantly, the adoption of objective civil liability does not imply a duty to compensate in every case. It remains subject to exclusions, such as the absence of essential elements (causal link and damage), fortuitous events or force majeure, state of necessity, lawful exercise of rights, self-defense, or the victim's exclusive fault.

The guiding principle behind objective civil liability lies in the interest of preserving equilibrium in legal relationships—whether driven by economic concerns or by the need to protect non-patrimonial rights essential to human dignity, a fundamental value enshrined in the 1988 Constitution.

The dignity and protection of the human person can only be ensured through the recognition that rights are held exclusively by that person. Accordingly, anything created by human beings—whether analog or digital technology—must be conceived as a thing or, more specifically, as goods (including machines and robots, whether or not equipped with artificial intelligence).

4 ANALYSIS OF THE LEGAL NATURE ATTRIBUTED TO ARTIFICIAL INTELLIGENCE

The issue of attributing legal personality to artificial intelligence necessitates a thorough debate on whether to recognize not only obligations and the consequences of civil (and even criminal) liability, but also whether it is coherent to grant AI rights, such as copyright. Evidently and from a standpoint of legal consistency, if liability were hypothetically to be attributed to AI, it would be necessary to also consider granting it rights—for example, copyrights for the "creation" of literary texts, musical compositions, paintings in physical or digital form, or even audiovisual material, based on the data provided to the technology that results in a differentiated output depending on the input presented.

The debate over copyright and AI usually centers on the nature of the creative material—i.e., whether the created object is art or not, whether it is truly new, and whether it constitutes an original creation. This issue has understandably raised concern among artists in various cultural sectors, especially in the music industry.

Understandably, such concern is legitimate, as this scenario would create market competition involving a creative process based on databases previously fed by human input, which AI then processes to produce a new song, a new version, or, potentially, an entirely new musical style or movement in the modern era.

The controversy thus arises: Is the result produced by artificial intelligence truly a work of art? In truth, even new compositions by human beings often resemble the works of other artists in terms of lyrics, melody, harmony, and arrangement. On the other hand, AI-generated content involves a generative process based on previously input data—human-created—and even after the output is generated by AI, it can be subsequently altered. This entire creative process between the human and the AI-assisted work is what enables innovative production. It is the combination of these activities that produces the final result, but what is generated by AI does not stem from a completely autonomous creative process independent of previous data.

The issue must also be examined in light of whether AI can be recognized as an author, as human-created artistic works are often driven by inspiration and inventive creativity, shaped by various factors—ideological, emotional, or rational—that reflect personal and contextual realities (e.g., the resistance music of artists during dictatorial regimes). These are factors that cannot be ascribed to artificial intelligence, as its "creative" process results solely from analyzing objective data or human-predetermined parameters, even motivational ones, such as a generalized prompt instructing the AI to create a song “inspired” (more accurately, based on correlations with other songs) by an idealized romantic relationship.[13]

As established, legal personality and legal capacity can only be attributed to human beings or to entities composed of human beings, such as legal persons through corporate structures, or in other cases, through the legal recognition of rights-holding entities or depersonalized entities. It is therefore essential to analyze which legal foundation is most appropriate for assigning liability for potential damages caused by the results produced by artificial intelligence.

There is no doubt that, even at its current early stage of technological evolution, AI already raises numerous economic, social, and legal concerns. This makes it necessary

[13] Artificial intelligence would not have one of the aspects that only humans possess: a soul capable of infusing aura into the work. Conforme: BENJAMIN, Walter. A obra de arte na era de sua reprodutibilidade técnica. In: SCHÖTTKER, Detlev; BUCK-MORSS, Susan; HASEN, Miriam. Org. Tadeu Capistrano. Trad. Marijane Lisboa e Vera Ribeiro. Rio de Janeiro: Contraponto, 2012. p. 13.

for legal science to reassess its frameworks so as to accompany the era of new technologies—while remaining rooted in existing legal structures and without departing from well-established theoretical foundations regarding personality and capacity.

According to scholars such as Gabriel Hallevy, artificial intelligence should be conceived as a tool that assists human beings, even though AI may exhibit a level of understanding comparable to that of a child[14] or an individual with mental limitations who cannot comprehend the unlawful nature of their conduct, unless such understanding has been preprogrammed in accordance with the usage policies of the tool (Hallevy, 2019).

What, then, is the most appropriate definition of its legal nature?

Under the current normative framework of Brazilian law, the legal nature of artificial intelligence should be understood as that of an intangible asset, falling within the scope of Property Law. It may also be characterized as a product or a service, to the extent that it can dynamically evolve. Any legal inquiry regarding the potential creation of a novel legal category for AI must view it as a tool or instrument designed to assist human beings. Granting legal personality to artificial intelligence would not, in itself, guarantee legal certainty in civil or criminal relations involving it.

From this foundational understanding of AI as a qualitative legal asset, civil, commercial, or consumer relationships may be established depending on the material legal relationship involved. Such relationships will generally involve the user and the supplier of the AI-generated product or service.

With that in mind, two scenarios arise:

i) the civil liability of the AI programmer or developer, and

ii) the civil liability of the supplier of the AI-generated output or the service provided to the consumer or user of the technology.

The civil liability of the AI programmer or developer may be equated to that of a manufacturer, given that AI software, though intangible, can be made available to businesses or end users. In this respect, it must be noted that the prevailing rule under Brazilian consumer protection law is that of strict liability, which dispenses with the need to prove intent or fault. It is not necessary, for instance, to determine whether the fault lies with the programmer, the software designer, the system architect, or the brand owner.

[14] Although some professional-use AIs are advancing in the autonomous labor process.

Their joint liability is imposed under Brazilian consumer protection legislation, particularly given the potential risk of damage inherent in the technology and the uncertainty surrounding the results it may produce.

The supplier of the result generated through AI or of the related service may be held liable unless there are applicable defenses to civil liability, such as the absence of an act or omission, lack of causal nexus and damage (material or moral), force majeure or fortuitous events occurring after delivery of the result or service, and the exclusive fault of the victim.

Therefore, a rigorous methodological analysis is required when assessing damage caused by artificial intelligence, particularly with regard to the elements that characterize the legal relationship and the use of AI between the parties involved.

Thus, we begin from the premise that AI is a means of production, a service, or even the end product of a generative process which, if causing damage, results from a good or service—falling under the scope of real or personal rights. As an object, AI should be situated within the legal concept of intangible, non-fungible, indivisible, movable, and singular assets, as structured by legal science, specifically within Property Law.

If legislation were to establish a legal personality for artificial intelligence, this would create the same structural challenges associated with the construction of legal personality for companies and their members, generating various obstacles to corporate liability toward consumers. It would open the door to arguments of civil immunity by claiming that AI is a mere software platform used for diverse purposes by multiple, non-exclusive users.

If AI were to be regarded as a legal person, this would necessitate the coexistence of two legal persons operating jointly, leading to asset confusion that would compromise victims' ability to obtain compensation for damages caused by AI and potentially shield the actual company (whose business model relies on AI) from liability.

From another perspective, if AI were granted autonomous personality, capacity, and liability, this would exclude the user from liability, allowing them to argue that the creation of a harmful result stemmed solely from the technology, absent any intent or negligence on the user's part, given their reliance on the new technology which inadvertently produced an erroneous outcome.[15]

[15] The 5th Criminal Chamber of the Santa Catarina Court of Justice (TJ/SC) issued a warning to a lawyer for filing a habeas corpus petition generated by AI, which included fake case law. (https://www.migalhas.com.br/quentes/424313/tj-sc-adverte-advogado-por-hc-feito-por-ia-com-jurisprudencia-

For this reason, it is the user of the technology—whether a natural or legal person—who must be recognized as the rights-holder, with legal personality and capacity to act and be held accountable for any harm caused through the use of AI. In legal terms, AI should be considered an intangible asset, situated within the field of Property Law, and potentially regarded as a product or service developed by ever-evolving technology.

5 CONCLUSION

The Federative Republic of Brazil constitutes a Democratic State governed by the rule of law and, as one of its foundational principles, enshrines the protection of human dignity (Article 1, item III of the Federal Constitution of 1988).

Under the vertical applicability of the Constitution, it is the duty of the State—through the Executive, Legislative, and Judicial branches—to safeguard, in accordance with the aforementioned principle of human dignity, the extra-patrimonial rights that derive from it as individual guarantees and rights, especially the inviolability of privacy, private life, honor, and image, and to ensure the right to compensation for material or moral damages resulting from their violation (Article 5, item X). Such rights and individual guarantees must be balanced with public interest and social well-being, in accordance with social rights (Article 6). The Legislative Branch must therefore enact legal norms that preserve the composition of these rights, ensuring the central protection of individual rights. Lastly, the Judiciary is responsible for the enforcement of such rights, fulfilling its fundamental role in a democratic state governed by the rule of law.

From the perspective of horizontal applicability, those same rights categorized as personality rights serve to safeguard legal relationships that aim to protect these extra-patrimonial assets, which form the object of legal protection under the guiding principle of human dignity.

It is also important to note that these rights are recognized as human rights by international communities and organizations, as reflected in treaties and conventions to which Brazil is a signatory.

Given the exclusive legislative competence of the Union regarding civil, procedural, and criminal law (Article 22, item I of the Constitution), it is the responsibility of all future legislation to ensure legal certainty and the preservation of the legal science

falsa). The reporting judge, Justice Cinthia Beatriz da Silva Bittencourt Schaefer, stated that it was "an act of bad faith and disrespect toward the court."

and structure of the theories of legal personality and capacity. Therefore, it is unnecessary to construct a new theory to grant civil personality to artificial intelligence as a means to justify its civil liability.

At the current stage of legal development—not only in Brazilian law but also in the broader civil law tradition—granting civil legal personality to artificial intelligence would undermine existing normative structures, leading to serious consequences for the doctrines of legal capacity and procedural capacity. It would risk the untenable scenario of granting AI the status of a legal person with capacity to sue or be sued. And even if a sui generis legal personality were created without procedural capacity, it would fail to address the core issue of legal certainty regarding damages caused by AI, especially when personality rights are violated.

Legal personality and capacity must be limited to human beings or entities composed of humans, as legal science is intrinsically concerned with the assignment of rights and duties to individuals within society.

When rights and duties are established for current and future generations, under the present constitutional text, they are defined as the rights and duties of all human beings regarding the world around them—including the environment, which is legally defined as a common good of the people (Article 225).

The Civil Code, in Book II, establishes various classes of property, which then serve as the foundation for Book III's treatment of Property Law.

The advent of modern technologies in recent decades, and especially the current technological inflection point marked by the emergence of dynamically evolving artificial intelligence, must not lead to the scientific error of remodeling normative structures for the purpose of granting civil legal personality to a technological creation that remains, by its very nature, either an intangible asset (AI itself) or a product or service generated by it.

There is no doubt that artificial intelligence—regardless of its current or future level of development—can yield unpredictable outputs at various levels of production, creation, or innovation. Nonetheless, this does not justify granting civil legal personality to AI, as it is best understood as a human-created tool designed to assist in fulfilling human economic, biological, social, and intellectual needs.

Accordingly, the results obtained through AI must be framed as services or goods provided to users. At present, the appropriate interpretative approach is to maintain the

legal framework of supplier-product relationships or traditional civil relationships between the parties.

In the case of an unexpected outcome causing harm, adjustments may be necessary in the fields of civil personality, legal capacity, and civil liability, with such liability attributed to the human creator or operator of the general productive command. As with previous technological revolutions, civil liability must evolve through the development of strict liability doctrines aimed at preserving the personality rights of individuals when violated.

In the past, it became necessary to develop strict liability in order to protect human beings in the face of industrial advances that posed new risks, allowing for continued technological progress supported by labor and production. However, in the context of the ongoing technological revolution brought by artificial intelligence, there is no justification—even under the pretext of encouraging expansion—for attributing responsibility to AI or requiring proof of intent or fault, whether on the part of the AI or the human agent who directly or indirectly caused harm to the victim.

Assigning legal personality to artificial intelligence would also fall into the false analogy of corporate legal personality, which often leads to the lack of effective redress for damages caused by such entities.

Artificial intelligence must be understood according to its legal nature: a tool or instrument created by humans, which does not warrant the creation of a new theory of personality. Its autonomy does not entitle it to rights or duties; these belong solely to the human beings who design, manage, or direct its actions, whether with or without human supervision.

Any attempt to invert this natural state of affairs would distort the principle of human dignity by assigning civil personality to artificial intelligence merely because it is a content-generating automated system.

In conclusion, the idea of attributing civil and even procedural legal personality—and consequently civil liability—to a robot, organism, or software system powered by artificial intelligence, in our view, should remain within the realm of human fiction and science fiction.

The independence and creative autonomy of artificial intelligence should not serve as a basis for conceptual extrapolations that break with the fundamental structures of legal science. There is no legal, economic, or social necessity for granting civil personality to artificial intelligence in order to effectively apply existing legal solutions regarding duties

and civil liability, which must remain exclusive to human beings and legal entities composed solely of humans, as rights-holders and duty-bearers in all public and private legal relationships.

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