

What is it Like To Be an Artificial Intelligence? Nagel's View From Nowhere and Artificial Intelligence as Subject of Law

Como É Ser uma Inteligência Artificial? A Visão a Partir de Lugar Nenhum de Nagel e a Inteligência Artificial como Sujeito de Direito

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ABSTRACT: This paper has as its research problem the following question: what is it like to be an artificial intelligence? It aims to critically analyze the epistemological and semantic aspects developed by Thomas Nagel in *What is it like to be a bat* and *The View from Nowhere*, demonstrating the relationship between physicalism and subjectivity and its application to artificially intelligent beings. We chose to approach these two works because of the author's importance in analytical philosophy and the approach to consciousness. The analysis shows that the defense of artificial intelligence as a subject of law is intrinsically based on physicalism. However, in refuting it, Nagel does not offer an alternative outside the scope of dualism. Thus, the Procedural Theory of the Subject of Law is developed with stages of emancipation of the being against the law. As a result, it is verified that the reductive physicalist vision is insufficient to substantiate the condition of the subject of law of an artificial intelligence as a legal and political being in the social order. However, if the three stages of its formation (emancipation, interspecies recognition, and personification) are observed, the possibility of achieving the condition under analysis is assumed. It is concluded that it is unverifiable to know what it is like to be an artificial intelligence. In the current scientific stage, an artificially intelligent being cannot (yet) be considered a subject of law, under penalty of characterization of instrumentalism. The methodology of integrated, analytical, deductive, and bibliographic research is used to obtain these results and conclusions.

KEYWORDS: Artificial intelligence; subject of law; Procedural Theory.

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RESUMO: Este trabalho tem como problema de pesquisa o seguinte questionamento: como é ser uma inteligência artificial? Objetiva-se analisar criticamente os aspectos epistemológicos e semânticos desenvolvidos por Thomas Nagel em *What is it like to be a bat* e *The view from nowhere*, demonstrando a relação entre o fisicalismo e a subjetividade, bem como sua aplicação nos entes inteligentes artificialmente. Opta-se pela abordagem nessas duas obras pela importância do autor no âmbito da filosofia analítica e na abordagem da consciência. A análise demonstra que a defesa da inteligência artificial como sujeito de direito está intrinsecamente pautada no fisicalismo. Contudo, ao refutá-lo, Nagel não oferece uma alternativa fora do escopo do dualismo. Dessa forma, desenvolve-se Teoria Procedimental do Sujeito de Direito com seus estágios de emancipação do ser perante a ordem jurídica. Como resultado, verifica-se que a visão reducionista fisicalista é insuficiente para fundamentar a condição de sujeito de direito de uma inteligência artificial enquanto ser jurídico e político na ordem social. Contudo, caso sejam observados os três estágios de sua formação (emancipação; reconhecimento interspécie; e personificação) assume-se a possibilidade de conquista da condição em análise. Conclui-se que é inverificável saber como é ser uma inteligência artificial e que no estágio científico atual um ente inteligente artificialmente (ainda) não pode ser considerado sujeito de direito, sob pena de caracterização do instrumentalismo. Para obtenção desses resultados e conclusões utiliza-se a metodologia de pesquisa integrada, analítica, dedutiva e a técnica de pesquisa bibliográfica.

PALAVRAS-CHAVE: Inteligência artificial; sujeito de direito; Teoria Procedimental.

SUMÁRIO: 1 Introduction; 2 What is it like to be an Artificial Intelligence? Human and non-human cognitive capabilities from nowhere view; 3 The Procedural Theory of Subject of Law: how can Artificial Intelligence be part of the legal system?; 4 Final considerations; References.

1 INTRODUCTION

With the development of artificial intelligence, questions ranging from responsibility, data treatment, discrimination, or acting as an autonomous agent have been addressed in the legal, social, and philosophical scenarios. However, in the face of the novelty and unpredictability in the actions of these entities, the discourse on ethical limits and their responsibility has been opaque. Thus, a more refined and objective discourse is needed to clarify this problematic issue.

Given the myriad of facts and cases to be addressed, this article chooses to focus on the epistemological aspect of Artificial Intelligence. With this approach, we intend to demonstrate the differences and similarities between the cognitive capacity of an AI and a human being. To this end, the research problem of this essay is: what is it like to be artificial intelligence? The question is an analogy to Nagel's seminal essay "What is it like to be a bat?". In this article, Nagel discusses the relationship between different viewpoints and how subjectivity and objectivity must be correlated through a critique of physicalism.

Developing this analysis is essential since it is assumed that Law is a science formed by subjective criteria in an objective-looking world. However, it must be verified that an objective world must hold different subjective views. To this end, the view from nowhere developed by Nagel is used to describe the situation, identification, and participation of the subjective in the objective, correlating the mind-body problematic, will, and the different world views to the social and legal complexity. It aims to problematize: what is consciousness? What is the self (in the world)? What position does the individual's thought occupy in an objective world? Is there a way to reconcile the subjective, first-person view with the objective, third-person view?

The result is that different points of view can and should be incorporated into an objective reality. Besides, it is verified that for Law to be complete, and anthropomorphism must be left aside from the moment that some situations and beings cannot be understood by humanity. Therefore, although artificial intelligence can be a subject of Law³, its characterization becomes unfeasible since the current technological, scientific stage does not allow these beings to act in a genuinely autonomous manner to the point of demonstrating their different points of view. From this approach, recognizing artificial intelligence as a subject of Law necessarily goes through instrumentalism.

However, these considerations cannot be easily extracted from Nagel's approach, for the author, by denying physicalism, does not present a viable solution for the insertion of different worldviews, especially in Law. At this point, the procedural theory of the subject of Law is inserted (Divino, 2020), demonstrating the stages of development of the being before the legal order and against its power. First, one must keep in mind the understanding of the subject of Law and differentiate it from the term person to verify how and where it is formed. It is evident that it is a constant struggle against the legal norm itself, a relationship traced back to Foucault. However, Nagel's nowhere vision offers alternatives to avoid the essentially subjective formation of Law. In this way, artificial intelligence could be considered

3 "A subject of law is one's who can exercise his rights and duties in the legal system without someone's representing him. It is conquering his position in the system. It is winning a battle against the domination process. It is being rational and linguistic subject to contribute to society for their interspecies relations. It is an active person in the legal system who can do whatever he wants since the law does not prohibit it. This structure will be developed now. It is not a definitive view (so far). It's a dialogue between ideas for the law system evolution" (Divino, 2020, p. 184).

a legal subject when it possesses sufficient autonomy and manifestations similar to human beings.

However, the formation of the subject of Law must also go through interspecies recognition. This recognition is made from the moment that Law is considered as a product of language. The syntactic, semantic, and epistemic aspects are united to produce a coherent result and allow human society to give up its anthropomorphic egoism and recognize artificially intelligent beings as autonomous political and legal beings.

Given the above, we conclude that it is unintelligible to understand what it is like to be artificial intelligence. Therefore, it is also unintelligible to attribute an autonomous regulation to these entities in the current scenario due to the lack of scientific and technological progress. However, this does not mean that these entities can be left aside and their worldviews denied by the possible absence of subjectivity. With the procedural theory of the subject of Law, artificial intelligence can be elevated to a social and legal level similar to the human one, as long as it demonstrates this understanding to deserve its legal protection. Integrated, analytical, deductive, and bibliographic research is used to obtain these results and conclusions.

2 WHAT IS IT LIKE TO BE AN ARTIFICIAL INTELLIGENCE? HUMAN AND NON-HUMAN COGNITIVE CAPABILITIES FROM NOWHERE VIEW

The discussion between body and mind began with Cartesian dualism and its development with analytical philosophy in the 20th century. However, the actuality of this approach remains when one takes a comparative look at the consciousness of human beings and non-human beings. In the latter case, the term “non-human” should also be understood as non-biological. To know whether an artificial intelligence deserves autonomous treatment and to possess rights and duties, we need to understand what it is like to be an Artificial Intelligence⁴. Therefore, this section aims to demonstrate how an artificially intelligent entity should be treated according to your point of view.

4 McCarthy says (2007, p. 2-15): “It is the science and engineering of making intelligent machines, especially intelligent computer programs. It is related to the similar task of using computers to understand human intelligence, but AI does not have to confine itself to methods that are biologically observable”.

According to Russell and Norvig (2010, p. VIII), AI can be defined “[...] as the study of agents that receive percepts from the environment and perform actions”.

This starting point becomes necessary to justify the reasons and rationale for recognizing rights and duties for a being that does not fit as a human being. Why should we recognize the rights and responsibilities of artificial intelligence? How can artificial intelligence modify reality in its objective aspect? Is it possible to talk about the experience without tying it to objectivity? These are the questions that will guide this section and help answer the proposed problem.

First, it should be recognized that the construction of Law is something essentially subjective. In other words, Law is formed as a result of cultural practices in a given society. Therefore, what may be accepted and recognized in one country may not be so in another. Thus, the purpose and result of legal production are to respond to the interests of society, and this production occurs essentially through the mental phenomena of political beings. Therefore, the accurate result is linked to solving a given country's political or social issues.

One of the products of this legal, social, and political practice is the concretization of the subject of Law. However, this concretization is only possible through experiences, which are understood and interpreted semantically and epistemologically through consciousness. This is where Nagel can contribute to the approach. First, imagine what it is like to be a person without fundamental rights. In this case, there is the possibility of imagination and even proof of this fact. You can think, for example, of slaves, where fundamental rights and guarantees were ignored. So, you can imagine yourself as a person or a human being without fundamental rights and guarantees to the extent that you are a human being with fundamental rights and guarantees.

However, what is it like to be a freezer? What is it like to be a rock? What is it like to be a non-life object? You cannot feel or imagine because there is no previous experience that allows you to feel that. To be an inanimate object is not to be something static in darkness without any correspondence from its environment. It can be said to be so because inanimate and lifeless objects do not experience moments. There is no subjective relationship in a rock experiencing darkness. If you close your eyes, you can feel and experience darkness. However, if you close your eyes again, you cannot handle the experience as a rock. Inanimate objects, therefore, have no experience at all. There is nothing in our sense we can match to feel in this way. What allows experience is consciousness. What

it is like to be that being is only possible throughout by experience and consciousness.

Nevertheless, where does the artificially intelligent entity fit into this scenario? If a developer creates an artificial intelligence that can detect colors or numbers, his work will be successful if the programming is successful. Therefore, both a human being and artificial intelligence would see colors and numbers from their observation. However, there is a difference in the point of view of these beings. In the case of the human being, it can be said that consciousness makes it possible to experience analysis. Seeing a green or red object is a physically objective analysis and a subjective experience of that reality. In artificial intelligence or an electronic device designed to detect color or number, there is no relation of experience because of the inexistence of the mind in that being. They cannot see what the color or the number looks like. Because they are not conscious, but humans are.

However, there is a point to consider. Not all mental states are conscious. When we are asleep, mental states continue to happen, but we are not aware of this. Beliefs are also good examples of intrinsic mental conditions in the mind but are not always conscious. In this situation, a person may firmly believe that the whale is the largest mammal in existence and not always be aware of this fact.

Furthermore, there are situations that, although experienced, consciousness is mitigated into a background. Just think about the piece of clothing you are wearing right now. You may have spent a great deal of time wearing it and experiencing it in an unconscious mental state, but from the moment you read this passage, you have consciously directed your attention to feeling this garment.

In short, “an organism has conscious mental states if and only if there is something that it is like to be that organism-it is like the something organism” (Nagel, 1974, p. 436). However, why Nagel’s vision is essential here? Now we can talk about the bats. Bats have an echolocating system that humans do not. We can smell, taste, touch, see and hear, but we do not have an echolocating system. So, Nagel does the question, “What is it like to be a bat?”. What is it like to fly and map all the environment around you through an echolocating system? Can we understand what it is like for a bat to echolocate? For Nagel, the answer is negative because humans have no idea how it feels like. So, we cannot experience something that we do not have and cannot understand. However, what is the point of this example?

Nagel said: “Whatever may be the status of facts about what it is like to be a human being, or a bat, or a Martian, these appear to be facts that embody a particular point of view” (Nagel 1974, p. 441).

In other words, Nagel is saying that there are facts that can only be known by getting into a particular/subjective perspective⁵. And why is this observation important? Because as Law must, or at least should, be based on reality, its construction from thought must have as its objective the regulation of those who construct it. In other words, the formation of Law is essentially subjective. It exists as a function of social code towards its creators. Thus, what are the interests of artificial intelligence to recognize it as an autonomous entity in the contemporary scientific and legal scenario? The answer to this question is impossible to verify at this point. Since artificial intelligence is developed under a strictly objective aspect, it is inferred that there are no subjective aspects in its programming. Therefore, the interests expressed and manifested by these entities seem to be nothing more and nothing less than simulations of the interests of their developers.

As much as there are findings on the development of machine learning and deep learning techniques that supposedly authorize granting a certain degree of autonomy to artificial intelligence, one should be cautious about affirming the existence of mental states in these beings. Furthermore, why is the fact of mental states important in this case? Because it makes no sense to insert an artificially intelligent entity into the legal order that cannot act autonomously and is incompatible with the creation of the legal system itself. This would be a fundamental instrumentalist approach.

At this point, Nagel’s argument becomes more acceptable: in refuting physicalism, a reductionist theory that defends the idea that aspects of the world are reduced to physical justifications. In this sense, according to physicalism, one could say that rain, lightning, or a storm could be analyzed under the objective aspect and reduced to physical explanations about their formation. Lightning, for example, would be an electric discharge that moves atoms. The modification of water states could understand rain. Moreover, a storm could be explained by the relationship between the various climatic factors and air densities. Therefore, physicalism starts from the assumption

5 “The more different from oneself the other experienter is, the less success one can expect with this enterprise. In our own case we occupy the relevant point of view, but we will have as much difficulty understanding our own experience properly if we approach it from another point of view as we would if we tried to understand the experience of another species without taking up its point of view” (NAGEL, 1974, p. 442).

that the relations existing in the world are essentially objective and reduced to physical explanations. Physicalism, therefore, cannot justify or explain the experience because it gets away from any subjectivity.

When we use physicalism to approach the relationship between body and mind, the premise that we can find is that the mind would be an exclusively physical phenomenon arising from the chemical relationship existing in the brain. In this sense, when the object of study is biological beings, brains have minds and, consequently, can think through their consciousness. However, when we talk about non-biological beings, this idea is not falsified. For physicalism, an artificially intelligent being could be endowed with consciousness to the extent that it has physical relations in its hardware and software. In this way, artificial intelligence would think and present its objective view under its worldview.

However, physicalism denies the subjective part existing in the world. Understanding what rain or a storm is from an objective point of view is not the same as experiencing it. Therefore, experience is linked to the subjective aspect of a worldview, which will be responsible for forming consciousness.

When we talk about Law, its formation is essentially objective and based on different points of view. Hard sciences cannot explain how Law works because Law is made from subjective points of view. If we consider it accurate, the subject of Law must be a being with a subjective point of view. In this sense, how can we recognize that artificial intelligence possesses subjectivity if we do not yet understand how the mind works? This is a question that is impossible to answer at the moment and, at worst, will not be answered because there are things that human beings cannot explain.

So, what is it like to be artificial intelligence? We do not know. There is no subjective perspective to understand how an artificial intelligence sees and experiences the world without enough technological resources. So far, the argument or thesis for granting autonomy to artificial intelligence in Law is essentially physicalist, reductionist, and instrumentalist. It is a good way for developers and companies to avoid liability from the damages caused by their actions.

Nevertheless, we might have something in Nagel's argument to explain how artificial intelligence can be part of the world. Nagel proposes that one should project X into the world as a thing that interacts with others and question it as the world must be when viewed from no particular point of view, to present X as it presents itself from its point of view (Nagel, 1986,

p. 66) In other words, X should think of itself as part of the world and see itself from the outside. Nagel exemplifies:

Suppose all the nerves feeding sensory data to my brain were cut but I were somehow kept breathing and nourished and conscious. And suppose auditory and visual experiences could be produced in me not by sound and light but by direct stimulation of the nerves, so that I could be fed information in words and images about what was going on in the world, what other people saw and heard, and so forth. Then I would have a conception of the world without having any perspective on it. Even if I pictured it to myself I would not be viewing it from where I was. It might even be said that in the sense in which I am now TN, I would under those circumstances not be anyone (Nagel, 1986, p. 66).

It is inferred that the objective self is only part of a person's point of view, and their objectivity develops to different degrees at different stages of life and civilization. There is the possibility of convergence of other people's world views without a center, so there is a close relationship between objectivity and intersubjectivity. The quest is to share a conception, a point of view, between X and the other individuals in the world. This is why the objective self of X is not singular, and each Y possesses one. For Nagel, the objective self is not a distinct entity; each individual, besides being an ordinary person, is a particular objective self, a subject of a conception of reality devoid of perspective⁶.

It should be noted that, although the impersonal conception of the world does not grant any particular position to individual X, it is tied to his perspective and develops from it. This does not mean that the world is the world of X: he is not its subject, but only one of the persons contained in it, and none of them is its center or focal point. In this way, X is the logical focus of an objective conception of the world and a particular being that does not occupy any central position. Since X possesses or is an objective self, one can express meaningful identity by alluding to X indicatively as a self and, objectively, to the person publicly identifiable as X, and also make both references from the same point of view as someone who possesses the

6 "The objective self should be able to deal with experiences from any point of view. It in fact receives those of TN directly, but it treats on an equal footing those it receives directly and those others it learns about only indirectly. So far as its essential nature is concerned, it could base its view of the world on a different set of experiences from those of TN, or even none at all coming directly from a perspective within the world, for in itself it has no such perspective. It is the perspectiveless subject that constructs a centerless conception of the world by casting all perspectives into the content of that world" (Nagel, 1986, p. 67)

same objective conception of the world that contains X. Since the objective concept has a subject, what allows the objective and subjective views to be joined is the fact that there is the possibility that he is present in the world. The purely objective conception, without the inclusion of the subjective, rejecting their union, will leave out something authentic and remarkable (Nagel, 1986, p. 67).

For Nagel (1986), the objective self must be the reference in virtue of something greater whose inclusion in the world is not apparent. The only meaningful aspect under which the individual can refer to himself subjectively, provided only by the objective conception of the world because he is the subject of that conception. Nagel (1986 p. 68) describes the degree of autonomy of the objective self such that it would have sufficient independence from the private self to have a life of its own. Sometimes the author treats it as if it were a distinct part of the mind, but this does not mean that it should be given a metaphysical nature incompatible with Cartesian dualistic theory. The problem of reconciling the subjective, first-person view with the objective, third-person perspective finds an answer in these premises⁷.

Going out of ourselves and seeing the world from nowhere within it is a means for expanding knowledge and our doubts about ourselves and the world, which never end. The problem arises from the premise: “how limited beings like ourselves can alter their conception of the world so that it is no longer just the view from where they are but in a sense a view from nowhere” (Nagel 2004, p. 73). This, in turn, must include and understand the fact that the world contains beings who have such a view, explaining why the world appears to them to be as it is before they form that conception and describing how they can arrive at that conception. The particular viewpoint would be only instrumental, not essential (Divino, 2021, p. 249). It would appear that the most objective view that can be achieved must rest on a subjective basis and free examination and that one can no longer abandon the particular point of view but only change it. Reductive and heroic skeptical theories of knowledge present answers to this problem. “Skeptical possibilities are those according to which the world is completely different from how it appears

7 “We can account for the content of the philosophical thought ‘I am TN’ if we understand the ‘I’ as referring to me qua subject of the impersonal conception of the world which contains TN. The reference is still essentially indexical, and cannot be eliminated in favor of an objective description, but the thought avoids triviality because it depends on the fact that this impersonal conception of the world, though it accords no special position to TN, is attached to and developed from the perspective of TN” (Nagel, 1986, p. 68).

to us, and there is no way to detect this” (Nagel 1986, p. 74). Reductive theories advocate a view of the world not as it is but as it presents itself to us. “Assuming that we do know certain things, and acknowledging that we could not know them if the gap between content and grounds were as great as the skeptic thinks it is, the reductionist reinterprets the content of our beliefs about the world so that they claim less” (Nagel, 1986, p. 72). In turn, recognizing the large gap between the foundations of our beliefs about the world and the contents of those beliefs, heroic theories subject this gap to a realist interpretation in an attempt to bridge it without narrowing it.

Nagel refutes skepticism, defending the idea that it would be a means of recognizing our situation, but not a way of coining us to go on and pursue something like knowledge because our natural realism prevents us from settling for a purely subjective view. The problem with heroic theories, on the other hand, lies in epistemology (the first-person problem of what to believe and how to justify one’s beliefs), which need not necessarily be reductionist and may be vulnerable to metaphysical arguments just like Descartes’ dualist theory. Reductionist theories, by reinterpreting the content of our beliefs about the world as it presents itself to us to reduce its claims, naturally cannot escape skepticism because constructing a reductionist analysis of claims about the world that has a minimum of plausibility without leaving gaps between the grounds and the content is challenging (Nagel, 1986).

Nagel, therefore, leans toward a rationalist theory. “The conditions of objectivity that I have been defending lead to the conclusion that the basis of most real knowledge must be a priori and drawn from within ourselves” (Nagel, 1986, p. 85). For Nagel, the role played by the particular experience and the action that the world exerts in the specific through its perspectives can only be selective. Hence,

If the possibilities, or at least some of them, are available a priori to any mind of sufficient complexity, and if the general properties of reality are fairly uniform throughout, then the pursuit of objective knowledge can be expected to lead to gradual convergence from different starting points. (Nagel, 1986, p. 86).

However, Nagel (1986, p. 86) points out that this limit of convergence is a consequence of the relationship between reality and mind, not the definition of truth. For this reason, the author (Nagel 1986, p. 87) believes that mental capacities do not entirely mirror reality but assumes that all

individuals potentially have in their heads the possibilities that will be revealed in the course of the next millennium by scientific advances. His basis, therefore, falls within the rationalist tradition of an anti-empiricist theory of knowledge, for the author presupposes an unheard-of property of the natural order that we are not aware of, such as the role that Descartes attributed to God.

Nagel commits to realism for the defense of his position. This theory brings the conception that the world is independent of our minds. Nagel defends a form of realism “according to which our grasp on the world is limited not only in respect of what we can know but also in respect of what we can conceive. In a very strong sense, the world extends beyond the reach of our minds” (Nagel, 1986, p. 92). In taking this stance, Nagel (1986) abandons idealism⁸. This theoretical axis holds that what exists is what we can think or conceive, or what our descendants or we might come to believe or imagine, and idealistic conceptions, which hold reality as correlative to the mind in a much broader sense, that is, it includes infinite minds. The realism defended by the author says that the world is perhaps inconceivable to our minds since it would be independent of our possible representations and capable of extending beyond them (Nagel, 1986, p. 93). The incompleteness of objectivity is taken into consideration, for in some aspects, it does not correspond to reality and is not always the best method of knowledge. Therefore, given human nature, what exists and we can think they are two different things, and the latter may be smaller than the former (Nagel, 1986, p. 93)⁹. Thus, Nagel (1986, p. 96) believes that “reality extends

8 Berkley (1710, p. 2 and 23) defended the thesis that “for unthinking things, to exist is to be perceived; so they couldn’t possibly exist out of the minds or thinking things that perceive them”. For him, this is evident when trying to conceive a non-perceived object because it is impossible. If we think of a book on a shelf unperceived, there is an evocation of the perceptual image, and thus it is not something unperceived. “But”, you say, “surely there is nothing easier than to imagine trees in a park, for instance, or books on a shelf, with nobody there to perceive them”. I reply that this is indeed easy to imagine; but let us look into what happens when you imagine it. You form in your mind certain ideas that you call “books” and “trees”, and at the same time you omit to form the idea of anyone who might perceive them. But while you are doing this, you perceive or think of them! So your thought- experiment misses the point; it shows only that you have the power of imagining or forming ideas in your mind; but it doesn’t show that you can conceive it possible for the objects of your thought to exist outside the mind. To show that, you would have to conceive them existing unperceived or unthought-of, which is an obvious contradiction. However hard we try to conceive the existence of external bodies, all we achieve is to contemplate our own ideas. The mind is misled into thinking that it can and does conceive bodies existing outside the mind or unthought-of because it pays no attention to itself, and so doesn’t notice that it contains or thinks of the things that it conceives. Think about it a little and you will see that what I am saying is plainly true; there is really no need for any of the other disproofs of the existence of material substance.

9 “It has already been argued that in various respects the pursuit of objectivity can be carried to excess, that it can lead away from the truth if carried out in the wrong way or with respect to the wrong subject matter. That is one way in which objectivity does not correspond to reality: it is not always the best mode of understanding. But human objectivity may fail to exhaust reality for another reason: there may be aspects of reality beyond

beyond the reach of possible human thought, since this would be closely analogous to something which is not only possibly but actually the case”, because “the existence of unreachable aspects of reality is independent of their conceivability by any actual mind” (Nagel, 1986, p. 97).

Therefore, although human beings cannot answer the question “What is it like to be an artificial intelligence” one can include their point of view in the world by recognizing that the human mind is limited and does not represent the entire content of the world. However, this recognition is only possible through the procedural theory of the subject of law, which tends to present a balance¹⁰ between objectivity and subjectivity and the refutation of instrumental solipsistic physicalism.

3 THE PROCEDURAL THEORY OF SUBJECT OF LAW: HOW CAN ARTIFICIAL INTELLIGENCE BE PART OF THE LEGAL SYSTEM?

This section aims to demonstrate how artificial intelligence can be part of the legal system. For the anxious reader, the answer is *as a subject of law*. However, to reach this result, the reasoning adopted goes through a brief historical background of the formation of the subject of Law. Furthermore, one must change the perspective that Law arises only from an exclusively subjective point of view, as proposed by Nagel. In this sense, it is not to adopt a reductionist or physicalist view as discussed above, but a realist idea that recognizes the incompleteness of the human biological mind in representing the various aspects of the world. To develop these two approaches, the idea of Law as an emancipatory instrument and Law as a tool for interspecies recognition is developed. These stages stem from the procedural theory of the subject of Law that aims to explain how it is formed and inserted into the legal order.

its reach because they are altogether beyond our capacity to form conceptions of the world. What there is and what we, in virtue of our nature, can think about are different things, and the latter may be smaller than the former. Certainly we are smaller, so this should not be surprising. Human objectivity may be able to grasp only part of the world, but when it is successful it should provide us with an understanding of aspects of reality whose existence is completely independent of our capacity to think about them – as independent as the existence of things we can't conceive” (Nagel, 1986, p. 93).

- 10 This balance is only possible by assuming that any objective perspective of view must contain a particular point of view, and this one is subjective. The procedural theory of the subject of law aims to recognize not only sentient beings as a subject but those who use rationality as well to communicate and struggle for their recognition in the society. The main argument in our theory is that any rational being (even it is not human) can be a subject and recognized as well by the Law.

First of all, explaining the subject of Law in terms of traditional theories becomes elementary. Junsnaturalism conceives the subject of Law as a natural condition of man (*lato sensu*). The attributions. Law, in this case, corresponds to the primary art part of a moral reality used to give the thing of each one (Hervada, 2006, p. 16 and 131), which designates and recognizes the being in his position as a natural subject of Law, a unitary composition of the socio-relational system itself. On the other side, the subject of Law appears as a purely normative determination. There is a reduction of this figure to a complex of legal norms. Both the natural person and the legal person are figurative entities of a figuratively legal reality expressed in the concept of person, whose concept is merely the personification of this unity (Divino, 2021). Ultimately, legal duties and subjective rights are enacted by legal norms and reduce the unitary problem of the person to a complex of norms (Kelsen, 1967, p. 193-194).

However, both naturalism and positivism have misconceptions. Explaining the condition of the subject of Law according to state of the art and of things should start from the differentiation between *persona* and subject of Law. *Persona* corresponded, in ancient times, to the invocation of an artificial and fictitious dimension, where the man (real being) used a mask (*prosôpon*) to personify himself and put himself in another's skin, aiming to get rid of his own (Viola, 2017, p. 14). The person was not an individual, nor was the individual a person. The notion of *in-dividuus*, the *undivided*, has its equivalent in the Middle Ages, the idea of the atom, an order, an *estamento* capable of being recognized as a social being (Martins-Costa, 2010, p. 69). *Prospon* represented having (*habere personam*) and not being. There was no talk of a symbiotic existence between person and self, nor consciousness, since this correlation has its origin only in Cartesian philosophical principles (Descartes, 2004, p. 46). Its attribution, therefore, was more linked to the political aspect and less to the legal one since the usefulness of the mask was represented as a place of speech disconnected from the being that uttered it.

On the other hand, the subject of Law develops markedly in liberal humanistic legal thought with the *fictio juris* that human beings are equal before the Law and, therefore, holders of the same rights and obligations. This situation, however, is not simple to be realized. The construction of subjectivity or subjectivation is excellently analyzed by Foucault. The author performs a critique within the legal grammar, directing his attention to a critical or practical attitude towards a re-signification. This means that the target subject of normative power uses the normative tools at his disposal

to modify them and construct himself. Foucauldian critique is the art of not being ruled, “a certain way of thinking, of saying, of acting equally, a certain relation to what exists, to what one knows, what one does, a relation to society, to culture, a relation to others as well” (Foucault, 2015, p. 31). This is because the subject of Law in Foucault serves as resistance to the normative domination system for constructing one’s subjectivity.

The inertia of the subject concerning the practice of criticism leads him to governmentalization, which is defined as a social practice of individual subjection by mechanisms of power that claim a truth (Foucault, 2015, p. 35). Criticism has its importance from the moment the subject gives himself the right to “question truth about its effects of power and power over its discourses of truth” (Foucault, 2015, p. 35). To the subject is entrusted the task of fight in the politics of truth. For Foucault (1995, p. 234), the control of power can be realized by anti-authoritarian struggles that affirm the right to be different and emphasize everything that makes subjects genuinely individual. “The subject, therefore, suffers the effects of power, and it is from these effects that he can be identified and constituted as an individual” (Silva; Rodrigues, 2019, p. 2297). For Foucault (1999, p. 35), the subject “is an effect of power and is, at the same time, to the same extent that it is an effect of it, it’s intermediary: power transits through the individual it has constituted”.

The subject of Law emerges as a resistance and, at the same time, a concession of the being to the Law from the moment the latter exercises the power of domination over the persona and prevents it from exercising the practices of the self. Foucault’s constitution of the subject of Law can be seen as a relation of domination between the legal system aimed at normalization practices, where the being reacts against them and constructs itself. There is an asymmetry between the social relations inscribed by the subject and the norm in which the former is constituted through practices contrary to the coercive attribution of a specific identity.

Thus, the sense of differentiation between persona and subject of Law only exists if the regulatory legal system does so or attributes qualities and legal situations to one and not the other. This means that if every person is a subject of rights and duties, the differentiation between non-person and non-subject of rights and responsibilities is undermined unless the legal system grants rights and obligations to the non-person.

The second thought to be raised is that Foucault seems to be correct but in part. There is a correlational duality between one who subjects himself to someone, by control and dependence, as well as the transition from subject to his autonomous synthesis, by a conscious or self-aware step, both of which, according to Foucault (1995, p. 235), “suggest a form of power that subjugates and renders subject”. In this sense, what Foucault tries to avoid is reducing social plurality through the normalizing system. In other words, he tries to prevent normalization through normalization. It is up to the subject and him to pay attention to the regulatory forms of power to transform himself and control his definitive settlement. In short, the subject must integrate the Law as a claimant agent of its claims and rights. This is the Foucauldian correctness. The process of constitution of the subject of Law must be emancipatory. There must be a counter-situation of subjection and resistance to the intrinsic power to him at that moment. Recognition becomes legitimate from the moment Law recognizes the critical practice claims produced by the confrontation with dominant discourses.

To consider an artificially intelligent entity as a subject of Law seems necessary to go through this claiming process¹¹. The entity must demonstrate to society and the legal system how its capacities are required and what rights it is possible to attribute before the moment of the praxis of the self. The simple concession of this legal position exalts the utilitarian character and ignores years of contributions and class struggles for social emancipation. It is up to the mechanical self to contradict the legal norm that restricts the position of rights and duties to human beings and terminates the obligation of obedience existing in this legal system. Law must act with its spectrum of legality, not normalizing and oppressing. If granted in the contemporary molds, the subjectivation of artificially intelligent beings tends to increase social complexity considerably. “By complexity, we mean that there are always more possibilities than can be realized” (Luhmann, 1983, p. 44).

11 In this context, only systems classified as ASI would be able to fulfill the requirements of this process. Regarding the ANI and AGI systems, although the European Parliament has proposed for the possibility of legal personhood not in attention to (possible) self-awareness, but as a system to regulate liability for damages in cases of more complex systems that prevent the attribution of harm to a human agent, such position should not prosper. A first argument is that personhood is only one of the (final) stages of the constitution of the subject of law. The entire emancipatory process in which self-awareness is considered essential for understanding the factual and legal aspects is indispensable for its configuration. The simple attribution of personality can work as a dodge of responsibility or just a distortion of the economic risks of the business. In a simple visualization, it can work as target instruments of conducts (desired or not) liable to civil responsibility, something very similar to what we have to the legal personality of companies and corporations, which had in its origin this justification to separate the patrimonial aspect of its constituent/exerciser of the economic activity originated from the positive or negative results arising from this social practice.

Contingency, understood as “the fact that the possibilities aimed at the other experiences could be different from those expected”, referring to something deceptive, non-existent, or unattainable means the forced selection of social situations capable of generating unnecessary dangers and risks (Luhmann, 1983, p. 45). Therefore, for an artificially intelligent entity to be considered as a subject of Law, the emancipatory process must be carried out towards Law, but not only.

After the emancipation stage, the view from nowhere should be applied here. In this sense, society and Law must understand how the anthropomorphic view is limited and recognize other non-human and non-biological beings in the system. Law is represented by language, semantics, and syntactic authorizes the agent to use Wittgenstein’s language games to elaborate public rules capable of legitimizing the emancipatory process. It is the Law itself that, within its legal norms, creates a space for the exercise of autonomy for subjects to manage their lives in society (Silva; Rodrigues, 2019, p. 2983). Moreover, within the spectrum of artificially intelligent beings, it will be incumbent upon them to disagree and contest the norms to create narratives of their existence vis-à-vis society and the Law. “The critical potential of the indeterminacy of legal norms, therefore, means exploring the possibility of constant revision of legal meanings” (Silva; Rodrigues, 2019, p. 2983). The function of the subject of Law, in this case, is to act as the center of the democratic legal order for the exercise of their freedoms against the practice of being ruled.

The foundation of this protection lies in the assertion that even if conceptually there is the recognition of thoughts that we do not have the exact language to describe them, denying them would be incorrect. It focuses, therefore, on an analysis beyond subjectivity in the legal construction to reconcile the private self and the objective self, from the perspective that the world without a center does not depend on the vision we have of it, nor on any other vision, but to recognize that the vision we have depends on the world put before us. Furthermore, it is this that will help the development and the balance between objectivity and subjectivity.

It must be emphasized that contemporary Law functions as a utilitarian tool to serve personal interests that do not even look at the consequences for the social, institutional framework. In our view, this is nothing more than a phantasmagoric reproduction of the Will Theory (*Willenstheorie*), which decayed in the Industrial Revolution. This theory believes that the internal will of the agent should be investigated to express his genuine intention to

protect individual interests. Its most important use was in the legal business scenario. The traditional conception of *Willenstheorie* makes the valid will of the declarant, his interests, prevail in all cases as absolute dogma to the detriment of the negotiating expectations that may have been created in the addressee or the repercussions affected by the conduct in question.

To work with the concept of autonomy without a reasonable conceptual domain is to implode the legal system itself. Not least because its elaboration presupposes knowledge of one's being, the notion of responsibility, and ethical guidelines for institutions. The lack of mastery tends to widen the possibilities of social experiences and hinder the application of the Law. This is perhaps the most significant reason for contemporary legal inefficiency. The contingency resulting from scientific and academic production is not limiting the advance of individualism and the increase of complexity since they are causes of this. Placing the individual, the biological and subjective self, as the center of the world to make the legal system revolve around him, without any ontological conceptual criteria and reflexive assumptions open doors to complexify Law and make it unenforceable since individual interests tend to conflict and what should be objective becomes solipsistic. For this reason, the construction of this topic is of importance. Tracing what role subjectivity plays in objectivity and locating the individual in the world is, above all, the basis for legal evolution.

When we insert artificial intelligence into this argument, we must analyze its evolutionary factor vis-à-vis society. The fulfillment of the emancipatory process and interspecies recognition requires a linguistic syntactic and semantic domain similar to the human level. Furthermore, it is for this reason that not all artificial intelligence technologies will be able to achieve this result quickly. In a brief classification, Bostrom (2018) assumes the existence of three stages of AI automation: 1) Artificial Narrow Intelligence (ANI); 2) Artificial General Intelligence (AGI); and 3) Artificial Superintelligence (ASI). ANI is the computational ability to efficiently perform singular tasks, such as page tracking or playing chess (Bostrom, 2020). AGI attempts to represent the original concept of intelligence by translating into algorithms that perform equivalent or superior to humans and are characterized by a deliberately programmed competence in a single narrow domain. Such modern AI algorithms tend to resemble almost all biological life (Bostrom, 2011). Moreover, finally, ASI is presented as "an intellect that far exceeds the cognitive performance of humans in virtually every domain of interest".

In the contemporary technological context, one can only detect the insertion of ANI in the informational society. The guidelines and general precepts for implementing AGI and ASI are in apparent development through machine learning and deep learning techniques (GOLDBERG; HOLLAND, 2015; CERKA et. al., 2015). It is very optimistically estimated that AGI will be available only in 2029 and that ASI would become a singular event in 2045 (Reedy, 2017). However, this does not reflect most scientists, who tend to believe that AGI will be achieved only around 2100, and ASI after 30 years of AGI discovery.

This observation leads us to two possible conclusions. The first is that the idea of recognizing autonomy to artificial intelligence at the current stage of science is instrumentalist. The goal would be to avoid the civil liability of the developer or the person responsible for it. It seems that there are no current possibilities about an AGI at a quasi-human level or with different points of view sufficient to authorize its autonomous entry into the legal order.

However, the second observation is about the possibility of recognizing artificial intelligence as a subject of Law. Affirming its impossibility at the present stage does not mean that the singularity will not be possible in the near or distant future. When this situation materializes, we will have the possibility of recognizing artificial intelligence as a subject of Law. This is so because the proceduralization of Law as a social being is not reduced to the rational factor alone. As Law is a social and cultural construction, the consequences of the insertion of a new being in the category of the subject of Law must recognize the others already framed as such. The norm is capable of disintegrating the status quo of things and emancipating the AI. Still, legal institutions alone are not capable of necessarily guaranteeing the autonomy of these entities before society.

Claims for interspecies recognition are necessary. With the term interspecies, we intend to avoid the concept of intersubjectivity made by Honneth (2017) in *Struggle for Recognition*¹². To date, it is not known what the ontology of the mind is. In simpler terms, it is not known with a high

12 "In particular, Honneth's intersubjective concept of autonomy is argued to provide a normative and empirical standard for emancipation premised on the historically progressive expansion of attitudes of recognition, born out of social struggles, toward the ideal institutionalisation of mutual recognition in world politics" (Brincat, 2015, p. 225). Even in this way, Honneth's intersubjectivity is tied to the human condition. In our work, we want to untie this condition and grant to subject the condition of being recognized in the law.

degree of certainty what the reason is. It is assumed that subjectivity is amalgamated with the biological aspect and that only biological beings with a brain can produce subjectivity (Searle, 1980). Therefore, the intersubjective terminology recognition seems to be erroneous to apply in this scenario.

In this sense, the view from nowhere developed by Nagel is essential. It must be recognized that the world exists independently of an anthropomorphic and subjective conception. Moreover, different views can exist that enhance an objective reality without necessarily being subjective. Furthermore, this is the case with Artificial Intelligence. Moreover, as a final argument, it is verified that Law does not require subjectivity for the constitution of the subject of Law. This statement becomes evident from the formation of corporations as fictitious subjects in the legal sphere from a cultural demand and requirement destined to the patrimonial protection of the subjects who exercise the entrepreneurial activity.

The second point is that Law is a product of social forces, human activity (Neumann, 2013, p. 72). The legitimacy to emancipate a being can be achieved in institutional foster care from objective claims without destroying its form of legal imputation. Subjectivity is not rejected. Not least because any worldview in its most objective aspect must recognize the first-person speeches for its structure to be complete. Therefore, any objective view that rejects subjectivity seems to be in error because subjectivity is part of the world (Nagel, 1986). Nevertheless, in reality, every subjective view that rejects the possibility of other objective forms of participation is also mistaken¹³.

Thus, at the core of the rationality of Law is the person as the center of imputation for domination and for the possibility of democratic participation in the norms that govern his life (Silva; Rodrigues, 2019, p. 2983). On a more abstract level, interspecies recognition is a complementary step to the emancipatory process that guarantees the non-human entity (the AI, in this case) freedom from the state and society to perform acts that require responsibility and to be able to form themselves as political beings. For an

13 The procedural theory of the subject of law is not only the opposite version of subjectivity and objectivity but a merge between them. In a conceptual framework, the gains by using this theory are detected by the use of rationality, which cannot be defined as objective and subjective as well. If you ask a child how much is 2 plus 2 and she answers 5, you cannot say that she does not have any subjectivity, but their behavior is irrational. Even human beings (sentients) can be irrational many times. The ideal criteria used in our theory if focused on rationality, which represents sometimes the qualia and the objective part of the world. After all, we can detect the condition of the subject of law for those who want and is capable of fighting against the system.

AI to be considered a subject of Law, society must recognize and support for this to occur so that the emancipatory process gains strength from the realization of linguistic mastery and the practice of not being governed. This implies the need for an AI to act in the same way (or better) as a human being, a political being.

4 FINAL CONSIDERATIONS

Given the above, the following considerations can be made:

1. It is unintelligible to understand “What is it like to be artificial intelligence?”
2. Different world views can compose objective reality.
3. As a subjective science, Law needs to recognize other points of view besides those of human beings, under penalty of falling into the falsehood of reality.
4. The formation of the subject of Law necessarily goes through the emancipatory process, which artificial intelligence can face, but not now.
5. This means that it is possible to consider artificial intelligence as a subject of Law, as long as it is AGI or ASI.
6. The recognition of rights and duties outside this scenario is nothing more than instrumentalism based on physicalism.

Therefore, it must be recognized that the world exists independently of an anthropomorphic and subjective conception. Moreover, there can be different views that enhance an objective reality without necessarily being subjective. Furthermore, this is the case with Artificial Intelligence. It is verified that Law does not require subjectivity for the constitution of the subject of Law. This statement becomes evident from the formation of corporations as fictitious subjects in the legal sphere from a cultural demand and requirement to protect the assets of the subjects who exercise business activities.

Given the above, we conclude that it is unintelligible to understand what it is like to be artificial intelligence. Therefore, it is also unintelligible to attribute an autonomous regulation to these entities in the current scenario due to the lack of scientific and technological progress. However, this does not mean that these entities can be left aside and their worldviews denied

by the possible absence of subjectivity. With the procedural theory of the subject of Law, artificial intelligence can be elevated to a social and legal level similar to the human one, as long as it demonstrates this understanding to deserve its legal protection.

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