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Constraints and Challenges to the Legal Relationship: From the Legal Entity to the Animal and the Robot

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Abstract

The purpose of this article is to reflect on the constraints placed on the legal relationship, due to the autonomy of the legal person, as well as the possible attribution of rights to animals and robots. Such modifications, by implying the correlative quality of legal subjects, raise new challenges to the legal relationship, bearing in mind, above all, the recent emergence to the re-personalization of civil law.

Keywords

legal relationship, subject, object, legal person, animal rights, animal as subject, robot, re-personalization, right of personality

1. Introduction

On this occasion, we set out to study, albeit in brief, the challenges facing the legal relationship, particularly the idea of re-personalising civil law. Above all, this does not overlook the constraints brought about by the autonomy of the legal person and the decline of human beings as the sole addressees of legal rules and the sole subjects of rights. In addition, we also approach those doctrines seeking to revisit the autonomy of the legal person and the new challenges posed by the legal nature of the animal and, more recently, of robots or electronic persons.

2. The Legal Relationship and the Legal Person

The autonomy of the legal person provides the grounds for revisiting the theory of the legal relationship. We must understand that this does not emerge in direct antinomy to or in duality with the natural person but rather within the framework of reconfiguring the civil system, thus, the Germanic classification of civil law. Indeed, we must hereby emphasise the breadth attributed to the subject of the legal relationship. As this recognition generally references the state or the legislator, the quality of subject receives an enormous range of amplitude and not in any way restrictive or a mirror image of the

natural person.

The admissibility of the legal person, as a subject, within the legal relationship, was justified by Heise in his argument that a legal person constituted everything that, in addition to the natural person, was recognised by the state as a subject for rights (Note 1). This position was subsequently maintained by Savigny who accepted alongside the natural person, the legal person as the subject of rights and the centre of imputed liabilities (Note 2). Other authors have also defended this broad meaning, opening up the main pole of the legal relationship, the subject or legal person, to whatever comes to be understood as such. Within this framework, Beseler then characterised the legal entity as everything that, in general, is accepted as a true subject of law (Note 3).

Furthermore, those who delved into studying subjective right, and accordingly did not highlight the components of the legal relationship in the same way, approached this issue from an eminently technical standpoint. It was thereby understandable that the subject of the legal relationship was not characterised in any restrictive or highly conditioned manner. In fact, Ihering, after explaining the subjective right as a legally protected interest, then broadly admits the protection of interests (Note 4). Therefore, the focus of interest falls on the position of any legal subject, a legal person (Note 5), even when not corresponding to an individual interest, a natural or legal person. This even allows for the existence of a general interest (Note 6) without the necessary correspondence with any individual interest belonging to individual or collective persons.

However, according to Menezes Cordeiro, this technically based conception of the legal relationship, by covering both natural and legal persons, promotes a progressive decline in the previously existing ethical reference framework for legal persons, the subjects of legal relationship (Note 7). The professor even accepts that the notions of subjective right and legal personality indicate a proximate, even an intrinsic, relationship (Note 8). Moreover, such proximity can clearly be identified in the incessant and lengthy debate on the legal nature of legal persons.

In this respect, Binder, Saleilles and Ferrara made paradigmatic contribution. Firstly, Binder analyses both the legal relationship and the subjective right in relation to the personality of the legal person (Note 9). He then accordingly argues that the legal person and the subjective right are the product of human relations, of legal relations (Note 10). All the more so given that, as he had previously proposed, the subject, that is the legal person founded on a subjective right, constituted one of the pillars and a defining vertex of the legal relationship (Note 11). Secondly, and according to Saleilles, individuals take on legal personality because of the need to assume ownership of rights (Note 12). A similar case would serve for legal persons and thereby emphasising autonomy and will in accordance with positive law (Note 13). Thirdly, Ferrara maintained this understanding through underlining the attribution of legal personality by the legal system in force at a particular moment (Note 14). He adds that the term person cannot be limited to a natural person but must rather at least extend to legal persons as entities holding rights and obligations (Note 15). In short, legal personality at least encompasses all legal persons as legal entities defined in terms of rights and obligations (Note 16).

3. Consequences of Endowing Animals with Rights

While the identification, or at least the equation between animals and things persisted into the late 1980s (Note 17), it is clearly important to appraise the consequences of the subsequent alteration. While animal ceased being things, there came the need to ascertain the rights resulting and involving an assessment of the consequences for the various components of the legal relationship. This especially becomes the case when this change was only enacted into the Portuguese legal system after decades of delay. In fact, the approval of the legal status of the animal, in 2017 (Note 18) implied the end of the aforementioned equation that triggered other relevant modifications to the wording of the Portuguese Civil Code (CC hereafter). For example, immediately prior to article 202, which opens the section on things, another provision was added, article 201 B, stating that animals are living beings endowed with sensitivity and subject to legal protection by virtue of their very nature. Hence, article 202, when setting out to broadly characterize the nature of things, cannot encompass animals.

However, across other aspects, reforms have only been timid, confused and disappointing. Indeed, should the legal protection of animals derive from the provisions of the CC, the Portuguese Criminal Code (CP hereafter) and special legislation, the regime for things ends up as applicable, subsidiarily, under the terms of article 201 D CC. Furthermore, besides ownership of things, ownership of animals is admitted in accordance with Article 1302 no. 2 CC. Article 1305A was also added to stipulate the content of animal property that highlights unavoidable duties and restrictions. These include, firstly, respect for animal welfare, for example guaranteeing access to water and feed, as well as to veterinary care, including prophylactic measures, identification and vaccination as provided for by the respective legislation (Note 19). Secondly, there is the safeguarding of the characteristics of each species and compliance with special provisions concerning the breeding, reproduction, keeping and protection of animals coupled with the safeguarding of endangered species (Note 20). Finally, there comes the duty not to inflict, without legitimate reason, pain, suffering or maltreatment resulting in unjustified suffering, abandonment or death (Note 21).

After ending the equating of animals with things and, above all, in accordance with the set of legally established duties, it becomes important to ascertain as to whether or not animals hold the correlative rights, whether they can be configured as subjects of rights and, ultimately, as legal persons. In fact, faced with the about turn triggered by the abolition of the old equation between animals and things, a contradictory position seems to arise among those insisting on prefiguring the animal as an object of rights. They therefore, correspondingly, end up defending how animals, while after all ceasing to be things in the strict sense, nevertheless do not cease to be things in the broad sense (Note 22).

There also seems to be little gained in heading down the direction of establishing *tertium genus*. In fact, while we might, *a priori*, accept a third category, somewhere between a subject and a thing, some authors defending this third way, nevertheless end up arriving at results similar to those who, from the outset, insist on characterising the animal as an object of rights. Thus, Filipe Albuquerque de Matos and Mafalda Miranda Barbosa, despite starting out by maintaining the animal statute corresponds to a

tertium genus, in a later moment, however conclude that animals are no longer things even while still the objects of legal relations (Note 23).

Faced with the dissatisfaction brought about by the conclusions above, it then makes sense to ponder the viability of the positions configuring animals as holders of rights, as the subjects of rights. Naturally, these ideas do not necessarily derive from postulates of an ethical, philosophical or political nature. Indeed, they above all constitute assertions of a technical nature that take into consideration the ending of the equation between the animal and the thing and the enactment of different legislative reforms, for example, the recognition of rights as well as for animal welfare. As a matter of fact, in the 1980s, Erbel had in this sense defended that the rights of animals, in addition to being consistently affirmed in ethical and philosophical terms, require acceptance by legal theory and even by positive law (Note 24). In this view, the construction of specific rights for animals, as special categories of subjective rights, requires consideration in keeping with the lack of any obstacles to establishing animals as holders of rights and legal subjects (Note 25). According to Erbel, should the animal be a living being, an indivisible vital unit, it must be endowed with a legal capacity that the legal framework already does not restrict to human beings as such a capacity extends to collective persons, fictional, abstract constructs, without any biological existence or tangible corporeality (Note 26). Therefore, the conclusion becomes unavoidable and animals clearly possess legal interests worthy of legal protection as the allegations made in the sense that animals are incapable of expressing a will directed by reason fail just as new born infants and mentally disabled persons also display this incapacity regarding the formation and expression of a free and enlightened will and this does not determine any denial of their quality as legal subjects (Note 27).

Following the reform of the BGB, the debate around this doctrinal facet intensified. While the more conservative sector insisted on characterising the animal as a thing, another current affirmed, with greater determination and assertiveness, the animal as a subject and the holder of rights. Within this scope, Brüninghaus insists precisely on the situation of newly born infants and severely mentally impaired individuals (Note 28). Consequently, this author proposes there is a clear need for the legal system to tread new paths, to confront those perspectives that reject the attribution of the quality of legal subject to animals with those that, on the contrary, defend such a position (Note 29). He furthermore adds it would be erroneous to suppose that beings unable to assume duties are equally unable to assume rights because there are persons without the capacity to assume such duties (Note 30). According to Brüninghaus, there are many reasons inherent to legal dogmatics for classifying animals alongside human beings as subjects of law (Note 31). In particular, the interests of animals, as subjective rights represented by fiduciary entities, coupled with the necessary openness of the legal system, represent aspects consistent with marked cultural progress in modern societies (Note 32). Moreover, according to Brüninghaus, the law can be neither fixed nor immutable but must rather integrate a process of development, based on new ethical and cultural considerations, in order to continuously adapt to the demands of contemporary society (Note 33).

Furthermore, Raspé, drawing support from a schematic diagram, seeks to explain how the attribution of the quality of legal subject to animals does not imply any immediate equivalence to human beings (Note 34). He even points out the difficulties in prefiguring a complete theory concerning the legal personality of animals across every aspect and all the complex consequences (Note 35). However, out of his belief in the inevitability of prefiguring animals as legal persons, he describes the need to introduce further reforms in the BGB, in addition to § 90a, and in particular to § 903 regarding the contents of property rights in order to adapt the framework for animal ownership (Note 36). His position also extended to advocating changes in procedural law to enable the representation of animals' subjective rights before civil and administrative courts (Note 37). In short, according to Raspé, there is no incompatibility between the dignity of human persons and the legal personality of animals. This holds especially true as the anthropocentric ideology was deemed to have been surpassed through the constitutional revision introducing article 20a into the Constitution of the Federal Republic of Germany (Note 38).

This issue has emerged in other legal systems in other latitudes. Brazilian law particularly stands out among them, especially in the wake of the paradigm shift brought about by the 1988 Federal Constitution. Accordingly, following the proclamation of Article 225 enshrining the right to an ecologically balanced environment, under the terms of §1, one of the strands designed to ensure this right stipulates the protection of fauna and flora and legally prohibiting those practices which endanger ecological functions, cause the extinction of species or subject animals to cruelty.

The Federal Supreme Court (STF) later gained the opportunity to review these constitutional amendment within the scope of ancestral practices, allegedly of a cultural nature, laid down and protected under state laws but likely to cause suffering and mistreatment to the animal. In particular, the state prescriptions of Santa Catarina, Rio de Janeiro and Ceará, over bull running, cockfights and cattle gathering respectively, were all declared unconstitutional (Note 39). In the case of the cattle gathering practice, certainly the most sensitive due to the economic interests at stake, the Court ascertained that the *vaqueros* pull the animal's tail, entrap and whip the animal before forcing it out through the gate of the stall. Thus, faced with the technical reports identifying the severe consequences for the health of cattle due to this forcible tail-pulling and whipping, the STF disregarded the alleged cultural significance and accepted the prevalence of environmental protection and, accordingly, declared the Ceará State law unconstitutional (Note 40). However, due to the resulting controversy, Congress decided to intervene, primarily as a result of pressure from agro-business interests. Thus, Congress moved to enact legislation reversing the ban on cattle gathering on the grounds of its status as a national artistic-cultural expression and therefore a facet of the national intangible cultural heritage (Note 41).

As regards Brazilian doctrine, special reference should be made to Braga Lourenço who, after boldly criticising the conservative position that considers the subject of law as a prerogative of rational beings, concluded there persists an undue exclusive link between persons and the subject of rights (Note 42). In his view, if the subject of law is a centre for imputing rights and obligations, not every subject is a natural person and not all persons are necessarily human beings (Note 43). Within this framework, Braga Lourenço highlighted important changes in Brazilian jurisprudence. Above all, following the granting of the Habeas Corpus request for the chimpanzee named Switzerland, imprisoned in the Getúlio Vargas Zoo and Botanical Park in a cage of 77.54 m2 (Note 44), animals, or at least sentient beings were, in his opinion, henceforth recognised as holders of rights while also accepting this position inherently involves the affirmation of new poles of legal subjectivity (Note 45).

In the Portuguese legal literature, the position of Fernando Araújo stands out as a precursor; after highlighting the interests of animals, he displays no hesitation in advancing with recognition of their rights (Note 46). Even while first defending the existence of minimum rights, aimed at protecting animals from suffering and safeguarding their quality of life, at a second level, he affirms the rights of animals are enforceable against human individuals and states (Note 47). Then, in order to emphasise the arrival of the *Time for Animals*, he refers to the UNESCO Universal Declaration of Animal Rights, the BGB reforms and the innovations introduced to the German and Brazilian Constitutions (Note 48). At a later stage, he also advocates revising the Portuguese Constitution and the Civil Code in order to terminate the assimilation between animals and tangible things and to expressly recognise the rights of animals (Note 49).

On our own account, after analysing the reforms of the Austrian, German and French Civil Codes, in addition to the ending of the equation between animals and things, we underlined the inconsequential nature of *tertium genus* and, above all, the imperative of characterising animals as legal subjects and true holders of subjective rights (Note 50). Subsequently, following the latest amendments to the CC, we emphasised the outstanding need to reposition animals as subjects, true holders of rights (Note 51) within the framework of animal rights such as the right to life, well-being and freedom from pain (Note 52). We also underlined the innovative position of some international jurisprudence that now provides for attributing procedural legitimacy to animals and thus accepting them for litigation, in their own name, as subjects of rights, as non-human persons (Note 53). We also refuted the idea that accepts, or seems to accept, the end of the equation of animals as things but then reframes them as an object of rights, on account of their lacking a reasoning capacity, running counter to the conclusive evidence defining animals as authentic holders of rights (Note 54).

Taking into consideration the most recent doctrinal contributions, we would here reaffirm our understanding especially given that legislative reforms have since assisted in confirming prior assertions. In particular, there is the case of the alleged sporting and recreational activity of pigeon shooting. Our annotations criticized a 2010 ruling by the Supreme Administrative Court, which rejected any ownership over rights to animals in order to justify pigeon shooting as a legitimate

sporting activity (Note 55). We are therefore only able to praise the wisdom of the legislator in, only very recently, deciding to ban recourse to pigeons for training and shooting competitions (Note 56). Indeed, we may also hope that, in an equally near future, another practice will also be subject to prohibition as every bit as barbaric and offensive not only to animal rights but also to the values of civilised societies. Such becomes the case with all bullfighting activities. In particular, this spans bullfighting and the running of bullocks, whether or not they involve the death of bulls inside bullrings, based on historical and supposedly cultural practices.

4. Does the Rights of Animal Issues Impact on the Legal Relationship?

At this stage, it would be best to ascertain the impacts of the directional change in the animal's legal nature on the theory of legal relationships. There would be particular interest in concluding as to whether the progress made regarding the legal status, especially as regards welfare, the criminalization of maltreatment and, above all, the concept of animals as the subjects of rights, causes any impacts on the legal relationship prevailing. Furthermore, this requires grasping whether, on the contrary, perceptions of the legal relationship and/or the rigidity of its components constrains or limits any understanding of the animal issue. This topic takes on marked relevance because, as already seen, natural persons have long since lost their exclusivity as the only subject of rights in keeping with the appearance of the corporate person. Furthermore, at that time, there was resistance to exclusively accepting this other subject. In fact, ever since the 19th century, the quality of the subjects of legal relationships has been viewed with great openness and we need only to revisit the contributions made by Heise, Savigny, Ihering, Binder, Ferrara or Saleilles. The common denominator here seems to be an understanding according to which the legal person statute extends to, in addition to the natural person, everything that is recognised by the state as a subject of rights. These authors have never argued that the subject should be limited only to natural and legal persons. Instead, they alluded to the theme, with great amplitude, pointing out how the quality of subject of rights depends on state recognition and the admissibility under positive law.

We are surprised, even borderline incredulous, when noting how certain sectors maintain a defence of some restrictive quality for the subjects of rights in legal relationships. After all, we are no longer in the 19th century but have entered significantly far into the 21st century. Following their resistance to abandoning the anthropocentric tradition, this seems almost as if an attempt made to return to it. In fact, this resistance was well signposted by Orlando de Carvalho when warning that the old tradition was maintained, implicitly or surreptitiously, for a long period of time. Hence, the neutralism or technicality of the theory of the legal relationship at various times appears more apparent than real in keeping with how, implicitly or consciously (Note 57), the attribution of the predominant role to the person still persists.

However, the technicality of the legal relationship and the positioning of the subject cannot be reconciled with any anthropocentric approach. In fact, the legal relationship seeks to replace the agglutinating pole, anchored around the human figure, with another more technical approach and necessarily less ideological or ontological. Therefore, in admitting that the law is capable of attributing rights and obligations and that personality arises as a direct consequence of ownership of those rights and obligations, this then accepts not only that legal personality is not immanent or exclusive to the human person but, and above all, that this can be endowed to other entities by the legislative authority.

Legal relationship theory does not proclaim any ineluctable commitment to the natural person as the subject of rights. In fact, the natural person has not always been deemed the exclusive subject of the legal relationship. Within this scope, Manuel de Andrade, after describing the subjects of the legal relationship as terminal points or means of supporting the relationship, qualifies the object as equivalent to an object of rights (Note 58). Therefore, in personal family rights, the object may be a person and, in obligations, the object of the creditor's right will be the person of the debtor (Note 59). In addition, Carlos Mota Pinto, Pinto Monteiro and Paulo Mota Pinto, after pondering the object of the legal relationship, that which underlies the powers of the active holder of the relationship, accept that other persons, tangible or intangible things, ways of being of the person him/herself and other rights can serve as the object of legal relationships (Note 60). In short, in this approach, some doctrinal positions hold that the individual may, under certain circumstances, assume the quality of the object in a legal relationship.

However, other authors, even while sharing similar assumptions, seek to distance natural persons from the rigid consequences of the technicality of legal relationship for ideological reasons. Thus, Hörster, after concurring that the object of the law is that on which the subject's power rests, states that a thing, a service, a right and a person may all be covered by this qualification (Note 61). However, immediately afterwards, he decides to exclude natural persons from that technical position on deeming the resulting solution to be obsolete and illegal (Note 62).

We thus run into a newly restrictive conditioning of an ideological nature, limiting the full affirmation of the legal relationship across all of its different facets and consequences. We may note such constraints in earlier periods, in late anthropocentrism and even in the theory of fiction regarding the legal nature of the legal person. For example, in the mid-19th century, Puchta was propositioning man as the only true subject of rights even though circumstances drove the consideration of another entity by way of mere fiction (Note 63). Surprisingly, as the 21st century advances, we encounter other constraints, animated by an ontological or ideological pre-understanding. Indeed, Hörster, while admitting the scope for isolating certain manifestations of the person, rendering such objectifications as objects of law (Note 64), rejects, on the grounds of something external to the technicality of the legal relationship, the direct consequence of that relationship functioning in keeping with its components whose characterization and functioning he nevertheless validates. On the other hand, the ideas concerning a re-personalisation or re-humanisation of civil law instil new reservations into the civil

legal relationship (Note 65).

From our own perspective, we would agree that the legal relationship theory deserves more extensive reflection, particularly as regards certain postulates deriving from the immediate and automatic technicality. However, any alleged valuation of the legal relationship (Note 66) risks contaminating, with ideological and ontological positions, something that has not been perceived as such. Therefore, reflection on the rights of personality should not entangle the problematics of civil legal relations. Hence, by taking this position, we correspondingly accept that opening up the subject of the legal relationship, the subject of rights, to other entities distinct from the natural person is both unavoidable and irreversible. On revisiting legal realism, we may duly note that the legal subject has been understood as a form attributed by the legislator and, in the last resort, by the state (Note 67). In fact, we also find cautious positions on this issue. In particular, Larenz warns on the importance of the legislator's will and the affirmation of the legal personality of legal persons as subjects of law and as a reality in the legal world in terms equivalent to natural persons (Note 68). Moreover, Larenz refutes any complete identification between the two in terms of personality rights (Note 69). This careful moderation also emerges in the Portuguese realist doctrine. Among others, we highlight Galvão Telles who underlines how the recognition of the legal person does not entail a position of an ontological nature but rather only the identification of another category of legal person (Note 70). Subsequently, Carvalho Fernandes, in accepting the theory of legal reality or technical reality with relative clarity, writes that the legal personality of man is imposed on the law by virtue of the dignity of the human person and that such reason does not hold for collective personifications (Note 71). However, as legal personality is generally a creation of the law, this author then proposes attributing personality to other entities bearing interests that deserve legal protection (Note 72). In addition, Pais de Vasconcelos, after pointing out how the collective personality cannot be confused with the singular personality even though the law establishes the former in the image and likeness of the latter (Note 73). And legal persons display a legal nature analogous to natural persons, the legal personality of human beings (Note 74). Therefore, although they are similar realities, they are not the same even if they are also not entirely different either (Note 75).

Even though Menezes Cordeiro concurs with the hypothesis that legal realism represents an empty formula for considering legal personality and the legal reality (Note 76), the fact nevertheless remains that such a formula signifies openness in view of the options available to the legislator as regards the attribution of rights and legal personality to other entities distinct from the natural person. This may even mean, through emphasising the technical aspect, the overcoming of certain constraints raised by the assimilation of the natural person, the legal person and other legal persons recognised by the legislator. This also holds worth for contrasting the legal relationship with the legal situation, and with an undeniable advantage for the former (Note 77) as well as the admissibility of the reversal of reality on the initiative of the legislator in view of the various circumstances disregarding legal personality (Note 78).

Clearly, this densification, this openness, cannot be restricted to the legal person. This was accepted even back in the 19th century when the motive was the legal person but already endowed with great amplitude in terms of the respective subjects of rights. In other words, as we have already noted, this recognition of the technicality of legal relationships and the initiatives of the legislator on behalf of a duly recognised state already has a long history. Therefore, following the entry into force of the legal statute for animals and the inherent attribution of duties and rights in 2017, it makes perfect sense to recognise living beings endowed with sensitivity, animals, as a subject of rights. Moreover, there is no incompatibility between the dignity of the human person and the attribution of the quality of subject, of a legal relationship, to animals. In fact, as Menezes Cordeiro indeed allows, the personalization of animals is neither repugnant to civilists nor does it undermine the dignity of the human being (Note 79).

Therefore, should the technique of the legal relationship replace the anthropocentric weighting, this cannot end up becoming entangled in inconsequential revivals or nostalgia. In fact, the various acts of resistance against this greater amplitude of the quality of the subject of legal relationships are, to a large extent, remnants of the old anthropocentric tradition that implicitly persists to a greater or lesser extent. Hence, the neutralism or technicality of the legal relationship has been dulled and limited due to exogenous reasons interlinked with a certain return to the previous model. Indeed, just as the defence of human dignity has never been thrown into question, we understand less well why re-personalisation has to limit and even asphyxiate the legal relationship. We must therefore note that it will not be the animal problematic that will topple the unicity of the legal personality around the natural person. After all, this happened a long time ago. This epistemological rupture occurred, at the least, at the time of accepting collective persons as a subject of rights. This inherently involved assent that legal personality is a creation of the law and, accordingly, the capacity to attribute personality to other entities or organisms that deserve the corresponding legal protection.

5. Robot or Electronic Person: A New Challenge?

The problem concerning the qualification of animals as persons is not the only question on the agenda of contemporary societies. In fact, besides the legal person and the animal, the attribution of legal personality to the robot, the electronic person, is under active consideration. Indeed, the problem concerning the legal personality of robots or electronic persons has gained increasingly insistent prominence. Thus, in addition to the legal personality extending to recognition of other living beings, animals, we also still face the scope for electronic persons deserving a similar prerogative.

Irrespective of more detailed analysis of this matter, we believe it pertinent to highlight, albeit very briefly, the doctrinal positions attributing legal personality to robots or electronic persons. Most certainly, the impressive technological advances and the need to solve questions arising from the actions of devices with great decision-making autonomy, in particular in terms of guardianship or civil liability, raises the question of whether or not we may attribute legal personality to robots or electronic

persons as mechanisms endowed with artificial intelligence. Furthermore, in addition to the technological and functional developments, there is the unavoidable question of their autonomy vis-à-vis human beings (Note 80).

We should note here the European Parliament Resolution on Robotics, adopted in 2017 (Note 81), called on the Commission to establish a legal regime for robots and electronic persons. Indeed, this Resolution, as well as emphasising the preservation of the dignity, autonomy and self-determination of individuals, does accept that artificial intelligence will, in time, surpass human intellectual capacities (Note 82). This also provides for, as regards liability, proportionality in the instructions given to the robot, its autonomy and the need to adopt a legal statute enabling more sophisticated robots to hold the prerogative, as electronic persons, of responsibility for remedying any damage they cause as well as extending this personality to situations in which robots take autonomous decisions or interact independently with third parties (Note 83).

While there is understandable resistance and imaginative formulations rejecting any electronic legal personality (Note 84), it is no less true that we come across consistent recommendations and doctrinal positions advocating such a hypothesis (Note 85). However, while not wishing take sides in this dispute, which is likely to rise in prominence over the medium term (Note 86), we cannot fail to raise this at a time when the legal personality of animals requires affirming without hesitation or prejudice. Therefore, the rupture in the aforementioned monopoly, triggered by the advent of collective persons, can be substantiated by the rights attributable to non-human and eventually to electronic persons. Hence, this would consequently take into due consideration the challenges and potential of the legal relationship, overcoming the atavisms and constraints motivated whether by tradition or by a less than correct understanding of the foundations of legal relationship theory and the affirmation of its respective components.

6. Conclusions

The admissibility of legal persons as subjects within legal relationships has been based on a broad understanding of legal persons. In these terms, a legal person may be anything that, in addition to the natural person, is recognised by a particular state as a subject of rights. In other words, this extends to everything which, in general terms, is assumed as a true subject of law, ratified by the legislator under the auspices of positive law. Moreover, the technicality of the legal relationship and the positioning of the subject is not compatible with any anthropocentric approach. Indeed, the legal relationship seeks to replace an agglutinating pole, anchored around the human figure, with another more technical approach and necessarily less ideological or ontological. Therefore, on accepting that the law can attribute rights and obligations, that personality arises as a direct consequence of ownership of such rights and obligations, we correspondingly concur not only that legal personality is neither immanent nor exclusive to the human person but also that legal personality can, above all, be attributed by the legislator to other beings and entities.

Regarding animals, a doctrinaire sector has consistently defended the attribution of the quality of legal subject to such beings even when this does not mean any immediate and complete equation to human beings. Furthermore, there is no incompatibility between the dignity of the human person and the attribution of legal personality to animals through taking into account the supersession of the anthropocentric perspective. Hence, the neutralism or the technicality of the legal relationship has been dulled and limited due to exogenous reasons interlinked with a certain revival of the previous model. Alternatively, there has been an alleged re-personalisation of civil law in defence of human dignity, which was clearly never under question in any case. In short, we would note that it will not be the animal rights problematic that will shake the unicity of the legal personality revolving around the natural person. After all, this occurred at the time of the acceptance of collective persons as subjects of rights.

On the other hand, we still find understandable the resistance and imaginative formulations posited within the scope of rejecting any electronic legal personality. Nevertheless, it remains no less true that there are consistent doctrinal recommendations and positions underpinning such a hypothesis. However, although it is not down to ourselves to take sides in this dispute at this moment, we cannot fail to raise the issue at a time when there is such a need to clearly affirm the legal personality of animals without any undue prejudice. This becomes all the more the case given that the rupture in the aforementioned monopoly, triggered by the establishment of collective persons, can be consolidated through the rights attributable to non-humans and perhaps to electronic persons. In addition, this stance, in paying attention to the challenges and potentials of the legal relationship, overcomes the atavisms and constraints whether driven by tradition or by an inadequate understanding of the theoretical foundations of the legal relationship and the role played by each component.

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Notes

Note 1. Arnold Heise not only presents a classification system, later recognised as the Germanic classification of civil law, but also justifies his options in lucid explanatory notes. Cf. *Grundriss eines Systems des Gemeinen Civilrechts*, Heidelberg, 1807, pp. 25 et seq.

Note 2. Cf. Friedrich von Savigny, *System des heutigen Römischen Rechts*, Vol. 2, Berlin, 1840, pp. 235 et seq.

Note 3. Cf. Georg Beseler, *System des gemeinen deutschen Rechts*, Vol. I, Leipzig, 1847, pp. 296 et seq.

Note 4. Cf. Rudolph von Ihering, *Geist des römischen Rechts auf den verschiedenen Stufen seiner Entwicklung*, Vol. III, Leipzig, 1865, pp. 351-352.

Note 5. Cf. Rudolph von Ihering, *Geist des römischen Rechts*…op. cit., pp. 340 et seq.

Note 6. Cf. Rudolph von Ihering, *Geist des römischen Rechts*…op. cit., pp. 355-356.

Note 7. Cf. Menezes Cordeiro, *Tratado de Direito Civil*, Vol. IV, 5th ed., Coimbra, 2021, pp. 635-636.

Note 8. Cf. Menezes Cordeiro, *Tratado de Direito Civil*, Vol. IV, op. cit., p. 638.

Note 9. Cf. Julius Binder, *Das Problem der juristichen Persönlichkeit*, Leipzig, 1907, pp. 31 et seq.

Note 10. Cf. Julius Binder, *Das Problem*… op. cit., pp. 141 et seq.

Note 11. Cf. Julius Binder, *Das Problem*… op. cit., pp. 48-49.

Note 12. Cf. Raymond Saleilles, *De la Personnallité Juridique*, Paris, 1910, p. 573.

Note 13. Cf. Raymond Saleilles, *De la Personnallité*…op. cit., pp. 616 et seq.

Note 14. Cf. Francesco Ferrara, *Le Persone Giuridiche*, 2 ªed., Turin, 1956, pp. 5-6.

Note 15. Cf. Francesco Ferrara, *Le Persone Giuridiche*, op. cit., pp. 31 et seq.

Note 16. Cf. Francesco Ferrara, *Le Persone Giuridiche*, op. cit., pp. 33 et seq.

Note 17. In 1988, the Austrian Civil Code (ABGB) introduced a paragraph stating that animals are not things. Shortly afterwards, in 1990, the German Civil Code (BGB) added § 90 a, in order to stipulate that animals are not things. In that same decade, there was an amendment to the French Civil Code article 524 in order to distinguish animals from appropriable objects (1999).

Note 18. Cf. Law no. 8/2017 of 3 March.

Note 19. Cf numbers 1 and 2 of article 1305 A CC.

Note 20. Cf. no. 1 of article 1305 A.

Note 21. Cf. no. 3 of article 1305 A.

Note 22. Cf. Barreto Menezes Cordeiro, "A Natureza Jurídica dos Animais à Luz da Lei no. 8/2017, de 3 de Março" in *Revista de Direito Civil*, Year 2, no. 2, 2017, pp. 330 and seq..

Note 23. Cf. Filipe Albuquerque Matos and Mafalda Miranda Barbosa, *O Novo Estatuto Jurídico dos Animais*, Coimbra, 2017, pp. 7-8.

Note 24. Cf. Gunther Erbel, "Rechtsschutz für Tiere: Eine Bestandsaufnahme anlässlich der Novellierung des Tierschutzgesetzes" in *Deutsches Verwaltungsblatt*, 1986, p. 1254.

Note 25. Cf. Gunther Erbel, "Rechtsschutz…" in op. cit., p. 1254.

Note 26. Cf. Gunther Erbel, "Rechtsschutz…" in op. cit., p. 1254-1255.

Note 27. Cf. Gunther Erbel, "Rechtsschutz…" in op. cit., p. 1254-1255.

Note 28. Cf. Birgit Brüninghaus, *Die Stellung des Tieres im Bürgerlichen Gesetzbuch*, Berlin, 1992, pp. 127-128.

Note 29. Cf. Birgit Brüninghaus, *Die Stellung*…op. cit., pp. 128 et seq.

Note 30. Cf. Birgit Brüninghaus, *Die Stellung*…op. cit., p. 132.

Note 31. Cf. Birgit Brüninghaus, *Die Stellung*…op. cit., p. 133.

Note 32. Cf. Birgit Brüninghaus, *Die Stellung*…op. cit., p. 133 et seq.

Note 33. Cf. Birgit Brüninghaus, *Die Stellung*…op. cit., p. 138.

Note 34. Cf. Carolin Raspé, *Die tierliche Person*, Berlin, 2013, p. 306.

Note 35. Cf. Carolin Raspé, *Die tierliche*…op. cit., p. 307.

Note 36. Hence, Carolin Raspé proposes a legal framework capable of ensuring the owner respects the particular stipulations relating to animal protection. Cf. *Die tierliche*…op. cit., p. 321.

Note 37. Cf. Carolin Raspé, *Die tierliche*…op. cit., pp. 325 et seq..

Note 38. This precept, on account of the responsibility prevailing towards future generations, in determining the need for the state to act to protect natural and animal resources, according to Carolin Raspé, requires a decisive change in mentalities. Cf. *Die tierliche*…op. cit., pp. 332-333.

Note 39. Bull running was declared unconstitutional on 3 June 1997 with cock fighting following on 29 June 2005.

Note 40. Cf. STF direct action of unconstitutionality of 12 August 2015.

Note 41. Cf. Articles 1 and 2 of Law no. 13,364 of 29 November 2016, published in the Official Gazette of the Union on the following day.

Note 42. Cf. Daniel Braga Lourenço, *Direito dos Animais: Fundamentação e Novas Perspectivas*, Porto Alegre, 2008, p. 498.

Note 43. Cf. Daniel Braga Lourenço, *Direito dos Animais*…op. cit., p. 499.

Note 44. Cf. Daniel Braga Lourenço, *Direito dos Animais*…op. cit., pp. 524-525.

Note 45. Cf. Daniel Braga Lourenço, *Direito dos Animais*…op. cit., pp. 532 et seq.

Note 46. Cf. Fernando Araújo, *A Hora dos Direitos dos Animais*, Coimbra, 2003, p. 285.

Note 47. Cf. Fernando Araújo, *A Hora*…op. cit., p. 286.

Note 48. Cf. Fernando Araújo, *A Hora*…op. cit., p. 286-287.

Note 49. Cf. Fernando Araújo, "The Recent Development of Portuguese Law in Field of Animal Rights" in *Journal of Animal Law*, no. 61, 2005, pp. 69-70.

Note 50. See our "O Animal: Coisa ou Tertium Genus?" in *Estudos Dedicados ao Professor Doutor Carvalho Fernandes*, Lisbon, 2011, p. 255.

Note 51. See our *Manual de Direitos Reais*, 3 ªed., Lisbon, 2022, pp. 77 et seq.

Note 52. See our article "Problemática Animal: Vulnerabilidades e Desafios" in *Revista da Faculdade de Direito da Universidade de Lisboa*, Year LXII, no. 1, 2021, pp. 553 et seq.

Note 53. On another occasion, we have studied an important decision handed down by the Administrative and Tax Litigation Court of the City of Buenos Aires in 2015 that recognised the orangutan Sandra as a subject of rights and, consequently, a non-human person. See our *Manual*…op. cit., p. 79.

Note 54. See our "Problemática Animal…" in op. cit., p. 555.

Note 55. See the STA (Administrative Supreme Court) judgement of 23 September 2010.

Note 56. Law no. 6/2022 of 7 January, introducing the fourth amendment to the law on animal protection, Law no. 92795, inserted paragraph g), in Article 1, in order to prohibit the usage of pigeons as targets in the practice of shooting sports, including both training and competitions.

Note 57. Cf. Orlando de Carvalho, *Para Uma Teoria da Relação Jurídica*, Vol. I, 2nd ed., Coimbra, 1981, pp. 56 et seq.

Note 58. Cf. Manuel de Andrade, *Teoria Geral da Relação Jurídica*, Vol. I, Coimbra, 1992, pp. 19-20.

Note 59. Cf. Manuel de Andrade, *Teoria*…op. cit., p. 21.

Note 60. Cf. Carlos Mota Pinto, António Pinto Monteiro and Paulo Mota Pinto, *Teoria Geral do Direito Civil*, 4th ed., Coimbra, 2005, pp. 189-190.

Note 61. Cf. Heinrich Hörster, *A Parte Geral do Código Civil Português*, 2nd ed., Coimbra, 2020, pp. 186-187.

Note 62. Cf. Heinrich Hörster, *A Parte Geral*…op. cit., p. 187.

Note 63. Cf. Georg Puchta, *Cursus der institutionen*, Vol. I, Leipzig, 1853, pp. 78 et seq.

Note 64. Cf. Heinrich Hörster, *A Parte Geral*…op. cit,, p. 187.

Note 65. Cf. Nuno Pinto Oliveira, "Os Princípios de um Personalismo Ético como Projecto de Materialização do Direito Privado" in *Estudos em Homenagem ao Prof. Doutor José Lebre de Freitas*, Vol. I, Coimbra, 2013, p. 488.

Note 66. On this matter, Nuno Pinto Oliveira, "Os Princípios…" in op. cit., p. 494.

Note 67. Cf. Francesco Ferrara, , *Le Persone Giuridiche*, op. cit., pp. 34 et seq.

Note 68. Cf. Karl Larenz, *Allgemeiner Teil des deutschen Bürgerlichen Rechts*, 3 ªed., Munique, 1975, p. 168.

Note 69. Karl Larenz highlights the restrictions on legal persons in the context of their personal rights. Cf. *Allgemeiner Teil*…op. cit., p. 169.

Note 70. Cf. Galvão Telles, *Direito Civil (Teoria Geral)*, Coimbra, 1948, pp. 126 et seq.

Note 71. Cf. Carvalho Fernandes, *Teoria Geral do Direito Civil*, Lisbon, 1995, pp. 426-427.

Note 72. Cf. Carvalho Fernandes, *Teoria Geral*…op. cit., p. 427.

Note 73. Cf. Pedro Pais de Vasconcelos, *Teoria Geral do Direito Civil*, Vol. I, Lisboa, 1999, p. 98.

Note 74. Cf. Pedro Pais de Vasconcelos, *Teoria Geral*…op. cit., p. 98.

Note 75. Cf. Pedro Pais de Vasconcelos, *Teoria Geral*…op. cit., p. 98.

Note 76. Cf. Menezes Cordeiro, *Tratado de Direito Civil*, Vol. IV, op. cit., p. 651.

Note 77. Diogo Costa Gonçalves successfully defends the potential of the legal relationship over the legal situation. Cf *Pessoa Coletiva e Sociedades Comerciais*, Coimbra, 2015, pp. 980 et seq.

Note 78. Hugo Ramos Alves focuses on this aspect, directed at the use of legal persons to circumvent injunctive legal commands. Cf. "A Pessoa Coletiva entre a Ficção e o Realismo" in *Dos 30 Years da Faculdade de Direito de Bissau*, Lisboa, 2021, p. 474-475.

Note 79. Cf. Menezes Cordeiro does not take this step, however, due to unresolved challenges. In particular, the source of personification and the system of representation. Cf. *Tratado de Direito Civil*, Vol. III, 4th ed., Coimbra, 2019, p. 314.

Note 80. By way of example, Matthew Elton, "Persons, Animals and Machines", in *Science, Technology and Human Values*, Vol. 23, no. 4, 1998, pp. 384 et seq. Ugo Pagallo, *The Law of Robots: Crimes, Contracts ant Torts*, Heidelberg, 2013, pp. 18 et seq. Ruth Janal, "Die deliktische Haftung beim Einsatz von Robotern: Lehren aus der Haftung für Sachen und Gehilfen" in *Intelligente Agenten und das Recht*, Baden-Baden, 2016, pp. 141 et seq. Mafalda Miranda Barbosa, "Inteligência Artificial, *E-Persons* e Direito: Desafios e Perspectivas" in *Revista Jurídica Luso-Brasileira*, Year 3, no. 6, 2017, pp. 1480 et seq.

Note 81. Cf. European Parliament resolution of 16 February 2017 (2015/2103 INL).

Note 82. Cf. Recitals P and Q of the Resolution, op. cit.

Note 83. Cf. Articles 56 and 59(f).

Note 84. Cf. Mafalda Miranda Barbosa, "Personalidade Jurídica Eletrónica?" in *Boletim da Faculdade de Direito*, Vol. XCVII, Tomb I, 2021, pp. 117 et seq.; Ana Rita Maia, "A Responsabilidade Civil na Era da Inteligência Artificial: Qual o Caminho?" in *Julgar Online*, May 2021, p. 39.

Note 85. Cf. Shawn Bayern, "The Implications of Modern Business Entity Law for the Regulation of Autonomous Systems" in *Stanford Technology Law Review*, no. 19, 2015, pp. 93 et seq.. Mark Lemley and Bryan Casey, "Remedies for Robots" in *The University of Chicago Law Review*, Vol. 86, no. 5, 2019, pp. 1311 et seq.

Note 86. This seems to be Nuno Sousa e Silva's position when, citing Collingridge's dilemma, he alludes to the risks of regulating a technology in full evolution. Cf. "Direito e Robótica: Uma Primeira Aproximação" in *Revista da Ordem dos Advogados*, I-II, 2017, p. 538.