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Europe: Paradigms and Perspectives of Legal Practice in the European Context

• **Abstract** •

The article examines three paradigms of European legal practice in permanent transition: the normative paradigm (from legislative rules to jurisprudential rights), the systemic paradigm (from hierarchical pyramid to reticular network), and the axiological paradigm (between bioconservatives and bioinnovators). The author argues these are not complete shifts from one stable model to another: paradigms remain perpetually suspended between old ones and new ones. This article contributes to the existing literature on European legal theory by demonstrating that the three examined paradigms—normative, systemic, and axiological—do not represent completed shifts but rather coexist in a state of permanent transition, a condition that itself constitutes the new immutable paradigm of contemporary European legal practice. Ultimately, the article argues that Europe must recover its Socratic philosophical heritage to transform the condition of permanent transition from a source of democratic fragility into an opportunity for reflective legal practice.

Keywords: Permanent Transition, Legal Pardigms, Rules vs Rights, Pyramid vs. Network, Bioconservatism vs. Bioinnovation.

Introduction

In this paper, I will attempt to highlight the paradigms of legal practice undergoing the most significant change in Europe today, while also trying to show how they are changing according to a completely peculiar perspective that must be taken into due account in a context like the contemporary one.[1]

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[1] This paper reproduces, expanding and systematizing them, some considerations expressed in the presentation entitled "Europe: Paradigms and Perspectives", given during the Conference entitled "Federalizzazione dell'Unione Europea: più luci o ombre" held on September 13, 2024, at Sala

A paradigm, according to the teaching of Thomas Kuhn, constitutes a central idea, a universally recognized conceptual achievement, which, for a certain period of time, provides an acceptable model to those acting in a given field (Kuhn, 1962). The issue of paradigm shift (or, rather, paradigm shifts) that I am interested in briefly analysing here is the change in some fundamental ideas that are typical of legal practice, particularly normative, sociological, and axiological, in the current structure of the European Union.

The element of originality I will try to show consists in the peculiarity of these changes: they remain in constant transition (i.e., never definitively moving from point A to point B but remaining perpetually poised between the two). In other words, the paradigms relating to law, the socio-political community, and shared values in European legal practice do not transition from an "old" paradigm to a "new" paradigm but become "mutants" in the most proper sense of the term: a present participle. This is because they change, yet remain in constant change (if you will, following a pattern reminiscent of the so-called "uniform rectilinear motion") according to a model of "permanent transition". That is, they do not move from one point to another, but remain constantly in transition without ever truly becoming something else, erecting the mutation itself as a new paradigm that appears, itself, immutable. Let us see how.

The methodology adopted is qualitative and hermeneutical, drawing on legal theory, political philosophy, and sociology. Each paradigm is analysed through its foundational authors and critically assessed through contemporary European legal developments, including case law and governance practices.

The Legal Paradigm

The first transition I will analyse is that of the normative paradigm, or rather, the way law is considered in the widespread culture of European jurists. Many of them, in fact, today grapple with the issue of expanding protections recognized for bearers of ever-new interests (Bobbio, 1990; Galgano, 2005; Irti, 2007). If we look at the current debate, we notice how it is linked to the question of identifying new

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positions of advantage (particularly civil rights) or, better, to the creation of situations of protection and guarantee according to a pattern consisting of the protection, by national domestic courts or European courts, of ever-new claims.[2] These prerogatives are presented as new specifications of equally existing principles and values within the Union, such as, for example, the values of human dignity, freedom, democracy, equality, the rule of law and respect for human rights, or those of the Charter of Fundamental Rights of the European Union or the European Convention on Human Rights, also in light of the jurisprudence of the Court of Justice and the European Court of Human Rights (ECtHR).

European states, still on paper based on written law (Civil Law), seem to have lost interest in the traditional instrument of *positum* law and are transitioning from a legal culture that is tendentially normative one, based on general and abstract rules of parliamentary origin, to a culture based *primarily* on the jurisprudential recognition of *ad hoc* legal protections (Bobbio, 1968; Bobbio, 1990). A mechanism of legal production analogous to that operating in Common Law countries manifests itself in European practice, in a perspective that seems to exacerbate the vague mercantile flavour of a production in which the citizen always demands new services[3] (Dworkin, 1977). This is because, today, many *rights* are considered to exist before and regardless of their recognition within normative measures of a general and abstract nature.

What I would like to draw attention to, however, is that this model risks leading to a situation of overproduction of positions of advantage, which, although in theory a positive element, risks showing profound critical issues in practical realization. It seems, in fact, that the jurisprudential production of new *rights* follows a logic more linked to *customer satisfaction* than to the control of democratic rationality that instead oversees the normative production of parliamentary assemblies (*rules*).[4] Apparently, this is a favourable situation for the European citizen (others

[2] See, for example, the systematic use that domestic courts have developed of Article 267 TFEU on the referral for a preliminary ruling to the European Court, where the nomophylactic role of the domestic high courts themselves is strongly challenged.

[3] For instance, the European Court of Justice's jurisprudence on the *right to be forgotten* (Case C-131/12, *Google Spain SL v. AEPD*) illustrates this dynamic: a new right was created by judicial decision without prior parliamentary deliberation, subsequently forcing domestic legislatures to retroactively accommodate a framework of rules to manage its scope.

[4] Just one example: the increasingly evident phenomenon of massive preliminary references to the European level and the way in which it has become, in fact, a tool that upsets the nomophylactic function of the domestic courts of each Union country. Here the national legislature is inhibited because the domestic court requests a review from the European Court and, in this way, can overcome the limits imposed by the parliamentary assemblies in the legislation of each state.

would call it a win-win situation), since the one who enjoys the positive effects of this mechanism is the citizen who can receive protection both from established law and from courts that create a new *ad hoc* protection situation.[5] But this is not, in reality, what actually happens. The rights-based approach of the Courts and the inexhaustible production that ensues is proving increasingly *disruptive*: from an exception, it has become the customary way of requesting new rules, so much so that today it seems the most effective tool for modifying the domestic legal systems of Union states in a direction we could define as post-democratic, i.e., one that does not take due account of the democratic scrutiny of national parliaments.

The paradigm shift (from rules to rights) constitutes a serious problem for the constitutional framework of the European Union states because they are still linked to traditional formulas of legal production, connected to general and abstract provisions issued by parliamentary bodies. While, in fact, it is the decisions of (domestic and) European courts that contribute more widely to providing citizens with tools for defence or recognition of new prerogatives, sometimes possibly competing with or openly contrasting those of the national legislature. We have thus moved from the problem of the abstractness of the provision born from parliamentary debate, today perceived as distant and the result of too many compromises, to the greater speed and concreteness of measures that attempt to resolve practical situations, thus recognizing new rights. In an activity that, however, is characterized as inexhaustible, i.e., suffering from a tendency towards productivity and inflation.

The author is not interested in delving into how this operation might, in fact, modify the equilibria linked to the sovereignty of a given state (although this would be a very interesting topic to explore). What I instead wish to emphasize is that the culture of normativism (which for convenience we will take as a unitary phenomenon), seems to have yielded to the practical reason of the so-called *suppletive jurisprudence*, particularly at the moment of justifying the premises upon which judges arrive, case by case, at a decision.[6] Much could be said about these new legal products and the issue of their inflation; however, I will limit myself here to pointing out some potential problems. The first one is that situations of conflict

[5] I deliberately leave aside the issue of the relationship between European Courts and National Courts where the strategy of direct recognition of prerogatives (rights) to individuals sometimes comes into open conflict with the national legislation of a member state, generating serious problems of nomophylaxis, if not outright systemic sovereignty.

[6] Leaving aside for obvious reasons of expediency the distinction between decisional reasoning (the so-called "context of discovery") and justificatory reasoning (found in the motivation), we can instead briefly frame the issue of justifying decisions.

between *rights* will become increasingly numerous: by avoiding recourse to the parliamentary discussion of the rule, which guarantees the preventive input of all interested parties (and counter-interested parties), advantageous prerogatives are created thanks to the recognition of a single Court which, in case of conflict, will not be able to harmonize due to the lack of a shared resolution criterion.

Secondly, there is the concrete risk that through the inflation of *rights*, positions of "privilege" will be created, characterized by the ever-growing demands of ever-new minorities compared to the demands of the rest of the population that still relies on the slower, and democratic, instrument of *rules*.

The third risk is the abandonment, thanks to the spread of *rights*, of the typical relationship of the right-duty correlation (which instead characterizes rules) since in *rights* the need for a duty incumbent on the holder of a position of advantage is barely noticeable. And this leads us to the final consideration: the concrete danger of creating a new European citizen endowed with ever-new *rights* of jurisprudential origin and, as just mentioned, less attentive to their duties, including respect for the rules themselves (which can hardly be a concrete tool for protection since they are now increasingly outside the circuit of rights production).[7] A further problem is the cultural habit of the so-called "begging" for rights, i.e., the request for specific protection situations deriving from a concession by Authority, government or courts, regardless of an architecture made up of general principles valid for everyone.

In such a scenario, how will it be possible to ask European citizens to respect the rules of coexistence (*rules*), if they then take a back seat to rights (*rights*) endowed with different appeal because they are immediately effective? And how will it be possible to curb the demand for new prerogatives, whose overproduction will certainly lead to situations of irreconcilable conflict between *rights*? Courts risk, in fact, becoming simple providers of services, *rights*, completely disconnected from democratic scrutiny and axiological evaluation of the shareability of their extension. This is no small problem, on which much more could be said, but this is not the most suitable place (Sommaggio and Daldoss, 2025).

The paradigm of rules is being replaced by the paradigm of rights as in a sort of Americanization of Civil law countries (Somma, 2011; Somma, 2007). Apparently, because on a technical-legal level, we are not witnessing a substitution of the old rules paradigm with the new rights paradigm; instead, we are observing

[7] An indication of this risk is that aura of "moral impunity" that culturally accompanies those who act to claim new rights which, even if endowed with strong media impact, risk justifying, at the limit, even a position "against the rules" that is tolerated in the name of higher values.

a constant transition that remains between the rules of parliamentary creation and the recognition of new jurisprudential prerogatives: a kind of "permanent transition" that must be recognised since there is no longer a shared reference model, only a model in continuous oscillation between rules and rights.

The Systemic Paradigm

Let us now consider a second paradigm: the systemic paradigm which, from a pyramidal model, increasingly takes the form of a network, also never definitively transitioning from one to the other. This second paradigm straddles the tradition of legal formalism, clearly identifiable with the idea of a hierarchically structured system in a vertical sense (represented by the metaphor of the 'pyramid' or *stufenbau*), and that current of thought which considers the 'network' as the most appropriate metaphor for the new governance according to a horizontal and polycentric perspective. In this framework, the governance model of the European Union seems to transition from a centralistic pyramidal paradigm to a federal and reticular one without, however, ever fully reaching it, but rather remaining in a condition of constant transformation.

Concerning the pyramidal paradigm, we can refer to the traditional normative organization (of *rules*), which has its roots in the thought of Hans Kelsen (Kelsen, 1989; Kelsen, 1966; Kelsen, 1952). In this model, we find some recurring elements such as a hierarchical structure of sources (Sarra, 2012), the 'top-down' trend of the main mechanisms of legal reasoning (linked to the privilege of the deductive reasoning model), and the principle of completeness of the system[8] (Bin, 2013, pp. 8–12, 16–17; Pastore, 2014, p. 27). However, contamination between different legal systems and the phenomenon of globalization lead, according to Baldo Pastore as well, "the pyramid to crumble"[9] (Pastore, 2014, p. 28). The pyramidal paradigm crumbles due to factors of cultural and social change such as a progressive interdependence of markets and processes of global political integration and

[8] Read the clear words of Baldassarre Pastore: "The centrality of that ordering principle, whereby one source prevails over another, which produces a representation of the system as a 'pyramid', fades away: a metaphor of that 'vertical hierarchy' which certainly had a historical and cultural pre-eminence, conferring organicity and compactness to the system of sources, but which today, in the presence of crowded and disjointed steps of the pyramid, appears increasingly less exhaustive and not even possible."

[9] Thus Pastore: "The proliferation and fragmentation of sources, normative polycentrism and osmosis between legal systems (national, supranational, international) prevent any reading of the legal phenomenon according to hierarchical schemes. The pyramid tends to crumble."

the irruption of so-called 'liquid' thought (Bauman, 2000) after the crisis of modernity (Toulmin, 1990) and the subsequent advent of post-modernity (Lyotard, 1979; Vattimo, 1991). The authors who best help understand the new paradigm of the network are, I believe, François Ost and Michel Van de Kerchove (Ost and de Kerchove, 2002; Daldoss, 2022). They argue that, unlike the pyramidal model, the new references are creativity, flexibility, pluralism, i.e., the 'coexistence' of different value positions (Losano, 2005). In other words, moving from a thetic perspective to a pluralist or polycentric one (Sommaggio, 2013). This paradigm, on the systemic level, is characterized by proportionality and subsidiarity as increasingly fundamental pillars in the processes of validation, and social and political legitimation. Indeed, the literature that has recently addressed the theme of multi-level governance in the European Union[10] (Piattoni, 2010) seems to support this very transformation since authority is diffused among different levels of government and among different actors, and governance models differ considerably from each other[11] (Hooghe and Marks, 2001, p. 4).

The network metaphor, therefore seems particularly suitable for grasping the essence of multi-level governance: "(…) the network approach suggests that governance should be based on models of relationship between public authorities at various levels, associations and citizens that are less constrained" (Jachtenfuchs, 2001). An example of how the network metaphor can be used in the systemic landscape comes from one of the most representative jurists on the Italian scene: Sabino Cassese (Cassese, 1999). Particularly, in his work *The Crisis of the State* (Cassese, 2002), he offers some reflections on a transformation in the way of conceiving sovereignty: "(…) the multiplication of public powers was not matched by their hierarchization, so that roles, tasks and positions are only partially defined; there are no clear boundaries for areas or matters, but structural and functional interdependence; procedures are not sequences articulated along clear lines of authority, but actions carried out in mutual support" (Cassese, 2002, pp. 62–63). To clarify this coexistence, one may imagine the European legal system not as a pyra-

[10] "Multi-level governance" began to be discussed from the 2001 White Paper on European Governance. See: European Governance—a White Paper, COM (2001) 428 of 25.07.2001.

[11] This leads, among many others, Liesbeth Hooghe and Gary Marks to argue that the European Union would be characterized mainly by three features: "First, (…) competencies in decision-making are shared between actors at different levels and are no longer monopolies of national governments. Second, collective decision-making among states involves a significant loss of control by individual national governments. (…) Third, political arenas are interconnected in a network shape rather than nested. If on the one hand national arenas remain important in shaping the preferences of national governments, the model of multi-level governance rejects the idea that subnational actors are nested solely within them."

mid that has collapsed into a network, nor as a network that has supplanted the pyramid, but rather as a *bipolar structure* where hierarchical principles continue to operate in certain domains (e.g., constitutional review) while reticular logic prevails in others (e.g., multi-level governance in environmental or competition law).

This new "reticular" representation of the State abandons the concept of "vertex" and transforms the meaning of old and new decision-making centers with the key concept of "node" and opens the way to the personalization of governance functions. However, even in this case, it does not seem that the network has completely replaced the pyramid. Rather, it appears that the pyramid and network models generate a situation of permanent transition, without the victory of one paradigm over the other. We can say that European practice, regarding its systemic governance model, finds itself during a permanent transition destined never to be resolved into either pole: poised between the pyramidal model and the reticular model, without, however being able to resolve itself definitively into one of the two paradigms.

The Axiological Paradigm

I will now attempt to present the third and final paradigm in mutation, namely the axiological paradigm, which so greatly influences European reality. This, too, as anticipated, presents itself in permanent transition. This is the paradigm, in my opinion, that more than any other influences the way of considering the principles of European culture because it presents itself in connection with new forms of single thought, which approach the deepest structures of society with unprecedented radicality: I am referring to biopower, i.e., the capacity of biotechnologies to guarantee direct power over the body, and consequently an intervention on the foundational values of European culture and on the most deeply rooted anthropological structures (Sommaggio, 2012b; Sommaggio, 2016; Sommaggio, 2018). Thus, Europe finds itself in a situation of permanent transition between the bioconservative value paradigm and the bioinnovator paradigm. This is because values are increasingly influenced by the change in the reference anthropological conception.

If there are not too many definitional problems for the bioconservative anthropological paradigm (Habermas, 2001), i.e., relating to those instances that deem it necessary to avoid modifying the human anthropological model, a few more words need to be spent on the bioinnovators who, especially in the industrialized West, propose a new phase of technological innovation concerning the hu-

man body and, consequently, the entire human species. The bioconservative paradigm inspired, for example, the Universal Declaration on the Human Genome (UNESCO, 1997) which, in Article 1, declared the human genome "heritage of humanity."[12]

To fully understand the other paradigm, the bioinnovator one, we must instead take a step back to the dawn of so-called biotechnologies. The first season of biotechnologies, the statist-oriented one, saw the flourishing, in the early twentieth century in Europe (but also in the United States), of enthusiastic eugenic societies aimed at improving the human species, favouring a perspective of improvement intervention through normative imposition by national states. The second season, instead, was characterized by a less imposition line, but one that passes through the satisfaction of (induced) needs that form the basis of societies with a consumerist culture[13] (Zanuso, 2016).

Those who support this latter possibility recognize themselves in the reflection represented by so-called trans-humanists (More, 2013). Transhumanists believe that, through intervention on the deep structures of the human species, made possible by the development of biotechnologies, one can, indeed, one must, arrive at a better humanity which represents the first step towards a new post-Darwinian era, in which evolution will be self-directed and no longer externally directed. Due to this perspective, the individual's choice to modify their own characteristics occurs, as with mass consumer products, for the satisfaction of those desires, oriented exclusively towards particular options, which form the basis of societies with a consumerist culture. However, biotechnologies could, perhaps unbeknownst to us, impose new models of transformation, making them appear inevitable, directing policies for the allocation of financial resources in the research of transformation tools[14] (Gambino, 2002; Sommaggio, 2010). The picture is thus completed through the announcement of a new *mutant* humanity.

[12] See, the Universal Declaration on the Human Genome and Human Rights (11/11/1997), Article 1 of which states that: "The human genome underlies the fundamental unity of all members of the human family, as well as the recognition of their inherent dignity and diversity. In a symbolic sense, it is the heritage of humanity."

[13] And here it is technology that allows the birth of ever-new desires. Desires that then claim to be enforced through court intervention as new rights.

[14] Gabriella Gambino argues that: "To date, in fact, perinatal medicine is able to cure less than 15% of diagnosable pathologies and with the completion of the Human Genome Project all the genetic variations that will be mapped could soon become targets for prenatal diagnosis, increasing the gap between diagnostic and therapeutic possibilities (…) Predictive diagnosis is creating the new social category of inpatients, the so-called 'healthy-ill' foetuses who may, one distant day, develop some symptoms of a disease, currently incurable".

Formulating a prediction for this humanity in transition does not seem so simple. The new project of "improving" the human could consist, for example, in greater performativity of the individual. A new enhanced human subject who would be endowed with a prolonged life expectancy, and an intelligence superior to the level we are used to[15] (Anders, 1956; Portinaro, 2003; Pulcini, 2004).

The bioinnovator paradigm, therefore, declares that it wants to assume responsibility for evolution. No longer, then, a blind evolution or almost guided by obsolete selective mechanisms, but a new conception of the human: a human no longer prey to disease, rational limits, or aging (Postigo Solana, 2009; Vatinno, 2010). As in the rest of the world, also in Europe and Italy the transhumanist perspective has begun to be explored thanks to the contribution of numerous and interesting studies (Terrosi, 1997; Marchesini, 2002; Longo, 2003; Fimiani, 2004; Esposito, 2004; Pireddu and Tursi, 2006; Campa, 2010; Caffo and Marchesini, 2014). An interesting definition of Transhumanism is contained in the "Mondoperaio Encyclopedia" signed by Riccardo Campa. There we read: "The term transhumanism indicates a philosophical doctrine belonging to the family of progressive ideologies. Transhumanist intellectuals elaborate, study or promote technologies aimed at overcoming human limits. They analyse the trends, psychological dimensions, ethical implications and social impact of such technologies, highlighting above all the positive aspects of scientific development, but without underestimating the potential dangers. The same term indicates the intellectual and cultural movement which, referring to this philosophy, considers the improvement of the human condition possible and desirable. By improvement is meant the limitation and, possibly, the elimination of natural processes such as aging, disease and death, as well as the increase of man's intellectual, physical and psychological capacities" (Campa, 2006).

I will give just two examples of how transhumanists intend to assume responsibility for the future evolution of man. The first example is provided by the English biochemist Aubrey De Gray, according to whom man can and must combat aging, which still appears to be a little-frequented topic in the medical-scientific landscape. According to Guy Brown, in fact, "An eighty-year-old today looks the same as an eighty-year-old several centuries ago" (Brown, 2009; De Gray and Ray,

[15] It must be remembered, however, that several authors are critical of such a perspective: according to Günther Anders, known for his techno-sceptical position, we will witness a veritable anthropological revolution: from the homo faber model to the homo creator model. "By the name homo creator, I mean the fact that we are capable, or rather we have made ourselves capable, of generating products from nature that are not part (like the house built with wood) of the category of cultural products, but of nature itself."

2008; Bonifati and Longo, 2012). That's the point. According to De Gray, aging can be considered like any other disease: it would indeed be due to an accumulation of 'waste' products from cellular metabolism that progressively prevent cells from reproducing until the organism dies. For this reason, he proposes SENS (Strategies for Engineered Negligible Senescence), different strategies capable of reacting to aging, ranging from regeneration to grafts to drugs, etc. Thus, the concept of negligible senescence becomes fundamental. It can, in fact, be proceduralized to prevent the body from becoming prone to disease and, therefore, to destruction (De Gray, 2004).

Another author we can count among the ranks of enthusiastic transhumanists is Raymond Kurzweil, who believes the so-called "singularity" is near, i.e., the overcoming of human intelligence by artificial intelligence. The convergence between these two types of intelligence should be guaranteed precisely by the development of genetics, nanotechnologies and robotics (Kurzweil, 1992; Kurzweil, 2000; Kurzweil, 2005). All this will lead to the realization of the singularity, in which: "billions of nanobots will travel through the bloodstream of our organisms and our brains. Destroying pathogens, correcting DNA errors, eliminating toxins, and carrying out many other activities to improve our physical well-being. The outcome will be that we can live indefinitely without aging". According to Kurzweil, the modifications will be realizable, initially, in virtual environments; later in actual reality. The enhancement of physical and sensory capacities could be, for example, the artificial tongue (Bonifati and Longo, 2012, p. 118), the cochlear implant (Gazzaniga, 2009, p. 419) and the retinal prosthesis. These biotechnologies can be included among "man-machine hybridizations" (Longo, 2001): for many, this represents the realization, still very primitive today, of the first truly cybernetic organisms. The common basis of transhumanists, insofar as it may be useful to remember here, consists of the idea that the human (and therefore also the genome) is not a stable and immutable reality since it is not possible, at this evolutionary stage, to find a discriminating criterion between nature and artifice. Transhumanism is, therefore: "(…) a cultural, intellectual and scientific movement, which affirms the moral duty to improve the physical and cognitive capacities of the human species and to apply new technologies to man, so that unwanted and unnecessary aspects of the human condition can be eliminated, such as suffering, disease, aging, and even being mortal" (Bostrom, 2003).

A strong criticism of bioinnovators, particularly transhumanists, comes from the American Francis Fukuyama (Fukuyama, 2002), former chairman of the US Presidency's Bioethics Committee. There are three reasons for criticism that the author proposes against human transformation (or enhancement). The first reason

is linked to respect for the creative will of the divine: modifying human nature would violate a sphere pertaining only to the divine God. This position, however, can be contested: there are no serious arguments to consider biotechnologies contrary to religion[16] (Balistreri, 2011). The second line of criticism concerns the effects that could arise from human enhancement to the detriment of future generations[17] (Fukuyama, 2002, p. 123). This would certainly make the economic development of the new society impossible, causing a series of hardly sustainable social tensions. The third line of criticism proposed by Fukuyama is legal in nature. The enhancement, the transformation of current human characteristics, would create social disparities, eliminating any possibility of solidarity with the weakest[18] (Fukuyama, 2002, p. 215). The most important concern for Fukuyama, however, is the spectre of an illiberal society. Based on the principles contained in the US Declaration of Independence, Fukuyama recalls that individuals possess intrinsic value, and that this very fact constitutes the essence of liberalism.

The core of the bioinnovator project would consist precisely in the modification of this essence because the posthumanist perspective could constitute the point of arrival (or direction of use) of transformation technologies, while the transhuman characterizes the period of gradual human enhancement (Vatinno, 2010; Bonifati and Longo, 2012).[19] A period destined never to transition into the posthuman, but to remain suspended in a permanent transition between bioconservation and bioinnovation. While the bioinnovator paradigm presents itself as emancipatory, it risks eliding the distinction between *freedom to modify* and *freedom from coer-*

[16] "If everything that exists can be attributed to divine wisdom, then the will of God will also be expressed when we try to improve our dispositions and capacities, since, if we can do so, we may have reason to believe that God willed it."

[17] "People at the top of a social hierarchy usually do not want to lose their status and often use their considerable influence to protect it. It is difficult for a younger person to take the initiative to remove a leader, a boss, a sports champion, a professor or a board member, at least until age has significantly deteriorated their abilities."

[18] "The possibility that biotechnologies could give rise to new genetic classes has often been hypothesized and condemned, ever since one questioned the future, but the opposite eventuality also seems equally plausible: a tendency towards a much more egalitarian society from a genetic point of view could emerge, since it seems quite unlikely that citizens of modern democratic societies would stand idly by while elites crystallize their social advantage in their children's genetic makeup."

[19] Italian transhumanists also propose a definition of posthuman, understood as: "Once the posthuman stage is reached, intellectual and physical capabilities will be far superior to those of a non-enhanced human being. Posthumans could be completely synthetic (based on artificial intelligences) or could be the result of a series of partial enhancements carried out on biological humans or transhumans. Some posthumans might even decide to get rid of their bodies and live inside supercomputers, taking the form of pure information. It has been said that it is impossible for us humans to imagine what the posthuman condition might be like."

cion to modify. The transition from bioconservatism to bioinnovation is not merely a neutral expansion of choice but may introduce new forms of social pressure, particularly when enhancement technologies become normalized or expected within consumerist societies. In fact, the posthuman paradigm brings with it many other transformations that are corollaries, particularly in the value horizon of European citizens (but not only). Any attempt to curb the technical possibilities involving the human body and its biology (from somatic, genetic, neuroscientific transformations to surrogacy) but also pertaining to modifications of the genome are labelled as obscurantist, against progress and against freedom (Sommaggio, 2010; Sommaggio, 2014). Therefore, any intervention of human modification is for that very reason conceived as right in itself because only through mutation can the human become responsible and become posthuman. In this activity of transformation, every opposing voice is seen as an undue interference in the personal sphere that freely decides its own most appropriate mutation.

This affects common values because this movement, which has begun to spread among the population also through the dynamics of sexual transition and gender self-recognition, poses the alternative: modify oneself to freely self-define without any biological limit, or self-destruct. For example, the use of the argument of avoiding suicide due to the non-recognition of a gender transition affirmation, even in minors, is now part of this movement for the affirmation of new law (e.g., *Ley* n. 4 of February 28, 2023, establishing rules for the protection of transsexual persons and the rights of LGBTQ people. ("Para la igualdad real y efectiva de las personas trans y para la garantía de los derechos de las personas LGTBI"). On closer inspection, however, as we have already anticipated, the posthuman could also reveal itself as a movement of transformation characterized by violence. This is for the simple consideration that every project of a "new" humanity, from the most abject to the most philanthropic, always contains a strong drive towards reducing each one to the schema chosen as a reference. And in fact, as Francesco Cavalla recalls, every 'new' (improved) man, freed from his limits and master of himself "(…) will refuse to find the 'other' in any existence that appears to him lacking even one of the characters he deems essential to his own subjectivity (…) Indeed, if the ego supposes it finds before itself only objects or existences identical to it, whatever determination of reality it assumes, this turns out to be dogmatic, as it is constitutively removed from the challenge of its negation" (Cavalla, 1974, p. 341).

The previous considerations allow us to understand that particular phenomenon which in the European context is commonly defined as the "dictatorship of minorities" (Levitsky and Ziblatt, 2023). Even in this case, however, we observe

how the posthuman is not the point of arrival of this transition path, but it is the transition that presents itself, within European culture, as a perennial and inexhaustible movement.

Conclusions

Europe, therefore, faces three paradigms in constant transition: the normative paradigm, the systemic paradigm, and the axiological paradigm. We are, as we have seen, faced with a permanent transition. These are paradigms that do not evolve from one pole to another (from rules to rights, from pyramid to network, from human to posthuman) but remain within an oxymoron where transition is constant, i.e., it does not proceed linearly from one point to another, but remains suspended in a potentiality that we will have to deal with in the years to come. It could be argued that this phenomenon is not new in Europe, but that it could be, in many respects, likened to the concept of "permanent revolution".

As is well known, the term *permanent revolution* appears in the thought of Karl Marx already in the texts of 1848, particularly in his *Address on the Class Struggle in France*. However, Marx speaks of the need for a revolution that does not limit itself to a simple change of regime, but that continues until the material conditions of existence are transformed, and therefore with a precise albeit distant point of arrival: "The revolution must be permanent until all the more or less propertied classes have been expelled from power and until the proletariat has conquered state power" (Marx, 1972).

Leon Trotsky, in the first decades of the twentieth century, reformulated the same concept in a theoretical-practical key. In his *Theory of the Permanent Revolution* (1930), he argued that the socialist revolution cannot be confined within national limits: it must expand and constantly renew itself. "The permanent revolution is not an isolated act, but the law of modern history" (Trotsky, 1930). Trotsky thus transformed the Marxian dialectic into a global dynamic: historical becoming becomes uninterrupted, without a final point.

I believe that, regardless of the ideological aspects, the intuition of these forms of constant transformation may be a product of the modern world approaching contemporaneity, because it seems precisely that European legal practice today is characterized by a similar state of permanent modification. At this point we can conclude that the changes analysed in the previous paragraphs possess precisely this peculiar characteristic: they are not transformations from a state A to a state B, but new ways of being that remain in constant change. They are, in

other words, mutants. The concept of *mutant* is not new in literature and finds its origins in biological lexicon, where it indicates the emergence of a difference with respect to a pre-existing code. Transposed into the philosophical and social sphere, it instead configures itself as a metaphor for the contemporary condition we have presented: a world in which change has ceased to be episodic to become permanent. The words of *Zarathustra* come to mind: "One must still have chaos in oneself to be able to give birth to a dancing star" (Nietzsche, 1972, Prologue § 5). Probably, in the Nietzschean perspective, the mutant embodies this capacity precisely: to transform disintegration into a formula of creation, instability into an opportunity for overcoming. On the more strictly sociological side, Bauman himself observes how liquid modernity dissolves certainties and makes identity itself a fluid process: "Identities are tailor-made in the do-it-yourself store" (Bauman, 2000, p. 116).

The mutant is, therefore, the archetype of a world in which the individual does not limit themselves to adapting, but constantly reinvents themselves, making change the hallmark of their own existence. In globalized and technological societies, permanent change thus configures itself as the only positive value: it is the only one that generates innovation, resilience and plurality. Where tradition celebrated continuity and permanence, today a veritable *beatification of the mutant* emerges. It is not a religious beatification, but a cultural one: the symbolic recognition that metamorphosis is the only possible foundation in an unstable world. This, perhaps, because the human is always capable of exceeding any determination, in a dynamic of uninterrupted overcoming that stands as an immutable bridge between autopoiesis and self-transcendence. What better viaticum for this particular attitude of thought than the example of the Socratic office to the god of Delphi (Sommaggio, 2016; Vlastos, 1994)? And here, I believe that Heraclitus is also an excellent ally. For Heraclitus, in fact, reality is in perpetual becoming: day follows night, birth succeeds death, satiety follows hunger, and so on. And this supreme principle regulates the world without producing contradictions, exactly as a river flows incessantly and receives ever-new waters without thereby ceasing to be a river. As Heraclitus states in one of his fragments, establishing the parallel with the river later taken up by Plato, "different waters flow for those who step into the same rivers" (Diels-Kranz 12). But Heraclitus also suggests that: "Pólemos is father of all things, king of all" (Diels-Kranz 53). One must indeed consider that the flow of paradigms from one to the other will in any case have to contend with the necessity of managing the oppositions between the paradigms themselves, preventing them from degenerating into violence (Cavalla, 2017; Sommaggio, 2012a). To navigate this condition of permanent transition without succumbing to either

normative inflation or democratic deficit, European legal practice must cultivate a renewed form of *Socratic legal culture*: one that privileges questioning, dialogue, and the public justification of legal decisions over the mere assertion of rights or the uncritical acceptance of technological imperatives. Only such a culture can transform the mutant condition from a source of instability into a foundation for reflective resilience. And to orient such a phenomenon of permanent transition, Europe must therefore rediscover culture at its philosophical and cultural roots to navigate towards a future perspective that is less confused and more respectful of identities and differences. Looking ahead, therefore. So far ahead as to also rediscover its own cultural and philosophical roots. Starting again from Heraclitus. Starting again from Socrates.

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