THE AUTONOMY OF THE TESTATOR AND CONTEST OF THE WILL. THE DISINHERITING OF THE HEIR.*

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SUMMARY: 1. Introduction. - 2. The planning of the right of succession of the testator through the categories of *mortis causa* act and *inter vivos* act. - 3. Private autonomy in the Italian Inheritance Law. - 4. The discipline introduced by the Italian Law n. 219/2012 (art. 1, co. 9). - 5. The French view. - 6. The content of the testament and the private autonomy of the testator: the problem of the dissolution clause of the heir.

1. For a long time the Inheritance law, although progressed and modified, was considered a separate system: the different perspectives paid little attention to the results achieved in this field of civil law, ignoring an axiological interpretation of the hereditary discipline social function that conforms to the founding values of the system of regulations. A wrong view of this sector of law that also involved the aims of the will. So that, in the preliminary phase of the paper, the reader should not be amazed by the idea that brings the succession mortis causa closer to the economic phenomenon and, therefore, that the success of a subject is a reflection of the patrimonial events described in the entire second Book of the Civil Code. Then, the legislative reconstruction of the subject is dominated by the main figure of the heir and by the necessity of commensurate with the portion due to it; moreover, the same code reconstruction seems to be oriented towards to the discipline of the events that require the heir to settle the debts of the deceased and hereditary weights, a reconstruction that finds reason to exist in the resolution of a plurality of issues concerning the protection of legitimaries and the matter of the division of inheritance. These situations are described duly in § n. 61 of the Relazione ministeriale a S. M. il Re Imperatore and which are further confirmed in the art . 588 c.c. In particular, this article defines the heir as a function of the attribution of the universality of the assets or of a share of

them, in addition to the discipline on the inheritance inherent. [1].

However, according to some wise authors of Italian doctrine such a legal interpretation of the legislator's wishes seems to waver. In fact, if one intends to analyze the text of the Report on the work of the Parliamentary Committee, there may be some reluctance, even a feeling of dissent, on the part of a Commissioner who, in some passages, states that "*there is a testament in order and to ideal goods and material goods, in order, that is, to the transcendental property of all the productions of the pure self, of pure testament*". The position assumed by the doctrine makes certainties held so far considered dominant and has highlighted the considerable difficulties that the jurist finds in approaching the content of the testatment. It creates a groove with respect to the certainties of the past that seems to be acceptable given that the succession due to death and the testamentary card must not be exhausted exclusively in the regulation of certain legal situations of the testator. The effect of this programming would relegate to a marginal state the regulation of existential juridical situations concerning the testator and his heirs, which, according to some authors, operating in this way would be ousted from succession and subtracted from the competence of the testament.

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* This paper was inspired by the reflections proposed by the professor Vincenzo Barba and the professor Giovanni Perlingieri at the last Conference organized by the *Associazione Dottorati di Diritto Privato* (A.D.P.) at the University of Molise, entitled <*Autonomia negoziale e successione mortis causa*>. The statements of the speakers was fundamental for the understanding of the issue of private autonomy in the Inheritance law of. This is a particularly complex subject, because it is much debated by Italian doctrine in the various historical periods. In point of fact, the historical dimension of this discipline represents the starting point for the reflections proposed by this paper.

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[1] E. BETTI, *Appunti di diritto civile*, 1928-1929, VII, Milano, 1929, pp. 369-383; P. PERLINGIERI, *Equilibrio normativo e principio di proporzionalità nei contratti*, in *Rass. dir. civ.*, 2001, p. 337 ss. e in ID., *Il diritto dei contratti fra persona e mercato. Problemi del diritto civile*, Napoli, 2003, p. 448 s.; P. STANZIONE, *Persona fisica (diritto civile)*, in *Enc. giur. Treccani*, Roma, 1990, XXIII, 1 ss., ID., *Delle persone fisiche*, *sub art 1 c.c.*, in *Commentario al codice civile*, a cura di P. Cendon, Milano, 2009, p. 467 ss.; F. CASUCCI, *Il sistema giuridico «proporzionale» nel diritto privato comunitario*, Napoli, 2001, p. 378; R. LANZILLO, *La proporzione fra le prestazioni contrattuali*, Padova, 2003; G. RECINTO, *I patti di inesigibilità del credito*, Napoli, 2004, spec. p. 236 ss.; F. VOLPE, *La giustizia contrattuale tra autonomia e mercato*, Napoli, 2004, p. 183 ss.; N. CIPRIANI, *Patto commissorio e patto marciano. Proporzionalità e legittimità delle garanzie*, Napoli, 2000, p. 198 ss.; S. POLIDORI, *Principio di proporzionalità e disciplina dell'appalto*, in *Rass. dir. civ.*, 2004, p. 686; A. GENTILI, *Senso e consenso. Storia, teoria e tecnica dell'interpretazione dei contratti*, II. *Tecnica,* Torino, 2015, pg. 377. Lastly, G. PERLINGIERI, *Prefazione*, in G. Bonilini, *Autonomia testamentaria e legato. I legati così detti atipici* (1990), rist., Napoli, Edizioni Scientifiche Italiane, 2018; V. BARBA, *Contenuto del testamento e atti di ultima volontà*, Napoli, 2018, p. 1 ss.

Then, this paper will attempt to analyze the theme reconstructed in the premise in an attempt to study according to a new approach the relationship between the regulation of existential situations, now an integral part of the will, and the concept of private autonomy recognized by the legislator to the testator, also called in technical way as testamentary autonomy. In fact, it is believed it is appropriate to make known the voice of the doctrine to better understand the bonds that generate this relationship, as well as the position of the legislator regarding the existential vicissitudes of the testator. Surely, Italian scholars of the testamentary has maintained that the pre-eminence of the patrimonial events of the de cuius is not only incapable of grasping the modern sense of the testament, but it is also unsuitable for responding to the needs that are felt by the person today.[2] For these reasons, to overcome the barriers that hamper the autonomy of the testator, it seems appropriate to start a process of reviewing the concept of succession and the road to be drawn can not be separated from two factors: the phenomenon of de-capitalization of civil law [3] and the progressive importance that existential juridical situations have conquered in the Italian legal system. Their imposition in the Italian Legal System is due to the development of the social context in which we currently live and the progressive evolution of technical, technological and biomedical innovations concerning people. The arguments just mentioned are reflected in the text of the articles 2 and 3 of the Italian Constitution (or in the provisions that require the recognition of the inviolable rights of the person, the principles of solidarity and personalism); art. 2 of the TUE (a standard that specifies that the European Union is founded on the "values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights"); in the text of the Charter of Nice, which is recognized by art. 6 of the TUE the same legal value as the treaties; still, in the art. 4 of the Constitution, which imposes on all citizens the duty to contribute to the material and spiritual progress of society; moreover, the art. 41 of the Italian Constitution, according to which the freedom of individual economic initiative must not be disregarded, nor can it be carried out in contrast with social usefulness, or in a way of damaging security, freedom and human dignity; finally, in the articles 3 and 36 of the Italian Constitution.

[2] P. PERLINGIERI, *La personalità umana nell'ordinamento giuridico*, Napoli, 1972, p. 1 ss.; ID., *La persona e i suoi diritti. Problemi del diritto civile*, Napoli, 2005, p. 25.

[3] C. DONISI, *Verso la «depatrimonializzazione» del diritto civile*, in *Rass. dir. civ.*, 1980, p. 644 ss.; A. DE CUPIS, *Sulla «depatrimonializzazione» del diritto privato*, in *Riv. dir. civ.*, 1982, II, p. 482 ss.; M. D'ORTA, *Saggio sulla «Heredis institutio». Problemi di origine*, Torino, 2006; P. PERLINGIERI, *«Depatrimonializzazione» e diritto civile*, cit., p. 1 ss.

It is possible to identify an inversion of legislative tendency resulting from a simultaneous European cultural overturning that has also influenced the Italian Legal System and, in this case, the right of succession due to death. By now, the concept of "succeeding due to death is meant to describe the complex of events of juridical, existential and patrimonial relations [4], and through the complement of the cause (death) to clarify that these events of juridical relationships are accomplished and realized as a function of death. of a subject. The events involved in the hereditary system concern not only the legal patrimonial relations, but also and, above all, the existential ones: decisions on their burial, on cremation, on funerals, on moral copyright law, on the fate of cards, portraits, images, photographs and family memories, on your account of access to the social network, on the account of access to the cloud, on the administration of the assets of the children, on guardians or administrators of support for their children, on their name, on their image , on biological samples [5], that is decisions on the rights of the personality [6], not only are they of primary importance, but also constitute contents of dispositions of last will, of which the practice is full. Therefore, the premises set up so far impose some reflections on the themes of the content of the will, now subject to continuous evolution with respect to the past, and the testamentary autonomy recognized to the de cuius in the Italian Legal System, also through concrete hypotheses, for example the emblematic theme of disinheritance of legitimaries.

2. The last thirty years of the history of inheritance law shows that the succession of the person is no longer, exclusively, entrusted to an act of last will but also to the act of negotiation between the living and, in particular, to the contract. In fact, we have come to believe that this instrument is not only able to guarantee the stability and certainty of legal relations, but also capable, by virtue of the principle of contractual autonomy, to offer the parties the freedom to determine their content, even

[4] V. BARBA, *I patti successorî e il divieto di disposizione della delazione. Tra storia e funzioni*, Napoli, 2015, p. 172 ss.; G. PERLINGIERI, *Garanzie «atipiche» e rapporti commerciali*, in *Rivista di diritto dell'impresa*, 1/2017, p. 21 ss.; and in *Liber amicorum per Bruno Troisi*, a cura di G. Perlingieri - C. Cicero, Napoli, ESI, 2017; as well as, G. PERLINGIERI, *La disposizione testamentaria di arbitrato. Riflessioni in tema di tipicità e atipicità nel testamento*, in *Rass. dir. civ.*, 2016, p. 511. In the opposite direction, E. BILOTTI, *Interesse della famiglia e interesse dell'impresa nella successione ereditaria*, in *Dir. succ. fam.*, 2016, p. 351 ss.

[5] In this sense, the reflections of V. BARBA, *Campioni biologici e atti di ultima volontà*, in *Lo statuto etico-giuridico dei campioni biologici umani*, a cura di D. FARACE, Roma, 2016, p. 225 ss.

[6] Cfr., Cass., 27 maggio 1958, n. 1033.

in limits imposed by the canon of protection merit required by law, introducing new schemes capable of satisfying the needs of the parties. As a result, it seems plausible to widen the meshes of the treatment and to consider not only the will and the acts of last will, but also the live acts to regulate the succession of the person. Naturally, the latter have created problems of systematic framing since their validity seems to be called into question by the regulation of the prohibition of succession agreements[7], which indistinct speaks of the invalidity of the deed between the living which has successor profiles. An inadequate reading and unable to offer coherent answers to the needs that are at its origin [8].

Therefore, in order to guarantee an evolution to private law, and to admit what has been supported so far, it is necessary that the study of acts of succession as a function of acceptance includes both acts of last will and acts between living persons. Regarding these two legal categories, it seems right to recall the scientific study of Professor Giorgio Giampiccolo, one of the principal interpreter of the Italian doctrine, who has traced the course for the study of succession material acutely countering the category of the act of last will, and not the mere *mortis causa* act, at the *inter vivos* act. [9]

The recognition of this distinction is understood in the arrangement between the acts of last will of unilateral and unipersonal legal acts intended to produce effects

[7] P. RESCIGNO, *Consenso, accordo, convenzione, patto (la terminologia legislativa nella materia dei contratti)*, in *Riv. dir. comm.*, 1988, I, p. 17 s.

[8] U. SCARPELLI, *Dalla legge al codice, dal codice ai principî*, in *Riv. fil.*, 1987, p. 3 ss., spec. pp. 10, 14. The Author in this scientific paper argues that important arguments that overcoming the crisis of codes and the law can be overcome by putting the principals in the forefront of legal experience.

[9] See, V. BARBA, *I patti successorî* e il divieto di disporre della delazione, Napoli, 2015, p. 20 s. The Author supports that the category of legal institutions due to death does not only cover acts of last will, but also legal acts between living persons. In fact, it might be sufficient to think about the institutional succession contract. Rather, it must be observed that while the act of last will is always an act due to death, the inter vivos act can, invariably, be it or not, with the clarification that when it is due to death, it no longer has sense to repeat that it is also inter vivos, rather to clarify that it is not of last will. It could be argued, perhaps, about the extension of the meaning that, today, we want to give to the expression "because of death". According to the thesis of professor Giampiccolo, accepted by all the doctrine, and also incorporated in jurisprudence (Cass., n ° 1547/1966, in *Foro it.*, 1966, I, c.1513 ss.) Is the acts that regulates relationships or legal situations which, on the death of the settlor, come to be constituted in the original way, or to draw an autonomous qualification from them. On this point, however, one could also hypothesize that the category of the deed due to death has a wider extension, so as to include also the act that regulates relationships or legal situations that are constituted in the original way, or derive their autonomous qualification not only to the death of the settlor, but also to that of a third party. With the consequence that all the successor pacts and, therefore, also those devices and renunciation, we should consider acts among living, with mortis causa function.

only after the death of their author [10], without, before that time, producing any effect, even in the case to which they are known, or addressed to the same recipients. Again, acts that can always be freely revocable [11] and must be interpreted having exclusive regard to the volitional determination of their author and with respect to which they remain on the background of irrelevance volitions and determinations foreign to the author of the act [12]. For them, lacking an organic discipline on interpretation, it was necessary to proceed to its difficult and not yet definitively accomplished reconstruction [13], moving from the rules on the interpretation of the contract [14]. On the other way the inter vivos acts are contrasted: that category of unilateral or bilateral legal acts, which, by virtue of their immediate suitability to produce a juridical effect, become capable of generating a legally relevant entrustment to the recipient of the act or effect. This effect is found above all in the contract, the institution through which the parties are located on the same floor and in an opposing position. These are legal instruments whose effectiveness must take into account the will of the other party or the intention of the recipient of the act or relationship.

Returning again to the reconstruction that the present paper intends to offer, in both circumstances, these are acts of last will and acts among living that are, therefore, united by reason of their succession function [15], of their aptitude to create a story of legal relationship , be it existential or patrimonial, which detects as a function of the subject's death; that in the death of the subject he finds, not merely a mere occasion for the production of the effect, but an objective-functional foundation, so as to prevent the possibility of configuring the story of the juridical relationship outside or beyond the death of the subject.

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[10] M.V. DE GIORGI, *Patti successori, compatibilità della legge straniera con l'ordine pubblico e tutela dei legittimari*, in *Libertà di disporre e pianificazione ereditaria*, cit., p. 418.

[11] G. D'AMICO, *Revocazione delle disposizioni testamentarie e disciplina applicabile*, in *Libertà di disporre e pianificazione ereditaria*, cit., p. 69 ss.

[12] G. GIAMPICCOLO, *Il contenuto atipico*, cit., p. 114, «*l'atto di ultima volontà è la più solitaria fra tutte le manifestazioni non recettizie; quella che meno comporta un qualsiasi movimento verso l'esterno: perché, se è vero che il diritto è* relatio ad homines *e che ogni atto presuppone la* destinazione ad alterum*, l'atto di ultima volontà, in quanto destinato essenzialmente ai posteri, non richiede altre attività del dichiarante, perché sia compiuto, se non il segnare in forma idonea, a memoria di quelli che verranno, la propria volontà*»

[13] See, P. RESCIGNO, *Interpretazione del testamento*, Napoli, 1952, p. 1 ss.

[14] A. GENTILI, *Senso e consenso. Storia, teoria e tecnica dell'interpretazione dei contratti*, Torino, 2015, p. 4 ss.

[15] See, S. PAGLIANTINI, *Motivi del testatore, struttura e attuazione dell'atto dispositivo*, in *Libertà di disporre e pianificazione ereditaria*, p. 117 s.

As just stated, given that the deeds of disposition capable of carrying out a hereditary planning are both acts of last will and acts among living, we intend to consider the first category more in an attempt to verify which contents can be accepted in the will and if can give an autonomous space to the act of last will, different from the will. On the other hand, deny this reconstruction if in the Italian Legal System the will is the only act of last will that exhausts the category of acts of last will itself.

3. With the term autonomy private negotiation refers to the power of individuals to self-regulate their interests, through the choice of a typical or atypical negotiation scheme, through the determination of the content of this scheme and through the choice of the counterpart (in hypothesis of bilateral act). This is a power destined to an eternal tension with the legislative will, which tends to control the modes of extrinsecation of the same, in order to ensure the constant pursuit of the interests of the community; from this emerges a legislative work of containment that assumes greater or less intensity according to the historical period that is taken into consideration and the relative forms of sovereignty.

In particular, the negotiating autonomy presented a rather reduced operating spectrum in Roman times, when, in a rudimentary economy and integrally focused on real rights, the state tended to limit the privatistic creation of limits that could jeopardize the free circulation of these rights. The trend thus inaugurated faded in feudal times, and then acquired renewed vigor in the period of absolute monarchies and under the rule of the Napoleon Code. A first moment of authentic exaltation of the negotiating autonomy is connected to the subsequent Industrial Revolution and to the affirmation of economic liberalism, which is followed by the diffusion of a subjective conception of the store, considered productive only and exclusively of the effects attributable to the will of the parties. However, the advent of the fascist regime and the entry into force of the civil code of 1942 overturn this perspective, given that the negotiating autonomy is caged through the screening of merit according to art. 1322, § 2, c.c. In such a context, the Legal System recognizes the productivity of legal effects only to the acts that realizes interests in line with those pursued by the State.

The entry into force of the constitutional text does not eliminate this screening of merit, which however takes on a different function. In detail, it is no longer conceived from an authoritarian point of view, as an expression of the state

intervention on the economy, but in a solidarity and social perspective, so that only that store that pursues interests that conform to the fundamental values of our system must be considered productive effects.

Nevertheless, it should be emphasized that, over the last few years, the parties have been given renewed autonomy, autonomy that jurisprudence tends to free from the codicistic schemes in guaranteeing the fulfillment of emerging needs in the modern market economy, including supranational dimension. What emblematic attestation of this process can be referred to the 2006 ruling, with which the Italian Court of Cassation has consecrated the concrete conception of the negotiating cause, hitherto relegated to the reconstructions of the most felt doctrine. With this epochal intervention, the jurisprudence definitively undercut the investigation concerning the causal justification of the acts from the schemes prepared by the legislator, admitting the usability, by the parties, of any typical or atypical negotiation tool, but always in pursuit of objectives conform to the ordinance values.

Moreover, this extension of the self-regulatory powers of the parties finds expression in numerous further jurisprudential interventions, which have led to affirming the admissibility of act that were in friction with the traditional code-making schemes, such as the assessment acts, the regulatory contract, the trust internal, the autonomous guarantee contract. And it is precisely with reference to this last type of negotiation that the last stage of expansion of private autonomy has been reached. Indeed, with a ruling in the United Sections of 2010, relating, in fact, to the autonomous guarantee contract, the Italian Court of Cassation affirmed that negotiating autonomy finds its foundation in the Constitutional Charter, and, in particular, in Articles. 3 and 41, configuring itself as an ineliminable expression of the personality of the individual and of the freedom of private economic initiative. It follows that this autonomy, at present, is susceptible of legislative limitations only where the same pursue values of equal constitutional rank. However, within a framework outlined above, the negotiating autonomy reaches its maximum expansion in the contract sector, but suffers a considerable compression in sectors strongly permeated by superindividual interests, such as family law and real rights, to stop completely in the field of successions which, according to what is effectively affirmed, represent "*the Middle Ages of negotiating autonomy*".

It is an affirmation that according to the arguments so far supported, it is now

possible to overcome that, however, it returns for some situations that will be the object of the present discussion.

Nevertheless, as regards family law, it may be observed that the need to safeguard the legal position of the weaker spouse and children, without, at the same time, overly frustrate individual economic initiative, leads the legislator to outline a regime that is only partially derogable, which finds application in the physiological phase of marriage, and to regulate particularly penetrating judicial controls both in relation to the physiological phase and to the pathological phase of the same. However, this sector has also been invested by the process described above, and it is emblematic, in this sense, to admit the side acts of separation, peacefully acquired by the Supreme Court with arguments that part of the case law attempts to extend to the phase of the divorce. As for the real rights sector, it may be noted that the same is governed by the principles of "*numerus clausus*" and typicality, aimed at avoiding the creation of new atypical real rights which, by burdening the property, could compromise the free circulation, compressing the same freedom of private initiative referred to in art. 41 of the Constitution and the "*funzione sociale*" referred to in the following art. 42.

Nonetheless, even the aforementioned principles (and especially that of typicality), can now be said to be weakened, as attested by the affirmation of some originally atypical figures, such as the sale of cubature, the destination acts, the timeshare, gemmate from the adaptation of the typical figures created by the legislator to the needs of the current economic context.

So, as mentioned above, the sector in which the negotiating autonomy continues to meet the greatest resistance remains the right succession, within which the legislator regulates in a particularly precise manner the methods of its explication, providing for a number of limitations. It is therefore necessary to analyze, for a correct understanding of the phenomenon, the superindividual reasons which invest the succession sector and which push the legislator to such a detailed discipline, correlating them to the appropriate limitation rules. However, it must first be pointed out that the legislator, with succession rules, guarantees the continuation of the personality of the *de cuius* after death, making sure that it is deliberately manifested in a solemn act such as the will, revocable and modifiable up to a moment before death itself, even with the assistance of a notary (articles 587 of the Civil Code). Therefore, the code excludes the possibility to dispose of its substances for the time following death through other types

of negotiation, which do not offer the same guarantees of weight and which, by virtue of the possible bilaterality, can be changed only with the consent of the other contractor.

At the same time, the legislator is concerned to prevent the legal relations of assets belonging to the "*de cuius*" from remaining without a holder, since this could lead to the proliferation of hoarding phenomena that are contrary to public order and public security. Therefore, it elaborates an accurate code discipline applicable in the case in which the deceased has left no will, which identifies in a timely manner the subjects who take over the juridical positions previously belonging to the same, outlining the "*Successione legittima*" (articles 565 and following of the Civil Code). It is not lacking, however, to point out that legitimate succession and testamentary succession, from the point of view of the most recent jurisprudence, can well coexist with each other, in the hypothesis in which the "de cuius" has disposed only part of its patrimony through the institute of the bequest.

As a further superindividual need worthy of mention, reference must be made to the 'perpetuation of households', which the legislator assures through the discipline of the so-called. "*Successione Necessaria*" (articles 536 and following of the Civil Code), that is, by recognizing imperatively certain persons linked to the "*de cuius*" by intense family ties (spouse, children and possibly ascendants) a predetermined portion of their assets.

Furthermore, reference can be made to the need to guarantee the satisfaction of creditors, which could be compromised by the confusion of the estate of the deceased with that of the heirs, so that many instruments of protection are attributed to them, such as, for example, the possibility of continuation of liquidation, by the art. 509 of the Civil Code, or to request the appointment of the trustee for the inheritance inherent, provided for by art. 528 c.c.

Finally, we can not fail to point out the need to avoid phenomena of capturing the will that are conflicting with current morals, as well as the proliferation of devices concerning future assets, put in place by inexperienced and poorly prudent subjects, a need protected by the prohibition of succession agreements pursuant to art. 458 c.c. However, this requirement must now come to terms with the simultaneous need to allow the continuation of entrepreneurial activities, functional to the overall development of the economic system, ensured by the legislator with the discipline of

the "*patto di famiglia*" (articles 768-*bis* of the Civil Code), introduced with the Law n. 55/2006, and considered by many to be a real exception to the prohibition of successors agreements.

However, it should be noted that the negotiating autonomy of the *de cuius* and of the other subjects involved in the phenomenon under examination, although strongly compressed in the phase prior to the opening of the succession, re-expires in the phase following the opening itself, finding expression in the discipline of the division of inheritance, referred to in Articles 713 c.c.

Generally speaking, it can not fail to point out that, in recent times, the right of succession has also been invested by the *vis expansiva* of the negotiating autonomy, which has given greater importance to the called. "*atypical discipline of the testament*".[16] In particular, we wondered about the operational scope of art. 587 c.c. (§ 2), which allows the inclusion of non-equity provisions within the will. A previous theoretical approach considered this provision referable only to the assumptions required by the legislator, such as for example the recognition of the natural child, as for the art. 254 of the Civil Code, or the appointment of the guardian, as the art. 348 c.c.

However, the need to guarantee maximum expansion, within the imperative ordering limits, to the autonomy of the *de cuius*, to allow an effective continuation of his personality, led the most recent jurisprudence to consider the provision in question also applicable to hypotheses not provided for by the legislator. It follows the possibility, for the *de cuius*, to include in the will also provisions without legal basis, such as those related to the sepulcher or the treatment of his body, just to want to make examples. But the instrument through which the autonomy of the testator is most expressed is undoubtedly the bequest, waiting for the possibility of the same to avail itself of the typical figures provided by the articles. 651 ss. c.c., or alternatively, to confer to the bequest an atypical content, while always respecting the mandatory rules, public order and morality, as well as, according to some, the merit of which in art. 1322 c.c. (§ 2). In this order of ideas, the bequest is configured as a formidable negotiating tool available to the testator, by means of which he can alternatively obligate the honorable person to complete, in favor of the honorable, a material behavior, a unilateral act or a bilateral act. Indeed, the most recent jurisprudence, placing itself along this line of interpretation, admits the figure of the "*legato di posizione contrattuale*", a particular

[16] See, V. BARBA, *Contenuto del testamento e atti di ultima volontà*, Napoli, 2018, p. 55 ss.

bequest with which the *de cuius* directly determines the birth of a contractual relationship that binds the honored and the honored.

Moreover, through the "*legitimate substitute*", the possibility exists for the testator to implement a limited exception to the principles of the necessary succession, placing the rightful owner before the choice to accept the bequest and renounce the legitimate, or, only alternatively, reject it and act in reduction for the reintegration of the same.

The overwhelming penetration of the autonomy of negotiation in the narrow meshes of succession law has led part of the doctrine and jurisprudence to question the orderly solidity of the prohibition of succession agreements. As previously mentioned, the art. 458 c.c. prohibits any agreement other than the will with which you have the rights related to a succession not yet open. In detail, the succession agreements can be subdivided into three categories. The first is that of the pacts establishing themselves, ie those with which the *de cuius* commits itself with a third party to nominate him his heir, inadmissible as being capable of causing undue compression of his negotiating autonomy, as well as contrary to current morality (since times of the Romans). Then there are the categories of pact or surrender agreements, with which a person other than the *de cuius* has the rights that will derive from a future succession or renunciation of the same, also prohibited as a potential means of reckless agreements, placed in being from non-expert subjects. All this with the clarification that this prohibition also falls on mandatory acts with which the parties are bound to the subsequent stipulation of one of the above agreements. Given this, it is worth pointing out that part of the doctrine regards this institution as the result of an ancestral legacy, no longer compatible with the current enhancement of the personality of the *de cuius* and, consequently, of its negotiating autonomy. Moreover, this is clearly attested by the elimination of this prohibition in some of the most modern continental Legal Systems, such as the German one, and by the intense Community pressures in this regard.

4. In the following path must also be inserted the discipline introduced by the law no. 219/2012 (in particular, the art. 1, co. 9). The aforementioned provision has given rise to widespread interest because it introduced Article 448-*bis* into the system of the Civil Code, a rule that introduces the discipline of the cessation of the obligation to provide food for the forfeiture of the entitled person from the power over the children. Despite its main scope of application, this rule succeeds in innovating inheritance as

well, since it expressly provides for the possibility for the child, even adoptive, to exclude from the succession the parent who has held against him a particularly serious conduct, such, precisely, to justify the forfeiture of power. On this aspect, the provision specifies that the sanction is valid in relation to the facts, which go beyond the cases of unworthiness provided for in Art. 463 of the Civil Code.

This important clarification more clearly supports the legislator's desire to link the text of the article in question with the one that introduced the provision of a new case of unworthiness in respect of those who have lapsed from parental authority over the person whose succession is treats and has not been reinstated on the date of opening of the succession of the same.

As a result of this, it is possible for the child to exclude from the succession that parent who has been guilty of prejudicial facts, although not such as to justify the forfeiture of power. Such cases could be traced to the violation of family duties from which it obtains the responsibility pursuant to art. 2043 c.c., that is, to the case of the parent who changes his religious beliefs and also obliges the minor children to change their system of life, without any possibility of choice, being instead obliged to adhere to the rules of the religious community[17]; finally, to the hypothesis of the parent who fails to constitute for the child a parental model valid on the educative level, and that, consequently, is condemned to compensate any damage thus caused even when the omissive behavior, constituting, however, a crime, not has been ritually ascertained and sanctioned in criminal proceedings.[18]

The introduction into the the Italian Legal System of the possibility of disinheriting, even in the case of the only child [19] in relation to the parent who has held similar reprehensible behavior, consists of a novelty that enriches the internal succession system and further distances the idea of the will as an essentially device and merely economic act.

Beyond the cases represented, a wide debate arose on the remedies granted to

[17] See, Trib. min. Genova, 16 settembre 1999.

[18] Cass., 28 agosto 2009, n. 18804.

[19] See, P. STANZIONE, *Capacità e minore età nella problematica della persona umana*, Camerino-Napoli, 1975, passim; ID., *Diritti fondamentali dei minori e potestà dei genitori*, in *Rass. dir. civ.*, 1980, 446 ss.; ID., *Scelte esistenziali e autonomia del minore*, in *Rass. dir. civ.*, 1983, 11, 1145 ss; ID., *Capacità (diritto privato)*, in *Enc. giur. Treccani*, Roma, V, 1988, 1 ss.; ID., *Interesse del minore e "statuto" dei suoi diritti*, in *Fam. e dir.*, 1994, 351 ss.

the heir in the event of disenfranchise sine causa. The positions of greater importance can lead, as previously said, to those who, in general, recognize the validity and effectiveness of the disownment understood as an autonomous testamentary disposition and those who, on the contrary, referring to art. 587, first paragraph, c.c., subordinate the possibility of disinheriting to the circumstance of the attribution of the hereditary goods to other subjects through the typical forms of the institution of heir or of the legate.

In this regard, it is singular to observe how, even before the recognition made by the law no. 219/2012, the jurisprudence had already expressed in favor of the possibility of disinheriting, believing that the nullity of the testamentary disposition with which the testator deseredi all or some of the called ex lege does not invalidate the whole will, and in particular that part of it with which the de cuius has declared to want to revoke a previous will containing an institution of heir, unless it turns out that its author, if he had been aware of the nullity of the disinheritance, he wanted to keep firm the institution of heir contained in the previous will. [20]

In the same way, the decision to consider valid the clause of the testament with which the testator manifests the will to exclude from his legitimate succession some of the successors and to restrict it to the not dispossessed, constituting the said disinheritation clause, expression of a regulation, is recent. of patrimonial relationships, falling within the typical content of the act of last will and aimed at directing the concrete post-mortem allocation of its substances, without the need to proceed with a positive assignment of good or to disinherit, nor does it require proof of implicit institution. [21]

The law no. 219/2012, while significantly innovating the subject of filiation, has not, however, as said, governed directly the related successor profiles, the regulation of which ultimately follows the changes made in terms of kinship and recognition. The

[20] Cfr., App. Catania, 28 maggio 2003.

[21] See, Cass., 25 maggio 2012, n. 8352. The rulling represents a fundamental arrival in matters of succession. In fact, the Supreme Court reiterated the principle of law that the testament clause with which the testator expresses his will to exclude from his succession some of the successors is valid. Therefore, the Supreme Court, embracing a thesis considered more liberal, considered this clause to be valid, moving from the general principle of testamentary autonomy, providing a consequent interpretation of the articles. 587 and 588 c.c. In particular, with regard to art. 587 c.c., the legislative code didn't want to refer to the technical term of the provision but to the generic one of manifestation of will of the heir in relation to the *post-mortem* structure of his goods.

legislator of the reform, moreover, has not dictated transitional rules, with the consequence that natural relatives can not make claims to successors as many times as the death of the person from which they could derive their rights if it happened before the indicated date. In essence, as often happens, he took a step when he could have been more brave and made others.

5. Some themes introduced by the present paper on the proposals can find the confirmation with the deepening of the regulations laid down in the French Legal System, which, for some principles governed by succession law, is sometimes analogous, other timesdifferent with Italian civil law, yet both these orders belong to the same Legal family. [22] The structure of succession law in the French Legal System reflects an aversion to family discrimination and feudal institutions, in particular fedecommessi [23] and "maggiorascati[24]". In fact, the examination of the rules of the Code Civil shows how rules were introduced such as the legitimate quota (artt.913 ss.), The regulation of the prohibition of pacts on future successions (articles 722, 1130, II c., 791 , 943, 1389, 1600, 1837), as well as the regulation of conjunctive and reciprocal wills (Article 968) and finally the introduction of an instrument to carry out immediate transmission of the inheritance, through the institute of the "saisine" which involves the investiture of the nearest heir, without the mediation of any administrative or judicial office, which denote such an attitude.

These are original characters, typical of the French system, which have tended to circulate and inspire numerous systems, including the Italian system, and which, more

[22] In this context it is important to recall the speech of Mirabeau "sur l'égalité des partages dans les successions enligne directe at the *Assemblée nationale*: *<1°. Qu'à l'avenir toutes institutions de préciputs, majorats, fideicommis par contrat ou testament, soient prohibées entre toutes personnes: & qu'à l'egard de ces institutions actuellement existantes, il soit statué des mesures convenables pour assurer la jouissance de celles échoues, & l'abolition des autres. 2° Que toute personne ayant des descendants en ligne directe, ne puisse disposer par testament que d'une quotité determinée de ses biens.*>.

[23] L. MENGONI, *Successione per causa di morte. Parte speciale. Successione necessaria,* in Tratt. Cicu-Messineo, IV ediz. rielab., Milano, 2000, p. 36; A. ZOPPINI, *Le successioni in diritto comparato*, Torino, 2002, pp.71 ss., and 155 ss.

[24] It is an institute of inheritance law born in Spain and widespread in the 16th century. The majority wanted to ensure the integrity of a patrimony through its establishment in fedecommesso and the transmission, within the same family, regardless of descent, from the last owner to the next of degree relatives and, in case of parity of degree , at the age of majority.

than two centuries later, suffer from inadequacy compared to changes in social and economic scenarios. The limits imposed on the autonomy of the testator proved to be the cause of inequality and proved to be particularly inefficient with respect to the needs of both the recomposed families and the transmission of businesses. This happens, for example, in cases where the reipersonal attitude of the reduction action involving the purchaser of goods that the settlor has received as a result of donation or succession, as well as the defect in the quality of heir that imports uncertainty about the ownership of the settlor, they jeopardize the legal traffics in an unbearable manner when they are considered against the background of cross-border circulation.

An obsolescence found to which France has remedied through a decisive legislative intervention.[25] And, the same situation of unease also occurred in Italy, where similar complaints were collected against which, however, it was reacted in a not very dissimilar, even if not coinciding: this determines a displacement, in some ways a run-up between the two systems, which deserves to be reported. In fact, this approach is particularly noticeable on the issues of the prohibition of succession agreements and, specifically for the treatment of this paper, on the discipline of disinheritance of the heir.

In tracing synthetically matrices, scenery, directions and contents of the movement for further reforms of the legitimacy, it is necessary to remember how the requests are distributed according to a graduation that oscillates from the proposal of its radical abolition to that of minor changes related to the discipline.[26]

The debate between those who complain about the excessive compression of the testamentary autonomy, that the attribution of rights of jouissance to the spouse by the art. 540 c.c. it can come to annihilate and, instead, those who wish to suppress it[27] - in this extreme sense can be recalled the comparatistic argument, since in English law it defers the predetermination of a necessary quota, but allows the judge to assign resources to the "dependents" in a manner calibrated to the needs, with particular attention to children not yet self-employed and to the spouse, but also to the

[25] See, A.GAMBARO, *Il modello francese*, in A.Gambaro - R. Sacco, *Sistemi giuridici comparati*, 2' ed., Torino, 2002, p. 287 ss.; J. CARBONNIER, *Le droit de la famille, état d'urgence*, in *JCP*, 1998, I, 184, p. 2152.

[26] G. GABRIELLI, *I legittimari e gli strumenti a tutela dei loro diritti*, in S. Delle Monache (cur.), *Tradizione e modernità nel diritto successorio*, cit., p. 115,

[27] F. GAZZONI, *Competitività e dannosità della successione necessaria (a proposito dei novellati artt. 561 e 563 C.C.)*, in *www.judicium.it*, and, in *Giust. civ.*,2006, II, 3 ss.

cohabiting partner. [28]

The opportunity to substitute for mechanical and pre-established designation an attention modulated according to needs and also merits is shared by those who, although excluding the opportunity to abrogate the required succession, wish for a temperament, especially regarding the position of the spouse. As for the position of this subject, it is suggested to look at the recent French reforms, in particular that of the year 2001, which gave him, in cases of succession with his children, the choice between a greater percentage of usufruct and a smaller share of property. Furthermore, it is proposed to use the tool of anomalous successions.[29]

The historical-juridical evolution in this case facilitates the understanding of some legislative choices, as it makes understandable the choice made by the legislator on the opportunity to expand the cases of unworthiness in order to hit the non-deserving subjects, and finally the idea to introduce the institute of disinheritance into the codic text.[30] A historical course, it was said, that starts from afar, since it was decided that the disinherit was an institution that had to be ousted from the Code Civil

[28] In the USA Legal System a legitimate like ours is not widespread; since, being a non-federal subject matter, the matter is referred to the dispositive authority of the individual States. Only in Louisiana, the order in which the Code Civil was transplanted, there is one in favor of the younger children. In the other States nothing is foreseen for the children, while forecasts appear in favor of the spouse, often graduated depending on the duration of the marriage (as happens in the state versions of the Uniform Probate Code).

[29] As for the anomalous vocations, for which the conviction prevails about the application of some institutes only of succession (p.103), the author points out how they show the primacy of the spouse and the irrelevance of cohabitation (p.104), except for some extent, a qualitative and not quantitative primacy, since the rights of habitation and use on the family home are not added to the quota (see Cass.6 April 2000, No. 4329). The difference between spouse and cohabitant is reproduced in the contrast between legitimate and natural kinship (p.106): art. 565 c.c. he speaks of legitimate and natural descendants, but of only legitimate ascendants, the art. 578 c.c. contemplates the succession of the parent to the natural children, without mentioning the relatives, the art. 578 c.c. provides for the contest of the spouse with only legitimate ascendants (v., C. Cost. 184/90 has admitted the natural brothers to succeed before the State and C.Cost. 532/00 has denied relevance to the natural cousins) (p.110). With this in mind, it is proposed to extend the protection to natural relatives - with the succession of the descendant to the natural nephew and to replace the devolution in favor of the State with a mechanism similar to that of art. 630 c.c. (P.114). See, PADOVINI, *La successione del coniuge, dei parenti e dello Stato*, in S. Delle Monache (cur.), *Tradizione e modernità nel diritto successorio*, cit., p. 97.

[30] A. PALAZZO, *La funzione suppletiva della successione necessaria, la tutela dei soggetti deboli e la diseredazione (riflessioni sul progetto per l'abolizione della categoria dei legittimari)*, in *Persona e danno*, 2007, n. 5; E. L. BACH, *Contribution a l'étude de la condition juridique du conjoint survivant*, in *Rev. trim. dr. civ.*, 1965, p. 575 ss.

for the fear that it could allow the survival of major players and other similar suppressed institutions. As a result of its ousting from the French code, the disinheritance did not even appear in our 1865, nor was it introduced in 1942, while it appears variously in German codes, and indeed in Germany it proposes an extension.

Its reception in the Italian code in force would allow the testator, if nothing else, to hit the subjects he deems not worthy. In short, there are no voices authoritatively deployed in favor of a concrete consideration of the dependents, as well as the possibility of increasing the rights of the needy and deserving, and to conceal those of the reprobates, however, as an exception to the fixed quota, to be preserved as rooted in the depths of our legal and social culture, possibly following the French example, as regards the downsizing of the restitutive scope of the reduction action.[31] This is also in the awareness of the risk that the cost of the necessary succession abolished moves on conflict with the will, as happens in the Legal Systems that do not have the reserve.[32]

Alongside these proposals on the survival of the legitimate are those related to the revision of its content, whose current consistency in nature is not only in the limping fact, but also causes disadvantages. Claudicating because the same reading of the code of the reduction action shows that it has the ability to stall after the assignment of the asset by the beneficiary of the provision, since its aggression is subject to the prior enforcement of the beneficiary. 130

Finally, the recent legislative intervention, affecting the art. 563 of the Civil Code, has reduced the scope of recovery, providing for the closure of the twenty-year period in the absence of opposition (although the prevailing doctrine has excluded the retroactive application, ie with regard to donations finalized before the entry into force of the law).

6. In consideration of such observations, some authors have come to envisage

[31] G. CIAN, *Il testamento nel sistema degli atti giuridici*, in S. Delle Monache (cur.), *Tradizione e modernità nel diritto successorio*, cit., p. 155; see, also, F. TERRE'- Y. LEQUETTE, *Droit civil. Les successions. Les liberalités*, Dalloz, 3 ed., 1997, n. 8.

[32] G. AMADIO, *Anticipata successione e tutela dei legittimari*, in *Scienza e insegnamento del diritto civile in Italia*, Milano, 2004, p. 653 ss.

a narrowing of the operational scope of art. 458 c.c. only to the successor pact agreements, supporting the validity of the pact and renunciation agreements; and this, in particular, by qualifying these latter covenants in terms of *postmortem* acts, which do not have their causal justification in the death of the *de cuius*, but in relation to which the said event constitutes a mere initial term.

However, this reconstruction does not seem, for the moment, to have breached the jurisprudence of legitimacy, anchored to the textual content of the art. 458 c. c. In fact, to a more innovative orientation in terms of expansion of testamentary autonomy, however, the Supreme Court recently adhered to the validity of the testamentary disability clause, with which the *de cuius* excludes from its succession a subject belonging to the categories of "*Successibili ex legè*", like the art. 565 c.c.

In this regard, the existence of a granitic jurisprudential orientation followed by the Court of Cassation until 2012, as a result of which the stoats, in addition to denying the disability of the legitimaries, in contrast with the mandatory rules governing the necessary succession, considered from the radical nullity also the disability clause of the "*successible ex legè*", thus compressing the autonomy of the testator, and this on the basis of the following considerations. In the first place, this clause was considered to be in contrast with the mandatory rule referred to in art. 587 c. c. Indeed, it was considered that the use of the verb "disposes" by the legislator allowed to include exclusively attributive provisions in the will; so that the disinheritance accompanied by the manifestation of the will to institute another heir, or even the simple "*preterizione di eredè*", was considered valid, but not also the merely disinherited clause expressing only a negative will.[33]

Furthermore, the disability clause was qualified in terms of non-pecuniary provision and, adhering to a strictly literal interpretation of art. 587 (§ 2) c. c., the testator was allowed to include in his will only the non-patrimonial dispositions provided with an express legislative referent. Legislative referent not found for the disability clause which, moreover, seemed to come into conflict with art. 463 c. c., which identified punctually the cases of unworthiness, thus demonstrating the legislative will to taxativize the hypotheses in which a subject can be excluded from the

[33] Cfr., Cass., 23.11.1982, n. 6339. In this pronouncement, the Italian Supreme Court has held that the disinheriting of some successors may apply to the recognition of a contextual will of the other non-disinherited successors only when, from the tenor of the testamentary card, the actual existence of the will of the testator appears.

succession. So, ultimately, the disability clause was considered to be rooted in radical nullity, as it was violative of imperative rules. However, in the year 2012 the Supreme Court, acknowledging the liberal ideas expressed by the doctrine, overturned its traditional orientation, through a confirming logical - argumentative path.[34]

In detail, the judges of legitimacy have observed that the term "disposes" as per art. 587 c.c. does not impose the inclusion in the testament only the clauses attributive content, well being able to identify further provisions admitted by the same legislator who have only negative content, such as the dispensation from the collation, as per art. 737 c.c. On the other hand, it is also possible to perceive in the disadvantage clause a positive content, consisting in the implicit will to expand the shares of the other non-disinherited heirs.They highlighted, then, that the art. 587 (§ 2) in accordance with the requirements of effective continuation of the personality of the de cuius, must be interpreted in an extensive sense, legitimizing all the non-patrimonial provisions that pursue interests worthy of protection.

Therefore, on the basis of the aforementioned considerations, the inclusion in the will of the disadvantaged clause, which does not violate any mandatory rule, may be considered admissible. However, the same must not be in contrast with public order and good customs and must overcome the screening of merit according to art. 1322 c.c. (§ 2), pursuing interests that comply with the values adopted by the Legal System. In this interpretative perspective, the testament that contains only the disability clause must also be considered valid, given that, in this case, the succession phenomenon will be regulated by the rules on legitimate succession, contained in articles. 565 c.c., having to exclude from the called to inheritance the subject expressly disinherited. In the light of such hermeneutical coordinates, duly plotted by the Supreme Court, one can also question the possibility of inserting the disinherited clause into the holographic will. This expression, pursuant to art. 602 c.c., reference is made to the written test in its entirety, dated and signed by the testator in his own hand, belonging to the category of ordinary testament forms together with the will by act of notary. Ordinary testaments are opposed to special testaments, referred to in art. 609 c.c., whose drafting

[34] V. BARBA, *La disposizione testamentaria di diseredazione*; in *Vita not.*, 2012, 2, p. 665; see, also, G. BONILINI, *Sulla possibile riforma della successione necessaria*, in *Tratt. dir. succ. e donaz.*, diretto da G. BONILINI, Milano, 2009, 727 e ss.; S. DELLE MONACHE, *Abolizione della successione necessaria?*, in Riv. not., 2007, 815 e ss.; F. GAZZONI, *Competitività e dannosità della successione necessaria*, in Giust. civ., 2006, 3 e ss.

procedures are considerably simplified by the legislator in order to remedy situations of particular contingency.

The holograph will, if written in compliance with the formalities prescribed by the aforementioned art. 602 c.c., produces the same effects as the will drawn up by the notary, and can be brought to execution by presenting it to a notary for publication, after the death of the testator. The legislator, therefore, does not provide particular limitations on the content of the same, so that it differs from the other ordinary wills exclusively from the formal point of view, well being able to contain the disability clause. Obviously, not availing the de cuius, in drafting this will, the assistance of a notary, could incur a formulation of the disadvantaged clause that does not allow the passing of the screening of merit, but it is a purely prospectual prospect.

It's worthwhile concluding that part of the doctrine believes that it is possible to see a phenomenon *latu sensu* disareratively even in the "*patto di famiglia*".[35] In fact, making use of the discipline referred to in Articles 768-*bis* c.c., the entrepreneur can well transfer his business to one or more of his descendants, who will liquidate the share of the other lawyers; so that the latter can be considered disinherited in relation to the share of the assets available. However, if we look closely, we can not speak of a

[35] It seems superfluous to dwell on this subject, but it is necessary to refer to what was written by G. AUTORINO STANZIONE, *Presentazione* ad AA.VV., *Le unioni di fatto. Il cognome familiare, l'affido condiviso, il patto di famiglia, gli atti di destinazione familiare (art. 2645-ter c.c.). Riforme e prospettive*, in *Il diritto di famiglia nella dottrina e nella giurisprudenza. Trattato teorico-pratico* (dir. G. AUTORINO STANZIONE), V, Torino, 2007; as well as, P. MATERA, *Il patto di famiglia. Uno studio di diritto interno e comparato*, Torino, 2012. Furthermore, the subject has been addressed by authoritative doctrine, in particular, IEVA, *Il trasferimento dei beni produttivi in funzione successoria: patto di* famiglia *e patto di impresa. Profili generali di revisione del divieto dei patti successori*, in *Riv. not.* 1997, 1371 ss., e di DEL PRATO, *Sistemazioni contrattuali in funzione successoria: prospettive di riforma*, in *Riv. not.*, 2001, 633 ss.; BALESTRA, *Prime osservazioni sul patto di famiglia*, in *Nuove leggi civ. comm.*, 2006, 384; DELFINI, *Il patto di famiglia introdotto dalla legge n. 55/2006*, in *Contr.*, 2006, 512; FIETTA, *Patto di famiglia*, in *www. fondazionenotariato.it,* 2; OBERTO, *Il patto di famiglia*, in *Le monografie di Contratto e Impresa* (dir. F. GALGANO), Padova, 2006, 3, 103 e *passim*; LOMBARDI - MAISTO, *Il patto di famiglia: l'imprenditore sceglie il proprio successore*, in *Corr. Giur.*, 2006, 718; MASCHERONI, *Divieto dei patti successori e attualità degli interessi tutelati. L'ordinamento successorio italiano dopo la legge 14 febbraio 2006, n. 55*, in AA.VV., *Patti di famiglia per l'impresa. I Quaderni della Fondazione italiana per il notariato*, Milano, 2-3, 2006, 27; ZOPPINI, *L'emersione della categoria della successione anticipata. Note sul patto di famiglia, ibidem*, 270; DI SAPIO, *Osservazioni sul patto di famiglia. (Brogliaccio per una lettura disincantata),* in *Dir. fam. pers.*, 2006, 4 ss.; DELLE MONACHE, *Spunti ricostruttivi e qualche spigolatura in tema di patto di famiglia*, in *Riv. not.*, 2006, 889 s.; COGNOLATO, *La nuova disciplina dei "patti di famiglia": tratti essenziali e principali problemi*, in *Studium iuris*, 2006, 775; PALAZZO, *Istituti alternativi al testamento*, in *Trattato di diritto civile del Cons. Naz. Not.* (dir. P. PERLINGIERI), Napoli, 2003, 207 s.; CACCAVALE, *Appunti per uno studio sul patto di famiglia: profili strutturali e funzionali della fattispecie*, in *Not.*, 2006, 289; GIAMPICCOLO, *Il contenuto atipico del testamento. Contributo ad una teoria dell'atto di ultima volontà*, Milano, 1954, 40 s.; IUDICA, *Fondazioni, fedecommesserie, trusts e trasmissione* della *ricchezza familiare*, in *Contratto e impresa*, 2006, 539.

real disinheritance, given that the legitimate share is kept intact and simply liquidated with different assets.

Concluding, in any case, and ignoring the results of this last debate, it can be observed how the admission of the validity of the disinheritance clause represents a further step forward in the affirmation of the testator's autonomy, expressive of that process of gradual disruption of the limitations Legislative Law that agitates the jurisprudential debate in every sector of the civil order, producing a gradual relocation of the personality of the individual to the center of the Italian Legal System.