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HIGH-RISK JUSTICE: DECISION-MAKING AUTOMATION AND THE STRUCTURAL LIMITS OF THE "ROBOT JUDGE" IN ENFORCEMENT PROCEEDINGS

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ABSTRACT: This article examines the structural limits of decision-making automation in civil justice by taking enforcement proceedings as a paradigmatic test case. The enforcement phase is frequently portrayed as the segment most exposed to standardisation and, for this reason, as the privileged field for the application of artificial intelligence. Such a representation rests on the idea of forced enforcement as a formalised procedure strictly bound to the enforceable title and reducible to a sequence of technical operations devoid of evaluative content.

The article challenges this assumption, showing that the alleged automatism of enforcement does not constitute a structural feature of the system, but rather the product of a historically and dogmatically determined construction, consolidated through modern codification and crystallised in the 1940 Code of Civil Procedure. Through a historical and systematic reconstruction, the contribution demonstrates that the enforcement paradigm incorporates a program of automatism which, in practical application, encounters an internal limit.

Even within a procedure conceived as formally constrained, there emerge decisive junctures at which the enforcement judge is required to exercise powers of procedural governance, legality control, and assessment of the proportionality of coercive measures. These interventions take place within a sphere of endo-executive cognition which, although not amounting to a full determination of substantive rights, entails contextual, attributable, and reviewable decisions, necessarily requiring adversarial participation and reasoned justification.

From this perspective, the analysis identifies the hypotheses of early termination of enforcement proceedings as an emblematic case. Precisely where the procedure appears most amenable to standardisation, decisions arise that cannot be reduced to an automated output without undermining judicial accountability and the controllability of jurisdictional activity. On this basis, the figure of the so-called "robot judge" is employed not as a futuristic provocation, but as a critical category through which to assess the compatibility between automation and procedural guarantees.

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The article concludes that artificial intelligence may legitimately serve a supportive function with respect to repetitive and organisational tasks, but encounters an intrinsic limit when it purports to replace the attributable decision-making core of the judicial function. Any technological innovation must therefore be confined within a paradigm of augmented intelligence, preserving human responsibility, motivation, and judicial accountability.

KEYWORDS: Artificial Intelligence; enforcement proceedings; judicial discretion; predictive justice; robot judge.

1. PREFACE

The increasing use of artificial intelligence (AI) tools in the administration of justice has revived, with renewed intensity, the debate on the limits of automating judicial decision-making. Enforcement proceedings are not approached here as a technically neutral or residual sector, but rather as a paradigmatic field for assessing the conditions under which AI may be legitimately employed within civil justice. While, at an initial stage, scholarly attention focused predominantly on adjudicatory proceedings, it has become increasingly evident that the issue also concerns—perhaps above all—the phase of coercive enforcement of rights, where the legal system is required to transform a legal claim into a concrete outcome[1]. From this perspective, enforcement proceedings are frequently identified as the privileged terrain for potential decision-making automation, insofar as they have traditionally been portrayed as formalised, serial procedures strictly bound to the enforceable title.

Such a representation, however, is potentially misleading. It presupposes that forced enforcement is structurally reducible to a sequence of technical operations devoid of evaluative content and, precisely for this reason, fully delegable to algorithmic systems[2]. This contribution challenges that as-

[1] Scholarly reflection on the impact of digital technologies in civil justice initially focused on adjudicatory proceedings, but has progressively extended to enforcement proceedings as the decisive stage for the effectiveness of judicial protection. From this perspective, the coercive enforcement of rights is increasingly regarded as an integral part of the "process" for the purposes of assessing both its reasonable duration and its effectiveness. On the relationship between effectiveness of judicial protection, reasonable length of proceedings, and enforcement, see: Verde, G. (2019). Effettività e durata ragionevole della tutela giurisdizionale. *Rivista di diritto processuale,* 1–15; Monteleone, G. (2012). *Manuale di diritto processuale civile*. (Vol. II). CEDAM, 78–85.

[2] The conception of forced enforcement as a merely technical procedure strictly bound to the enforceable title derives from a dogmatic construction aimed at rigidly separating adjudication and enforcement, thereby neutralising any evaluative content within the enforcement phase. Such a representation, however, reflects a normative programme rather than an accurate description of enforce-

sumption, treating enforcement proceedings not as a marginal domain of technological innovation, but as a paradigmatic testing ground for assessing the structural compatibility between automation and the judicial function. Technological innovation is therefore not evaluated in the abstract, but rather from the vantage point of those moments in which enforcement procedures require decisions that are attributable, reasoned, and subject to review.

From this standpoint, enforcement proceedings constitute a particularly significant test case for the analysis of decision-making automation in civil justice. They occupy a structurally ambivalent position: on the one hand, they are traditionally designed as formalised procedures, articulated through standardised sequences and oriented toward the swift implementation of the enforceable title; on the other hand, they contain decision-making junctures in which the enforcement judge is called upon to exercise powers of procedural governance, to assess the legality and proportionality of coercive measures, and to balance competing interests. It is precisely this coexistence of standardisation and attributable decision-making that makes it possible to test whether, and to what extent, AI may be employed as a supportive tool without undermining the guarantees of adversarial proceedings, reasoning, and judicial accountability.

The central thesis advanced here is that forced enforcement, precisely in the segment that appears most exposed to standardisation, contains decisions that cannot be reduced to mere calculation. These decisions do not amount to a full determination of substantive rights, but rather take place within a sphere of endo-executive cognition[3], functional to procedural governance, the management of adversarial participation, and the preservation of the legality and proportionality of coercion. It is within these decision-making passages—attributable, reasoned, and reviewable—that the structural limits of any hypothesis of substitutive automation of the enforcement judge emerge.

From this perspective, the figure of the so-called robot judge is not employed as a futuristic suggestion, but as a critical category through which to interrogate the traditional concepts of civil procedure in light of ongoing technological transformations. Recourse to the dogmatics of enforcement does not therefore represent a regression to classical models, but rather a necessary step in understanding why AI, while capable of performing auxiliary and supportive functions, encounters an intrinsic limit when it purports to replace the public responsibility inherent in judicial decision-making.

ment practice. On the premises and limits of this paradigm, see: Liebman, E.T. (1931). *Le opposizioni di merito nel processo d'esecuzione* (Vol. I). Società Editrice del Foro Italiano, 2–10; Monteleone G. (2012), *Manuale di diritto processuale civile*, cit., 78–85.

[3] The expression "endo-executive cognition" refers to forms of incidental evaluation internal to enforcement proceedings, which are functional not to the definitive determination of substantive rights, but to procedural governance and to the legality of coercive measures. Although such evaluations do not amount to a decision on the merits, they remain attributable to the enforcement judge and subject to judicial review. From this perspective, enforcement proceedings are not ontologically extraneous to the act of "deciding". See: Cavuoto, V.E. (2017). *La cognizione incidentale sui crediti nell'espropriazione forzata*. Edizioni Scientifiche Italiane, 322–330.

2. ENFORCEMENT PROCEEDINGS AS A TEST CASE FOR AUTOMATION

The conception of enforcement proceedings as a predominantly technical and serial sequence does not constitute a natural given, but rather the product of a historically determined construction, aimed at isolating the moment of "decision-making" within adjudication, and at neutralising it in the enforcement phase[4]. This construction has fostered a representation of enforcement as a constrained procedure, impermeable to evaluation and therefore structurally predisposed to standardisation. It is precisely against this background that, today, the hypothesis of automating enforcement appears, at first glance, particularly plausible. The portrayal of enforcement as a standard sequence thus constitutes the theoretical premise upon which many contemporary proposals for the automation of civil justice are built, grounded in the assumption that coercive action can be reduced to predetermined procedural flows.

The separation between adjudication and enforcement has deep historical roots, already traceable to Roman law, where the principle *non est inchoandum ab executione* expressed the requirement of a prior determination of rights before coercive enforcement could take place[5]. This approach was progressively rigidified through modern codification and found an organic articulation in the 1865 Code of Civil Procedure, which contributed to depicting enforcement as an autonomous and formalised phase, entrusted to a sequence of typified acts distinct from adjudicatory proceedings[6]. Within this framework, the enforceable title ceases to function as a mere operational prerequisite and assumes the role of a genuine organising concept of the enforcement experience[7]: it allows coercion to be abstracted from the material

[4] The separation between adjudication and enforcement has its roots in Roman law and in medieval elaborations, where the principle *non est inchoandum ab executione* expressed the requirement of a prior determination of the right before coercive enforcement could take place. On this point, see: Andolina, I. (1966–1968). I presupposti dell'esecuzione forzata nel diritto romano. *Jus. Rivista di Scienze Giuridiche*, 127–164, esp. 101–144; La Rosa, F. (1963). *L'actio iudicati nel diritto romano classico*. Giuffrè; Buzzacchi, C. (1996). *Studi sull'actio iudicati nel processo romano classico.* Giuffrè; Andolina, I. (1985). Accertamento ed esecuzione nel diritto italiano nel tardo Medio Evo. *Studi in onore di Cesare Sanfilippo* (Vol. VI), 4–30; Corbino, A. (2014). *Diritto privato romano*. CEDAM.

[5] On the Roman-law foundation of the principle *non est inchoandum ab executione* and, in particular, on the function of the *actio iudicati* as the procedural instrument marking the transition from adjudication to coercive enforcement, see: Andolina, I. (1966–1968), I presupposti dell'esecuzione forzata nel diritto romano, cit., p.127–144; La Rosa, F. (1963) *L'actio iudicati nel diritto romano classico*, cit.; Buzzacchi, C. (1996) *Studi sull'actio iudicati nel processo romano classico*, cit.

[6] Nineteenth-century codification played a decisive role in representing forced enforcement as a formalised activity distinct from adjudication, according to an enforcement-oriented model that would find its full articulation in the 1865 Code of Civil Procedure. In this sense, see: Picardi, N., & Giuliani, A. (Eds.). (2004). *Il codice di procedura civile del Regno d'Italia.* Giuffrè, VII–XX; Gargiulo, F. S. (1872). *Il codice di procedura civile del Regno d'Italia* (Vol. II). Marghieri; Magni, C. (1880). *Codice di procedura civile del Regno d'Italia* (Vol. II). Eugenio e Filippo Cammelli.

[7] On the role of the French model in disseminating a conception of enforcement as a predominantly administrative activity, see: Ziino, S. (2004). *Esecuzione forzata e intervento dei creditori*. ILA Palma,

foundation of the right and relocates all issues of adjudication outside and prior to enforcement proceedings, according to a sharp dichotomy between title and oppositions[8].

It is precisely this theoretical construction that renders the promise of automatism intelligible. If the legitimacy of enforcement action is resolved entirely within the enforceable title, the procedure may appear to be fully governed by typified documentary prerequisites and reducible to an impersonal sequence of operations[9]. The admission of enforceable titles lacking prior judicial determination—emblematically represented by negotiable instruments—further reinforces this representation, consolidating the idea of an enforcement process emancipated from adjudication and structurally self-sufficient[10]. The *Relazione al Re* of 1940 fits coherently within this trajectory, asserting the need to "liberate" enforcement from the superstructures of contentious proceedings and to strengthen its executory character, while at the same time placing the enforcement judge at the center of the procedure with functions of direction and coordination[11].

Automatism, however, is not a structural feature of enforcement, but rather a normative program. If automatism is a program, then any form of algorithmic automation cannot be conceived as a mere technical transposition,

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50–70; Padoa Schioppa, A. (2007). *Storia del diritto in Europa. Dal medioevo all'età contemporanea*. Il Mulino, 436. With specific reference to the ancien régime, see: Jousse, D. (1777). *Nouveau commentaire sur l'Ordonnance civile de 1667*. Hachette Livre, 225–250; Carré, G. L. J., & Chauveau, A. (1861). *Leggi della procedura civile* (Vol. III). Gabriele Rondinella, 797–799; Garsonnet, E. (1961). *Trattato teorico e pratico di procedura civile* (Vol. IV). Società Editrice Libraia, 129–131.

[8] On the enforceable title as the pivotal element of coercive action and as the organising concept of the enforcement experience, legal scholarship is notoriously extensive and stratified. See: Proto Pisani, A. (Ed.). (1993). *Titolo esecutivo, precetto, opposizioni.* UTET, 9–40; Mandrioli, C. (1995). *L'azione esecutiva: contributo alla teoria unitaria dell'azione e del processo.* Giuffrè; Carnelutti, F. (1931). Titolo esecutivo. *Rivista di diritto processuale civile*, Vol. I, 313–350; Satta, S. (1963). *L'esecuzione forzata*. UTET; Tarzia, G. (1961). *L'oggetto del processo di espropriazione*. Giuffrè; Chiovenda, G. (1930). L'azione nel sistema dei diritti. *Saggi di diritto processuale* (Vol. I), 37–70.

[9] On the representation of forced enforcement as an abstract procedure based on typified documentary prerequisites and susceptible to standardisation, see: Vaccarella, R. (2007). Esecuzione forzata. *Rivista dell'esecuzione forzata*, 14–40; Capponi, B. (2020). *Manuale dell'esecuzione civile*. Giappichelli, 167–422.

[10] On the bill of exchange as an enforceable title and on its innovative role within the theory of the enforceable title, see: Bonelli, G. (1913). L'esecuzione cambiaria. *Rivista di diritto commerciale*, Vol. I, 258–300; Marghieri, A. (1883). La cambiale come titolo esecutivo. *Diritto commerciale*, 86–120; Italian Supreme Court (Cassazione), 10 August 1963, no. 2276; Italian Supreme Court (Cassazione), 23 January 1968, no. 178; Italian Supreme Court (Cassazione), 18 September 1980, no. 5299. In legal scholarship: Redenti, E. (1926). *Diritto processuale civile* (Vol. III). Giuffrè, 317–340; Bianchi d'Espinosa, L. (1959). Cambiale (dir. proc.). *Enciclopedia del diritto.* Vol. V, 917–950; Angeloni, V. (1964). *La cambiale e il vaglia cambiario*. Giuffrè, 421–460; Oriani, R. (2006). La sospensione dell'esecuzione. *Esecuzione forzata*, 14–35; in Chiovenda's thought: Chiovenda, G. (1904). *L'azione nel sistema dei diritti.* Zanichelli, 44–60; Proto Pisani, A. (1993), *Titolo esecutivo, precetto, opposizioni*, cit., 27–35.

[11] On the *Relazione al Re* of 1940 and on the positioning of the enforcement judge as the organ responsible for directing the procedure, see: Satta, S. (1965). *Prefazione al Commentario al codice di procedura civile* (Vol. III). Casa editrice dr. Francesco Vallardi; Andrioli, V. (1964). *Appunti di diritto processuale civile. Processi di cognizione e di esecuzione forzata.* Jovene; Carratta, A. (Ed.). (2012). *Struttura e funzione nei procedimenti giurisdizionali sommari*. Jovene, pp. 27–45.

but must instead be understood as a choice that affects procedural guarantees and the *loci* of decision-making. It is within the practical experience of forced enforcement that this program reveals its intrinsic limits. Even within a procedure constructed as formally constrained, there emerge decision-making junctures in which the implementation of the enforceable title cannot be governed through a mere sequence of predetermined operations, but instead requires incidental evaluations, regulatory choices, and acts of procedural governance – all functional to the overall coherence of coercive action[12]. In such instances, the activity of the enforcement judge does not consist merely in carrying out a command already "closed" within the title, but requires a responsible governance of the procedure, oriented toward maintaining the integrity of the coercive process as a whole.

It is precisely this endo-procedural evaluative dimension—physiological, attributable, and subject to review—that renders enforcement proceedings a privileged laboratory for assessing the compatibility of judicial automation. If AI is oriented toward reproducing standard sequences and generalising cases, forced enforcement appears, in the abstract, to be the segment of civil proceedings most exposed to hypotheses of decision-making automation. Yet it is the very emergence, even within this domain, of internal spaces of evaluation that compels a critical assessment of the conditions under which such automation may operate without degenerating into an improper substitution of the judicial function.

3. THE ENFORCEMENT-ORIENTED PARADIGM AND THE PROMISE OF AUTOMATISM

The 1940 Italian Code of Civil Procedure expressly pursues the rationalisation of forced enforcement, pursuing both speed and legal certainty. The solution adopted is grounded in a guiding idea: to strengthen the functional separation between adjudication and enforcement, construing the latter as an autonomous enforcement phase, largely insulated from interferences with fact-finding, so as to remove enforcement proceedings from the forms of contentious litigation whenever there is, in a strict sense, no dispute to be decided. Within this framework—motivated by considerations of procedural

[12] Legal scholarship has long emphasised that the concursal dimension of enforcement inevitably entails a form of substantive evaluation by the judge, resulting in a structural overlap between enforcement and adjudicatory functions. In this sense, see: Menestrina, F. (1962). *L'accessione nell'esecuzione*. Legare Street Press, 204–230; Verde, G. (1968). *Intervento e prova del credito nell'espropriazione forzata*. Giuffrè, 42–70; Mandrioli, C. (1995) *L'azione esecutiva*, cit., 546–580; Costa, S. (1953). *L'intervento in causa*. UTET, 336–360; Montesano, L. (1968). La cognizione sul concorso dei creditori nell'esecuzione ordinaria. *Rivista trimestrale di diritto processuale civile*, (1), 576–620; Andrioli, V. (1937). Il concorso dei creditori nell'esecuzione singolare. *Foro Italiano*, (1) 11–40. Contra: Segni, A. (1938). La sentenza dichiarativa di fallimento. *Rivista di diritto commerciale*, I, 235–260. For a unitary approach, see: Garbagnati, E. (1938). *Il concorso dei creditori.* Giuffrè, 323–360; Carnelutti, F. (1931). *Lezioni di diritto processuale civile. Il processo di esecuzione* (Vol. I). CEDAM, 297–330; Mortara, L. (1923). *Commentario del codice e delle leggi di procedura civile* (Vol. V). Casa editrice dr. Francesco Vallardi, 248–280.

economy—the representation of enforcement as a "serial" and standardisable segment of civil justice also takes shape, a representation that is frequently invoked today as the theoretical premise of projects which, precisely for this reason, must confront the presence of internal evaluative junctures within the procedure [13].

From this perspective, the enforceable title is valued not merely as evidence of the claim, but as the typical and legitimising prerequisite of coercive action: the fact that a claim can be subsumed under a documentary scheme prescribed by law is deemed sufficient to justify enforcement, irrespective of any current verification of the underlying substantive relationship. Enforcement action is thus constructed as formally autonomous from adjudication, while issues concerning the right itself are diverted to external remedies, according to the logic of the so-called "dual-track" system, which channels cognition into oppositions and typified incidental proceedings [14].

This framework, however, does not result in the complete expulsion of the evaluative dimension from enforcement. Even within the structure of the Code, the figure of the enforcement judge emerges as one who is not merely tasked with supervising the formal regularity of acts, but is also entrusted with directing and governing the procedure; and this centrality—although justified in organisational terms—inevitably introduces spaces of choice and responsibility that mitigate the rigidity of a purely enforcement-oriented paradigm [15].

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[13] On the rationale underlying Book III of the 1940 Code of Civil Procedure and the decision to construe enforcement as an enforcement-oriented segment distinct from contentious adjudication, see the Report to His Majesty the King Emperor by the Minister of Justice (Grandi), presented at the hearing of 28 October 1940–XVIII, especially § 31, where enforcement is described as an activity in which "the task is not to decide, but to operate in conformity with a title that is already, in itself, enforceable", with the express aim of freeing the procedure from the "superstructures" of contentious litigation. On the systemic significance of this approach and on the subsequent normative and interpretative stratification of the Code over more than eighty years since its entry into force, see: Chizzini, A. (2023). Il codice italiano di procedura civile negli ottant'anni dalla sua entrata in vigore. *Judicium*, 1, 1 ff.

[14] On the reconstruction of the enforceable title as the typical and legitimising prerequisite of coercive action and on the principle *nulla executio sine titulo*, in case law see: Italian Supreme Court (Cassazione), 12 June 1968, no. 1883; Cass., 21 June 1974, no. 1854; Italian Supreme Court (Cassazione), Joint Chambers, 7 January 2014, no. 61. On the dogmatic level, for the systematisation of the enforceable title as the organising core of Book III and for the construction of the relationship between the autonomy of enforcement action and oppositional remedies according to the logic of the "dual-track" system, see: Verde, G. (1999). Attualità del principio "nulla executio sine titulo". *Rivista di diritto processuale*, 962–980; Micheli, G.A. (1971). *L'esecuzione forzata. Appunti delle lezioni di diritto processuale.* Giunti; Satta, S. (1971). *Commentario al codice di procedura civile* (Vol. IV). Libris, 69–85; Mazzarella, F. (1965). *Contributo allo studio del titolo esecutivo.* Giuffrè; Vaccarella, R. (2007). Esecuzione forzata. *Rivista dell'esecuzione forzata*, 1, 97–120.

[15] On the centrality of the enforcement judge in the 1940 legislative design and on the function of directing and governing enforcement proceedings, see again the Grandi Report, particularly the passages concerning Arts. 484–487 of the Code of Civil Procedure, with specific reference to the link between procedural direction, simplification of procedural forms (petition and order), and the provision for hearing the interested parties under Art. 485. In case law, on the distinction between acts advancing enforcement and merely organisational acts, with consequences for the system of remedies, see: Italian Supreme Court (Cassazione), 24 July 1971, no. 2459; Italian Supreme Court (Cassazione), 19 August 1971, no. 2566. In legal scholarship, for the qualification of the organisational function of the enforcement judge and the need to avoid improper assimilations to the examining judge, see: Satta, S.

The tension between the enforcement paradigm and the need for evaluation becomes particularly evident in the distribution phase, but it is not confined to it. The implementation of the *par condicio creditorum* cannot be entrusted to an impersonal sequence of mechanical operations: admission to the distribution, ranking of claims, and management of priorities entail verifications and comparisons which, while not amounting to full adjudication, nonetheless exceed the logic of the mere material execution of the title. Even within a formally enforcement-based structure, the judge is required to resolve interferences among competing claims and to preserve the overall balance of the coercive process [16].

Similar considerations apply to enforcement in specific form, where the immediate relationship with the concrete content of the obligation requires the modalities of coercion to be adapted to the result owed: conformity with the enforceable title does not exhaust the question of how enforcement is to be carried out, which necessarily involves contextual assessments that cannot be entirely predetermined *ex ante* [17].

Finally, the very architecture of oppositions—designed to externalise adjudication—ultimately reveals a physiological area of internal enforcement control. The need to prevent coercive action from being driven by merely asserted claims has imposed, at both the doctrinal and practical levels, forms of scrutiny concerning the admissibility and seriousness of the grounds invoked, giving rise to a type of cognition that is functional not to the definitive determination of the right, but to the procedural sustainability of enforcement itself [18].

(1965), *Prefazione al Commentario al codice di procedura civile,* cit.; Micheli, G. A. (1971), *L'esecuzione forzata*, cit.

[16] On the principle of *par condicio creditorum* and its projection onto the distribution phase, with the resulting necessity of comparative assessments (admission, ranking, priorities), see: Satta, S. (1971), *Commentario al codice di procedura civile*, 165–185; Andolina, I. (1979). *"Cognizione" ed "esecuzione forzata" nel sistema della tutela giurisdizionale*. Giappichelli, 71–95; Colesanti, V. (1984). Mito e realtà della par condicio. *Il fallimento*, (1) 7, 32–55; Jaeger, P.G. (1984). Par condicio creditorum. *Giurisprudenza commerciale*, I, 88–115; Tarzia, G. (1984). Parità e discriminazioni tra i creditori. *Il fallimento*, 1, 153–180. For a comparative perspective on distribution and allocation models in European enforcement proceedings, see: Tarzia, G. (1999). La distribution des deniers dans l'exécution forcée en Europe. *Revue internationale de droit comparé*, 51 (2), 331–360; Migliaccio, E. (2012). *Parità di trattamento e concorso dei creditori*. Edizioni Scientifiche Italiane, 43–70.

[17] On enforcement in specific form and on the need to adapt both the modalities and the content of coercion to the result owed, with a corresponding limit on the *ex ante* predetermination of enforcement operations, see: Castoro, P. & Castoro, N. (2023). *Il processo di esecuzione nel suo aspetto pratico.* Giuffrè. On the substantive-law level, as an indicator of the complexity of the relationship between adjudication and enforcement, see the regulatory framework of Arts. 2930, 2931, 2933 and 2932 of the Italian Civil Code.

[18] On the traditionally debated position according to which a creditor lacking an enforceable title could confine itself to the mere allegation of the claim, with consequent implications for the distribution of proceeds and for the scope of controls exercisable within enforcement proceedings, see: La China, S. (1960). *L'esecuzione forzata e le disposizioni generali del c.p.c.* Giuffrè, 452–480; Carnelutti, F. (1956). *Istituzioni di diritto processuale civile* (Vol. V). Società Editrice del Foro Italiano, 85–110; Minoli, E. (1950). *Contributo alla teoria del giudizio divisorio*. Giuffrè, 143–170. For a systematic reconstruction of the issue in post-war commentaries and manuals, see: Andrioli, V. (1957). *Commento al*

The result is a model which, while coherent in its enforcement-oriented inspiration, displays an internal fragility: the more enforcement is represented as the automatic unfolding of the enforceable title, the more situations arise in which evaluation, balancing, and procedural regulation become unavoidable. It is precisely within this friction—further accentuated in subsequent decades by reform measures aimed at reducing duration and backlogs, including through the progressive internalisation of cognitive incidents—that the problem of the limits of automation in enforcement proceedings, and more broadly the relationship between efficiency and the guarantees of adjudication, comes into focus [19].

4. THE EMERGENCE OF ENDO-ENFORCEMENT COGNITION AND THE INTERNAL LIMITS OF AUTOMATISM

Starting from a framework historically grounded in the separation between adjudication and enforcement, the evolution of enforcement proceedings has progressively called into question the image of the enforcement judge as confined to a merely executory function. While the classical model—built around the formal autonomy of the enforceable title and the externalisation of disputes concerning the underlying substantive relationship—tended to portray enforcement as a constrained and tendentially "automatic" phase, in the sense of being structurally predetermined, practical experience and doctrinal elaboration have revealed the difficulty of sustaining that promise in a context characterised by a plurality of interests, increasing technical complexity of coercion, and the strengthening of procedural guarantees, and above all by the need to preserve, within the enforcement phase itself, a core of adversarial participation and reviewability of the decisions governing coercive action [20].

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codice di procedura civile (Vol. III). Jovene, 1–35; Micheli, G.A. (1959). *Corso di diritto processuale civile* (Vol. I). Giuffrè, 300–340; D'Onofrio, P. (1957). *Commento al codice di procedura civile* (Vol. IV). CEDAM, 110–145; Satta, S. (1971), *Commentario al codice di procedura civile*, cit., 215–240. With specific regard to the effects on the distribution phase and to the need for controls functional to the stability of the creditors' concurrence, see: Redenti, E. (1957). *Diritto processuale civile* (Vol. I). Giuffrè, 70–90 and 198–215; Tomei, G. (1979). I difficili nodi dell'atto di precetto. *Studi in onore di Liebman* (Vol. III), 2397–2425. For a systematic connection with concursus logic and with models of verification of claims, see: Lanfranchi, L. (1979). *La verificazione del passivo nel fallimento*. Giuffrè, 227–260.

[19] On the relationship between efficiency-driven impulses, the duration of enforcement proceedings, and the progressive tendency to "bring back inside" enforcement proceedings verification points and cognitive moments functional to reducing duration and systemic workload, see: Chizzini, A. (2023), as a comprehensive framework for reconstructing the reform trajectory and normative stratification. From a systemic perspective, the references to the Grandi Report allow the 1940 model to be assumed as the original paradigm of neutralisation of cognition, against which subsequent reforms may be read—according to the analytical perspective adopted in this contribution—as interventions affecting the line of demarcation between "enforcement" and "cognition", with the progressive internalisation of evaluative moments within the enforcement phase (see § 3).

[20] On the "classical" construction of enforcement action as autonomous from the adjudication of the underlying substantive right and on the formal sufficiency of the enforceable title, it has been stated that "enforcement protection is severed from any link with its purpose" and that "the enforceable title

This transformation did not occur through an explicit abrogation of the principle of separation, but rather through its internal adaptation. The rigidity of the enforcement paradigm proved incapable of governing the complexity of contemporary enforcement, thereby requiring the emergence of forms of intra-procedural control which, without amounting to full adjudication, nonetheless assume a substantive content in terms of legality and proportionality of coercive action. In this context, the enforcement judge has inevitably been called upon to perform a function that goes beyond the extrinsic verification of the enforceable title and the sequential management of procedural acts, assuming tasks of functional regulation aimed at ensuring the overall coherence of the proceedings and their conformity with the legal limits governing coercion[21].

This expansion of the cognitive powers of the enforcement judge becomes particularly evident at those junctures where procedural automatism risks undermining the equilibrium of the proceedings: from the verification of the admissibility of interventions and, more broadly, of participation in the creditors' concourse, to the management of interferences among creditors, and up to the measures through which the proceedings are governed (conversion, reduction of attachment, modulation of enforcement modalities). In these decision-making passages, the intervention of the judge does not merely consist in "giving effect" to a command already closed within the title, but entails incidental assessments of the legality, utility, and proportionality of coercion in relation to its remedial purpose, resulting in decisions that are imputable and subject to review precisely because they concretely affect the positions involved[22]. It is precisely these decisions governing the proceedings—rather than the mere repetitiveness of individual operations—that constitute the

[…] is in itself sufficient to allow the creditor to obtain enforcement in his favour: nothing further must be alleged or proved"; see Liebman, E.T. (1931), *Le opposizioni di merito nel processo d'esecuzione*, cit., 159–169. For the systematic framework of the separation between enforcement action and disputes concerning the obligatory relationship (devolved to opposition proceedings), see Mandrioli, C. (1955).). *L'azione esecutiva*, cit. On the enforceable title as the organising core of coercive action, see Carnelutti, F. (1931), *Lezioni di diritto processuale civile*, cit., 313–330. On the theoretical background provided by the notion of action within the system of rights, which underlies this separative construction, see Chiovenda, G. (1930), L'azione nel sistema dei diritti, cit., 37–55. On the codified programme aimed at neutralising cognition within enforcement proceedings, see the Report to His Majesty the King Emperor by the Minister of Justice (Grandi), 28 October 1940–XVIII, especially no. 31.

[21] On the dogmatic and systematic emergence of powers of direction and control vested in the enforcement judge, and on the ensuing crisis of the purely executory paradigm, see Andolina, I. (1979), p. 71–95. On the continuing centrality of the enforceable title, together with the role of the judge in ensuring the overall coherence of coercive action, see Verde, G. (1999), Attualità del principio "nulla executio sine titulo", cit., 962–985. On the organisational and regulatory function of the enforcement judge within Book III of the Code—and on the irreducibility of enforcement proceedings to a mere sequence of acts—see Satta, S. (1965), *Prefazione al Commentario al codice di procedura civile*, cit., 165–190.

[22] On the distribution phase as a "cognitive" juncture internal to enforcement proceedings (admission to the concourse, ranking, priorities, and distributive disputes), and on the non-mechanical character of the *par condicio creditorum*, see Satta, S. (1963), *L'esecuzione forzata*, cit.; Bonsignori, E. (1962). *Assegnazione forzata e distribuzione del ricavato*. Giuffrè; Tarzia, G. (1984), Parità e discriminazioni tra i creditori, cit., 153–180; Jaeger, P. G. (1984), Par condicio creditorum, cit., 88–115; Colesanti, V. (1984), Mito e realtà della par condicio, cit., 32–55. For a comparative framing of distribution

true testing ground for the structural limits of any hypothesis of substitutive automation in the enforcement phase.

Along this trajectory lie the reform measures introduced since 2005–2006, which sought to institutionalise adversarial participation also within enforcement proceedings and to anticipate, in forms compatible with the remedial function, verifications of the seriousness of creditors' claims at selective stages of the procedure (in particular those connected with participation in distribution and with the orderly management of the concourse)[23]. The subsequent wave of reforms—including those of 2014 and Decree-Law no. 83/2015—continued along this path, intensifying the drive towards rationalisation and expedition while at the same time strengthening instruments and powers functional to the governance of the proceedings. This confirms that the efficiency of enforcement does not coincide with the neutralisation of jurisdiction, but rather with its capacity to supervise and regulate the critical points of coercive action.

The most recent reforms, culminating in Legislative Decree no. 149 of 10 October 2022 and its subsequent amendments, have further accentuated this tendency, rendering structural a dimension of evaluation that initially appeared exceptional. Particularly emblematic in this regard is the expansion of the scope of application of Art. 614-bis of the Code of Civil Procedure and, more generally, the enhanced recognition of spaces for judicial intervention also with respect to the effectiveness of the command and the adaptation of the remedy. These developments confirm that the enforcement phase is increasingly less reducible to a merely executory pathway in a technical sense and increasingly exposed to decisions regulating the concrete case[24].

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models, useful from an Italian–European perspective, see Migliaccio, E. (2012), *Parità di trattamento e concorso dei creditori*, cit., 43–70.

[23] On the reforms of 2005–2006 (Law no. 80 of 14 May 2005; Law no. 263 of 28 December 2005; Law no. 52 of 24 February 2006) and on the strengthening of adversarial participation and judicial control within enforcement proceedings—particularly with reference to selective mechanisms connected with intervention and verification of claims (Art. 499, para. 6, of the Code of Civil Procedure, and distributive disputes under Art. 512)—see Capponi, B. (2006), L'intervento dei creditori dopo le tre riforme della XIV Legislatura, cit. L'intervento dei creditori dopo le tre riforme della XIV Legislatura. *Rivista dell'esecuzione forzata*, 22–45; Storto, A. (2007). La riforma del processo espropriativo e l'accertamento anticipato dei crediti. *Rivista dell'esecuzione forzata,* 1, 221–250; Carola, C. (2008). La contestazione dei crediti ex art. 499 c.p.c. *Rivista dell'esecuzione forzata*, 470–500; Oriani, R. (2010). L'intervento dei creditori nell'esecuzione forzata. *Studi in onore di Modestino Acone*, vol. II, 1403–1435. In case law, on the enforceable title as the foundation of enforcement action and on the judicial control of its "fitness" (not merely apparent validity), see Italian Supreme Court (Cassazione), 12 June 1968, no. 1883; Italian Supreme Court (Cassazione), 21 June 1974, no. 1854.

[24] On Art. 614-bis of the Code of Civil Procedure as an instrument of effectiveness and on the progressive expansion of its scope of application up to the Cartabia reform (Legislative Decree no. 149 of 10 October 2022) and subsequent amendments, see Proto Pisani, A. (2010). Appunti sulla tutela di condanna. *Foro italiano*, 1, 257–280; Sassani, B. (2009). A.D. 2009: ennesima riforma. *Judicium*, 1, 1 ff.; Tiscini, R. (2014). Efficacia e stabilità dei provvedimenti decisori. *Liber amicorum Romano Vaccarella*, 231–260. For an updated reconstruction of the reformed system and of the powers of the judge, see Carratta, A. (2023). Le riforme del processo civile. Giappichelli. For a practical–systematic perspective on the "governance" of enforcement also in relation to indirect coercive measures, see Castoro, P. & Castoro, N. (2023). *Il processo di esecuzione nel suo aspetto pratico.* Giuffrè; Corea U. (2023). *Condanna*

The result is a figure of the enforcement judge that is ever less reconcilable with the paradigm of the technical executor and ever more closely aligned with that of a guarantor of legality and of the effectiveness of judicial protection. From this perspective, endo-enforcement cognition does not represent a pathological deviation from the codified model, but rather a systemic response to the complexity of contemporary enforcement. The emergence of evaluative spaces internal to the proceedings marks the overcoming of the idea of a process entirely governed by enforcement automatism and constitutes, precisely for that reason, the point of entry for a critical interrogation of the promise of decision-making automation[25]. Artificial intelligence may assist the judge in informational and organisational management; however, where the procedure requires choice, reasoning, and responsibility, output cannot become decision. When enforcement action confronts decision-making passages that demand reasoning, adversarial participation, and review, what is at stake is not merely the "technique" of enforcement, but the structural compatibility between efficiency and imputability of the decision—namely, the terrain on which the contemporary discourse on AI in enforcement proceedings is situated.

Within this framework, the emergence of evaluative powers internal to enforcement does not remain confined to isolated moments of the procedure, but assumes decisive relevance when enforcement fails to reach its remedial outcome. It is in such situations that enforcement comes to a halt as a result of a governing choice by the judge, and that the endo-enforcement decision reveals, with particular clarity, its function of control and regulation of coercion. It is precisely here that the internal limit of any representation of enforcement as an entirely predetermined sequence becomes apparent, together with the fragility of the automatistic paradigm.

5. EARLY TERMINATION OF ENFORCEMENT AS AN EMBLEMATIC CASE

Cases of early termination of enforcement proceedings make visible, in paradigmatic form, the role of enforcement as a test case: precisely where the procedure appears most exposed to standardisation, decisions emerge that cannot be reduced to an automatic output without affecting the responsibility and controllability of judicial power.

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civile e misure coercitive. Pacini Giuridica; Guarnieri, M.L. (2025). *Misure coercitive e poteri del giudice*. Pacini Giuridica.

[25] On the "structural" nature of endo-enforcement cognition—as functional, incidental, imputable, and subject to review—and on the consequent impossibility of reducing enforcement proceedings to a purely automatic sequence of acts, see Andolina, I. (1979), *"Cognizione" ed "esecuzione forzata" nel sistema della tutela giurisdizionale*, cit., 71–95; Satta, S. (1965), *Prefazione al Commentario al codice di procedura civile*, cit., 165–190; Verde, G. (1999), p. 962–985. From a more specific perspective, on the notion of endo-enforcement cognition as a functional evaluative activity distinct from full adjudication, yet capable of affecting the trajectory of coercive action, see Cavuoto, V.E. (2017), *La cognizione incidentale sui crediti nell'espropriazione forzata*, cit., 322–350.

The analysis of the progressive expansion of the cognitive powers of the enforcement judge[26] finds a particularly significant vantage point in cases of non-remedial termination of enforcement proceedings[27]. In such situations, enforcement comes to an end prior to the distribution or assignment of the proceeds, not as a result of a ruling on the substantive right, but following a decision that directly affects the continuation of the procedure. It is within this space—distinct both from full adjudication and from the merely "chain-like" implementation of the enforceable title—that the function of procedural governance assumes a particularly evident profile: the judge is required to assess whether coercive action remains feasible, useful, and legally sustainable, and to translate that assessment into a decision that is imputable and subject to review.

Doctrine and case law have at times subsumed these situations under the—intrinsically ambiguous—category of "atypical extinction"[28]. Such a label, however, is misleading, as it flattens heterogeneous phenomena under a nominalistic heading and risks extending, without adequate normative basis, a regime of typified effects to situations that are not typified. Articles 629–632 of the Code of Civil Procedure, in fact, delineate an institution of extinction of enforcement proceedings characterised by exhaustive prerequisites, a defined procedural framework, and systemically significant consequences, including in particular the issue of the effects on limitation periods in connection with Art. 2945(3) of the Civil Code[29]. It follows that an expansive use of "extinctive" terminology to designate every form of early termination of enforcement may generate consequences not justified by the positive law, shifting to the interpretative level choices that the legislature has instead anchored to determined factual hypotheses. Proceeding from these premises, the Supreme Court has

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[26] For a comprehensive analysis of the cognitive powers of the enforcement judge, see Limongi, B. (2025). *Contributo allo studio dei poteri "cognitivi" del giudice dell'esecuzione.* Edizioni Scientifiche Italiane.

[27] On the non-pathological character of non-remedial forms of termination of enforcement proceedings and, more generally, on the presence of internal "governance" junctures requiring evaluation within enforcement proceedings, see Menestrina, G. (1962), *L'accessione nell'esecuzione*, cit., 204–230; Verde, G. (1968), *Intervento e prova del credito nell'espropriazione forzat*a, cit., 42–65; from a reconstructive perspective already oriented towards the direction of coercive action, see Carnelutti, F. (1931), p. 297–320.

[28] On the genesis and ambiguity of the category of "atypical extinction" (and on the need to distinguish it from typical extinction under Arts. 629 ff. of the Code of Civil Procedure), see Bellè F. (2007). Estinzione tipica e chiusura atipica del procedimento esecutivo. *Rivista dell'esecuzione forzata*, p. 433–470; Giorgetti M. (2005). L'estinzione atipica del processo esecutivo e i suoi rimedi. *Rivista dell'esecuzione forzata*, p. 680–715; Damiani F. (2017). Estinzione atipica e chiusura anticipata del processo esecutivo. *Giusto processo civile*, 425–455; with specific reference to the effects on available remedies, see Limongi B. (2021). Effetti dell'ordinanza di chiusura anticipata del processo esecutivo (c.d. estinzione atipica) e i rimedi esperibili da parte del debitore. *Rassegna dell'esecuzione forzata*, 207–240.

[29] On the typical regime governing extinction of enforcement proceedings under Arts. 629–632 of the Code of Civil Procedure, on the related procedure, and on the principal effects (including those concerning substantive law), see Andrioli V. (1957), p. 390–430; Iannicelli L. (2004). *Note sull'estinzione del processo esecutivo*. Luigi Iannicelli, 149–190; for a systematic commentary on the provisions, see Arieta G., De Santis F., & Didone A. (Eds.). (2016). *Codice commentato delle esecuzioni civili.* UTET, 1723–1765.

progressively clarified that forms of termination of enforcement proceedings not expressly provided for as extinction must be referred to a different category, variously described as procedural non-viability or early closure of the procedure[30]. In such cases, the decision of the enforcement judge does not amount to a declaration of extinction in the strict sense, but rather constitutes an act of procedural governance acknowledging the legal or functional impossibility of bringing coercive action to its physiological outcome[31]. This qualification is not merely terminological: it directly affects the remedies available and the degree of reviewability of the decision, leading, as a general rule, to the inclusion of such measures within the scope of opposition to enforcement acts under Art. 617 of the Code of Civil Procedure, rather than the complaint provided for under Art. 630(3) for typical extinction[32].

The relevance of this distinction is not merely nominal. Classifying a case as extinction or as procedural non-viability directly affects the regime of both substantive and procedural effects of termination, starting with whether or not the permanent interruptive effect on limitation periods is preserved. The analogical extension of Art. 2945(3) of the Civil Code to non-typified cases of early termination raises, from this perspective, problems of systemic coherence: it risks entrusting to the interpreter—and at times to the enforcement judge—a determination concerning the "attributability" of termination

[30] Cass., 1 April 2004, no. 6391, which affirmed the principle of exhaustiveness of the causes of extinction of enforcement proceedings, referring non-typified cases to the category of non-viability of the procedure. On the exhaustiveness of causes of extinction of enforcement proceedings and, correlatively, on the need to classify non-typified cases under different categories (non-viability/early termination), see Olivieri G. (2020). Note sulla chiusura atipica del processo esecutivo. *Rivista dell'esecuzione forzata*, 80–110; Petrella L. (2004). L'estinzione atipica del processo di esecuzione: un istituto di creazione giurisprudenziale e la sua evoluzione alla luce dei moderni principi. *Giurisprudenza di merito*. (I), pp. 1373–1405; on "anomalous closures" and more recent statutory classifications, see Moretti (2015). Le nuove ipotesi di chiusura anomala del processo esecutivo introdotte dal d.l. 132/2014. *Giusto processo civile,* 589–620; Montanaro M. (2018). L'estinzione della procedura esecutiva ai sensi dell'art. 631-bis c.p.c. *Rivista di diritto processuale*, 698–730.

[31] On the qualification of "non-typical closures" as cases of non-viability or early termination (rather than extinction in the strict sense), and on the systemic consequences of such classification, see Micali D. (2017). "Inammissibilità" e "infruttuosità" dell'espropriazione forzata. *Rivista di diritto processuale*, 1052–1085; Vincre S. (2018). L'"improcedibilità" dell'espropriazione e l'opposizione all'esecuzione. *Rivista di diritto processuale*, 1651–1685; Felloni G. (2017). Interferenze tra improcedibilità dell'esecuzione e sospensione ex art. 624 c.p.c. *Giurisprudenza italiana,* 2385–2415; with reference to positive law and judicial practice, see Lodolini P.R. (2016). La chiusura anticipata della procedura per infruttuosità e l'estinzione per mancato espletamento della pubblicità sul portale delle vendite pubbliche. *Rivista dell'esecuzione forzata*, 232–260.

[32] To the same effect, among many others, see Cass., 17 March 2005, no. 5789; Cass., 12 September 2014, no. 19283; Cass., 18 December 2023, no. 35365, which confirm the availability of opposition to enforcement acts against early termination measures not referable to Arts. 629–631 of the Code of Civil Procedure. On the allocation of remedies between opposition to enforcement acts (Art. 617 c.p.c.) and the complaint under Art. 630(3) c.p.c., as well as on the implications in terms of reviewability of the concluding decision, see Oriani R. (1987). *L'opposizione agli atti esecutivi*. Jovene; Boccagna S. (1998). Estinzione del processo esecutivo e opposizione ex art. 617 c.p.c. *Foro italiano*, I, 1240–1270; Bonafine A. (2022). Il reclamo ex art. 630, comma 3°, c.p.c.: natura e modalità di deposito. *Rivista di diritto processuale,* 1380–1415; Cirulli M. (2022). Natura cognitiva del reclamo ex art. 630 c.p.c.: inquadramento sistematico e conseguenze applicative. *Rivista dell'esecuzione forzata*, 736–770; Balena G., Caponi B., Chizzini A., & Menchini S. (Eds.). (2009). *La riforma della giustizia civile*. UTET, pp. 189–215.

to the creditor's conduct that, within the legislative architecture, is instead governed through predetermined prerequisites[33]. The point is not to deny that a "fault-based" termination may have consequences; rather, it is to avoid attaching typical substantive effects to elastic categories, with heterogeneous and potentially unpredictable outcomes[34].

From a different but complementary perspective, cases of early termination show with particular clarity how the enforcement judge is required to perform assessments that, while not amounting to adjudication of the substantive right, decisively affect the fate of the proceedings. A declaration of procedural non-viability may, in fact, be based on controls relating to the object of enforcement (for example, where supervening circumstances affect attachability or the interest in continuing proceedings), the continued effectiveness of the attachment, the feasibility of enforcement modalities, or even the utility of continuing the procedure in light of costs and the reasonably attainable outcome. These are assessments that presuppose an appraisal of the concrete case and cannot be reduced to a rigidly predetermined sequence of acts, because what the judge ultimately decides is whether coercive action can still be governed within a framework of legality, proportionality, and effectiveness[35].

For this very reason, early termination of enforcement should not be understood as a marginal anomaly, but rather as one of the revealing manifestations of endo-enforcement cognition permeating contemporary enforcement proceedings. It makes visible a structural feature already present at other critical junctures of the procedure: the impossibility of reducing enforcement to a purely automatic mechanism entirely governed by the enforceable title and formal rules of sequence. In such cases, the judge does not merely ascertain the existence of a normative prerequisite, but exercises a functional, imputable, and reviewable decision-making power aimed at preserving the coherence of the proceedings and preventing coercion from degenerating into a mere act of force devoid of measure and control[36].

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[33] Critically, on the risk of an improper extension of Art. 2945(3) of the Civil Code to cases of non-viability, see Olivieri G. (2020), p. 87–100.

[34] On the critical issues raised by extending Art. 2945(3) of the Civil Code to non-typified cases of early termination (and on the issue of the "attributability" of termination to the creditor's conduct), see Olivieri G. (2020), p. 87–110; Attanasio C. (2024). Un altro assurdo corollario della teoria della "obiettivazione" del pignoramento. *Rassegna dell'esecuzione forzata,* 927–960; Tosches G. (2020). La mancata rinnovazione della trascrizione del pignoramento come causa di estinzione atipica ed insanabile del processo esecutivo immobiliare. *Rassegna dell'esecuzione forzata*, 195–225.

[35] On judicial controls concerning the object of enforcement, supervening circumstances affecting attachability or interest in continuation, as well as cases of ineffectiveness of attachment and related forms of "closure", see Balena G. (2016). Termine di efficacia del pignoramento ed espropriazione presso terzi. *Giusto processo civile*, 1–25; Fabiani E. (2010). L'inefficacia della trascrizione del pignoramento. *www.judicium.it*; De Carolis V. (2021). Disorientamenti giurisprudenziali in tema di deposito della nota di trascrizione e sanzione di inefficacia del pignoramento immobiliare. *Rassegna dell'esecuzione forzata*, 143–175; Ruffini G. (2020). La "chiusura anticipata" dell'espropriazione immobiliare per assenza di documentazione. *Rivista di diritto processuale*, 1301–1335; Arieta G., De Santis F. & Didone A. (2016), p. 1216–1255.

[36] On the governance function of enforcement proceedings and on the imputable and reviewable nature of endo-enforcement measures, see De Stefano F. (2020). Il giudice dell'esecuzione e la gov-

From this perspective, early termination of enforcement does not represent the sole *locus* in which the decision-making dimension of the enforcement phase manifests itself, nor does it purport to exhaust the forms of endo-enforcement cognition. It does, however, constitute a paradigmatic example capable of rendering visible, in concentrated form, the point at which enforcement requires an imputable and controllable choice. Against this background, the analysis of automation and AI applied to enforcement proceedings acquires its full meaning: technological assistance may have a role in the management of repetitive activities and in organisational rationalisation, but it cannot replace—without constitutional and procedural friction—those decisions of procedural governance that require reasoning, adversarial participation, responsibility, and review. Early termination thus reveals, in concentrated form, the internal limit of substitutive automation: where the procedure demands a legally imputable choice, output cannot be delegated to a "mechanism" without calling into question the very structure of guarantees governing the enforcement phase[37].

6. THE "ROBOT JUDGE" AS A CRITICAL CATEGORY

In light of the reconstructed evolution, the figure of the enforcement judge can no longer be described as a mere technical executor of a command already "closed" within the enforceable title. Endo-enforcement cognition—although functional in nature and not equivalent to full adjudication—now operates as a safeguard of legality and proportionality in coercive action. It manifests itself at those junctures where the procedure must be governed, the balance among competing interests preserved, and the concrete consequences of enforcement kept within legally acceptable limits. A first firm conclusion follows: enforcement proceedings, precisely in the segment that appears most serial and standardised, contain decisions that are contextual, relational, and imputable, and which therefore require reasoning and judicial control.

On this basis, the hypothesis of the "robot judge" must be addressed not as a futuristic provocation, but as a critical category for assessing the resilience of procedural concepts in the face of algorithmic efficiency-driven pressures. If automation aims at reproducing standard sequences, the core issue is not

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ernance del processo. *Rivista dell'esecuzione forzata*, 1–30; Fornaciari M. (2009). *Esecuzione forzata e attività valutativa*. Giappichelli, 201–245; Tiscini R. (2009). *I provvedimenti decisori senza accertamento*. Giappichelli; from a historical perspective, see Mortara L. (1923), p. 248–280; as well as Carnelutti F. (1931), *Lezioni di diritto processuale civile*, cit., 297–320.

[37] For a framing of "merits-based" controls and of enforcement judge's measures as a sensitive terrain for issues of responsibility and review, see Tota, G. (2018). I controlli sulle decisioni "di merito" del giudice dell'esecuzione. *Rivista di diritto processuale,* 1506–1540; Capponi, B., Sassani, B., Storto, A. & Tiscini, R. (2014). Il processo esecutivo. *Liber amicorum Romano Vaccarella.* UTET, 945–980; from a general perspective on the "status" of enforcement jurisdiction and its tensions with reductive models, see Tedoldi, A.M. (2023). *Esecuzione forzata?* Pacini Giuridica.

the delegation of data processing or the management of repetitive activities, but rather the possibility of transferring to decision-making systems—structurally non-transparent or only partially intelligible in their functioning—decisions that affect subjective positions, presuppose adversarial participation, and remain, by their very nature, responsibly attributable to the judge as a person. From this perspective, comparative analysis further clarifies the critical scope of the notion of the “robot judge.” In certain extra-European models, and in particular in the experience of Chinese Smart Courts and Internet Courts[38], AI is deployed within a project of systemic digitalisation of justice, in which decision standardisation and the reduction of discretionary variables are explicitly pursued as objectives of judicial efficiency[39]. In such contexts, algorithms do not merely support judicial activity, but tend to orient *ex ante* the outcome of decisions, embedding them within predetermined schemes of predictability and uniformity. This approach, however, highlights by contrast the specificity of the European paradigm of jurisdiction[40]. In civil law systems, judicial discretion does not constitute an irrational residue to be compressed, but a physiological element of adjudication, inseparably connected with personal judicial responsibility, reasoning, and adversarial procedure. Precisely in enforcement proceedings—and particularly at points of endo-enforcement cognition—decision-making cannot be reduced to a function of calculation without losing its imputable and reviewable character. For this reason, the idea of the “robot judge” assumes not a descriptive, but a critical relevance: it marks the point beyond which automation would shift from a supporting tool to a substitution incompatible with the very structure of the judicial function.

Hence the need to examine concretely the two blind spots of decision-making automation: the opacity of algorithmic processes and the phenomenon of automation bias, together with their implications for reasoning, reviewability, and the responsibility of judicial decisions.

The judicial function is not a conceptually static category, but one that evolves over time in relation to the configuration of legal sources, organisational transformations of justice, and the technical tools that support its exercise. The current historical phase—marked by the pervasiveness of digital technologies[41] and the emergence of AI systems applied to law—thus requires

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[38] On the model of Smart Courts and Internet Courts and on the use of artificial intelligence as a tool for procedural standardisation, see Clementi, D. & Comberiati, C. (2023). Digital justice as a tool of socio-juridical control: the cases of the United States of America and the People’s Republic of China. *La cittadinanza europea. Rivista di studi e documentazione sull’integrazione europea*, 1, § 3.

[39] Stern, R., Liebman, B.L., Roberts, M.E., & Wang, A.Z. (2021). Automating Fairness? Artificial Intelligence in the Chinese Courts. *Columbia Journal of Transnational Law*, 59, 1–55.

[40] Clementi, D. & Comberiati, C. (2023), Digital justice as a tool of socio-juridical control, cit., § 1; Xu, Z., Zhao, Y., & Deng, Z. The possibilities and limits of AI in Chinese judicial judgment. *AI & Society. On the relationship between algorithmic support and the structural limits of decision-making substitution* 37 (4), 1601-1611.

[41] For further analysis, see Comoglio, P. (2018). *Nuove tecnologie e disponibilità della prova. L’accertamento del fatto nella diffusione delle conoscenze.* Giappichelli.

a critical reassessment of the adequacy of traditional categories and of the structural limits of mechanising the decision-making process [42], especially in those segments where jurisdiction is called upon to govern the concrete case.

In contemporary debate [43], the hypothesis of employing AI in enforcement proceedings appears, at first glance, particularly plausible. Enforcement is often portrayed as the segment of the process most exposed to seriality, standardisation, and the repetition of formalised operations, thereby rendering it—at least in appearance—a privileged terrain for decision-making automation [44]. From this perspective, the figure of the "robot judge" might seem the natural continuation of an already structurally mechanical model.

Such a representation, however, does not withstand careful analysis of the current profile of enforcement proceedings. As the preceding sections have sought to demonstrate, the activity of the enforcement judge does not exhaust itself in a sequence of rigidly predetermined operations, but entails choices governing the procedure and balancing competing interests. These interventions are not aimed at full adjudication of the substantive right, but at safeguarding the correctness, proportionality, and legality of coercive action, and are located within a space of endo-procedural evaluation structurally connected to the concrete case. This decision-making space exhibits characteristics that render any reduction to automated terms problematic: it is contextual, because it depends on the concrete configuration of the proceedings; relational, because it develops through the confrontation of opposing subjective posi-

[42] See, in a classical framework, Chiovenda, G. (1980). *Principi di diritto processuale civile. Le azioni. Il processo di cognizione.* Jovene, especially on the principles of orality, immediacy, and concentration as epistemological presuppositions of judicial decision-making. In a contemporary perspective, see Luciani, M. (2018). La decisione giudiziaria robotica. *Rivista AI*C, 3, 884–915, where the issue of algorithmic decision-making is framed not as a merely technical problem, but as one of jurisdictional culture, responsibility, and democratic control over the formation of judicial decisions.

[43] For a reconstruction of the first applications of predictive justice in contemporary judicial systems, see the analyses of the French and Dutch models, which integrated algorithmic tools to develop case-law predictions and to monitor decision quality. Also significant is the experience of the State of New Jersey, which replaced traditional bail hearings with a risk-assessment tool: release is no longer based on an individualised judicial assessment, but on a probabilistic estimate generated by an algorithm on the basis of objective and predetermined parameters. The system allows release without bail when the resulting risk index falls below a predefined threshold. Although designed to promote greater equity in access to personal liberty, this experiment has raised substantial concerns regarding transparency of the decision-making process and compliance with fundamental guarantees. See Castelli, C. & Piana, D. (2018). Giustizia predittiva. La qualità della giustizia in due tempi. *Questione giustizia*, 4, 154–175; Livini, E. (2017). Nei tribunali del New Jersey è un algoritmo a decidere chi esce su cauzione. *Internazionale.it*, 1 ff..

[44] For a position emphasising the organisational and managerial dimension of enforcement as an area particularly exposed to technological innovation and automation, see Nieva-Fenoll, J. (2021). El futuro humanista y telemático de la ejecución forzosa. *Esecuzione forzata*. In a broader perspective on the relationship between AI and procedural law, see Nieva-Fenoll, J. & Comoglio, P. (2019). *Intelligenza artificiale e processo*. Giappichelli, where a distinction is drawn between auxiliary activities and decision-making functions, and the structural limits of judicial automation are highlighted. See also Nieva-Fenoll, J. (2022). Inteligencia artificial y proceso judicial: perspectivas tras un alto tecnológico en el camino. *Revista General de Derecho Procesal*, 57, 1 ff. where enforcement of monetary judgments is treated as a paradigmatic case of automation, albeit without a central focus on endo-enforcement evaluative activity.

tions; and responsible, because it results in decisions that are imputable, reasoned, and subject to review. Within this framework, any use of algorithmic tools may at most perform an auxiliary function supporting judicial activity, without ever replacing the judge's decision-making role. Delegation of processing is compatible with the legal order; delegation of responsibility is not[45].

It is from this perspective that Calamandrei's warning acquires renewed significance, according to which the judge is not a "syllogistic machine," but a conscience called upon to synthesise norm and fact[46]. This warning is not rhetorical here: it identifies the legally decisive point of adjudication, namely its attributability and its justificability through argumentation. An algorithmic output may assist analysis, but it cannot assume public responsibility for the choice. In enforcement proceedings, such synthesis does not concern the merits of the claim, but the manner in which coercion is concretely exercised, modulated, and kept within the bounds of legality. It is precisely this dimension that prevents reducing the activity of the enforcement judge to a function fully amenable to automation.

The figure of the "robot judge," therefore, is not a futuristic provocation, but a critical lens through which to assess the compatibility between automation and the judicial function. It is on this ridge—between technological assistance and decision-making substitution—that the principal challenges of judicial automation are situated. These challenges are not primarily technical, but properly procedural, and concern the opacity of algorithmic processes, the risk of automation bias, and the attributability of decisions, which form the object of the analysis that follows.

7. ALGORITHMIC OPACITY, AUTOMATION BIAS, AND RESPONSIBILITY FOR THE DECISION

The introduction of artificial intelligence into the legal domain is neither a neutral nor a merely technical development. It directly affects the very modalities through which decisions are constructed, calling for a critical reflection on the epistemological premises and the structural limits of resorting to automated procedures within adjudication[47]. It would, moreover, be unreal-

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45 On this point, see Luciani, M. (2018), La decisione robotica, cit., 887–889, where it is shown that attributing "decisive" legal effects to an algorithmic output raises issues of imputation, reviewability, and responsibility that are incompatible with the constitutional structure of judicial decision-making, which remains personal and subject to control.

46 Calamandrei, P. (1954). *Processo e democrazia*. CEDAM, 58–63; Calamandrei, P. (1939). Il giudice e lo storico. *Rivista di diritto processuale*, 105, where judging is understood as an interpretative and evaluative activity that cannot be reduced to mere "automatic" subsumption, with a critique of the Enlightenment-derived image of the judge as the mere "mouth of the law".

47 On the non-neutral nature of algorithmic innovation and on the transformation of algorithms into opaque "black boxes" that are difficult to scrutinize, see Pasquale, F. (2015), *The Black Box Society: The Secret Algorithms That Control Money and Information,* Harvard University Press, 19 ff.; in a theoretical–legal perspective, Rodotà, S. (2012). *Il diritto di avere diritti*, Laterza, 401 ff., on the risk of a new

istic to assume that legal experience could remain impermeable to technological transformations that have already profoundly reshaped social, economic, and institutional relations.

The primary risk lies not so much in the use of algorithms as decision-support tools, but in the gradual substitution of legal reasoning with computational procedures. Within this dynamic, the algorithm tends to present itself as an "objective" outcome of a chain of logically coherent operations, thereby concealing the classificatory, selective, and evaluative choices that constitute its underlying premises[48]. In convergent terms, algorithmic opacity translates into a problem that is not merely technical, but properly procedural: where the logic of the output cannot be reconstructed, the decision tends to escape adversarial scrutiny and judicial review, with a consequent weakening of procedural guarantees. This explains the need to preserve a human center of attribution and responsibility as a limit to forms of fully automated decision-making[49]. On the same premise rests the principle of non-exclusivity of algorithmic decision-making, according to which an automated output—where capable of affecting subjective legal positions—cannot constitute the sole basis of the decision, but must remain embedded within a decisional process effectively supervised by a human intervention that is responsible and reviewable[50]. The decision thus risks appearing as the product of technical necessity, rather than the outcome of a controllable argumentative path.

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form of *arcana imperii* of an algorithmic kind, in which transparency is imposed on citizens while the procedures underlying decision-making power remain inaccessible.

[48] For a critique of the reduction of adjudication to a computational sequence, and for the thesis that full automation is incompatible with the structural values of the judicial process (reason-giving, fact-finding, and prudent conviction), see Carratta, A. (2019). Decisione robotica e valori del processo, *Leggi d'Italia*, 2 ff.; more broadly, on the legal experience in the face of technological change, Punzi, A. (2018). Intelligenza delle macchine e libertà dell'uomo. *Protezione dati per un'etica del digitale,* 22 ff.; Breggia, L. (2019). Prevedibilità, predittività e umanità nella soluzione dei conflitti, *Rivista trimestrale di diritto processuale civi*le, 1, 403 ff.

[49] From this perspective, Italian administrative case law has qualified algorithmic decision-making as a technically relevant rule with legal significance, emphasizing that the opacity of automated procedures—even when justified by the protection of trade secrets or intellectual property—directly affects guarantees of knowledge, contestability, and judicial review. This has led to the requirement of ensuring a level of substantive transparency sufficient to allow control over the decisional logic, up to raising, in extreme cases, the issue of access to source code where a merely functional description proves insufficient. See Consiglio di Stato, Sez. VI, 8 April 2019, No. 2270; 13 December 2019, No. 8472; in legal scholarship, Pesce, G. (2020). Il giudice amministrativo e la decisione robotizzata. Quando l'algoritmo è opaco, *Judicium*, 1, 1 ff.

[50] In convergent terms, EU law has linked the use of automated decision-making procedures to the requirement of ensuring intelligibility and comprehensibility of the decisional process, as well as the identification of a human center of attribution of the decision. In particular, Art. 22(1) and (3) of Regulation (EU) 2016/679 (GDPR), while not imposing an absolute ban on automated decisions, conditions their admissibility on the provision of adequate safeguards, including human intervention, the possibility to express one's views and to contest the outcome, and the attribution of the decision to a responsible subject. These provisions do not reflect a rejection of technology as such, but rather safeguard the requirement that algorithms do not result in a withdrawal of decisions from the standards of attributability, reasoning, and reviewability inherent in the judicial function.

A further clarification helps to delineate the scope of this limit. In legal scholarship, *de iure condendo* discussions have explored the hypothetical attribution of legal subjectivity to AI through legal fiction, up to the well-known formula of the "electronic person." At present, however, the machine lacks self-awareness and the capacity to understand meaning, operating exclusively at the morphosyntactic level of signifiers[51]. Only by embracing radical theoretical hypotheses—such as the "algorithmic theory of mind" or the possibility of self-consciousness as a function of computational complexity—could one envisage a rethinking of traditional categories of attribution and responsibility.

Under the law as it stands, however, such hypotheses remain outside the normative horizon, thereby confirming the non-delegability of responsibility for judicial decisions. Algorithms operate through abstract and predetermined rules designed to function independently of concrete context and the specificities of individual cases. They generalise, decompose, and quantify, treating heterogeneous situations as equivalent and reducing the complexity of reality to measurable parameters. In doing so, algorithmic procedures lose contact with that dimension of "practical reasonableness" that enables the perception of what appears unreasonable, disproportionate, or misaligned with the concrete consequences of a decision[52].

This structural limitation acquires particular significance in judicial proceedings—including enforcement proceedings—where decision-making does not consist in the mechanical application of legal norms, but involves the selection of legally relevant facts, the management of adversarial participation, and the assessment of the impact of the measure on the positions involved. In such a context, reliance on algorithmic tools may generate an automation bias, inducing the human decision-maker to conform uncritically to the outcome suggested by the system, perceived as technically reliable and statistically grounded[53].

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[51] On the morphosyntactic and non-conscious nature of automated processing; on the hypothesis of legal subjectivity of artificial intelligence as a functional fiction (the so-called "electronic person"); and, in purely theoretical terms, on the "algorithmic hypothesis of the mind" and its possible implications for categories of attribution and responsibility, see Taddei Elmi, G. & Romano, F. (2016). Il robot tra ius condendum e ius conditum. *Informatica e diritto*. XXV (1), 4 and 8.

[52] On the non-mechanical structure of legal interpretation and on the idea that legal norms are structurally incomplete and require qualification, integration, and axiological balancing in the concrete case, see Betti E. (1990). *Teoria generale dell'interpretazione*, Giuffrè, 33; Perlingieri, P. (1975). Interpretazione e qualificazione: profili dell'individuazione normativa, *Diritto e giurisprudenza*, 1, 826 ff., now in Perlingieri, P. (1989). *Scuole, tendenze e metodi*, Edizioni Scientifiche Italiane, 27 ff.; Perlingieri, P. (2014). L'interpretazione giuridica e i suoi canoni, *Rassegna di diritto civile*, 407 ff.; Grossi, P. (2017). *L'invenzione del diritto*, Pacini Editore, 118.

[53] On the risks of decisional conditioning and compression of human control—also with regard to judicial independence—see Gioia, G. (2025). Intelligenza artificiale e indipendenza della magistratura: un equilibrio tra trasparenza e controllo, *Rivista di diritto processuale*, 338 ff.; for a "procedural" reading of the risk of delegation and of the illusion of technical neutrality, Carratta, A. (2019). *Decisione robotica e valori del processo*. Il Mulino.

In order to assess the robustness of this representation, it is nonetheless necessary to clarify preliminarily what is meant by AI applied to judicial decision-making. Under this label coexist profoundly different models, with heterogeneous legal implications. A first relevant distinction opposes rule-based systems—founded on predetermined rules formalised by experts—to data-driven systems, typically based on machine-learning techniques, in which the decisional model emerges from statistical analysis of large datasets. In the former, the decisional path is knowable and verifiable *ex ante*; in the latter, the output results from learning processes that do not always allow full transparency of the choices made by the system.

This distinction is of decisive relevance in the judicial domain. Data-driven systems presuppose the availability of high-quality information, selected and structured according to criteria that are never neutral. The relationship between the quantity of data and the reliability of the output is neither linear nor guaranteed: model training, the selection of relevant variables, and the optimisation function all incorporate preliminary value judgments that directly affect decisional outcomes. It follows that AI does not merely "calculate," but crystallises—often opaquely—classificatory choices and normative assumptions that escape the immediate control of the user[54].

From this perspective, a frequently underestimated profile emerges: discretion is not eliminated, but displaced. The algorithm inevitably incorporates the choices of the expert who designed and modelled it, from the selection of training data to the definition of relevant variables. Data quality is not ensured by data quantity, nor is output neutrality guaranteed by model complexity[55]. Discretion thus relocates into an opaque dimension, removed from adversarial scrutiny and difficult to attribute[56].

[54] On the link between data quality and representativeness, modelling choices (feature selection, objective function), and the risk of bias, as well as on the often-naïve assumption of neutrality of algorithmic output, see Pasquale F. (2015). *The Black Box Society*, cit., 19 ff.; Wischmeyer, T. & Rademacher, T. (2020). *Regulating AI*, Springer, 75 ff.; more recently, Ruffolo, G. & Amidei, N. (2024). *Diritto dell'intelligenza artificiale*. (Vol. I), Giappichelli, 20–21.

[55] On the distinction between rule-based (symbolic) systems and data-driven (sub-symbolic, machine learning-based) models and its implications for controllability and explainability, see Palmirani, M. (2022). Explainable AI and Legal Reasoning, *Rivista di informatica giuridica*, 69 ff.; Quintarelli, S. (2019). *Intelligenza artificiale*. Bollati Boringhieri, 12 ff.; in a regulatory and policy-oriented perspective, Calo, R. (2017). *Artificial Intelligence Policy: A Primer and Roadmap*. U.C. Davis Law Review, 513 ff.; Chesterman, S. (2021). *We the Robots? Regulating Artificial Intelligence and the Limits of the Law*, Cambridge University Press, 63 ff.

[56] On the opacity of sub-symbolic models, on the limits of current explanatory techniques, and on explainability as a requirement in tension with the structure of judicial decision-making, see Palmirani, M. (2022), Explainable AI and Legal Reasoning, cit.; Quintarelli S. (2019). *Intelligenza artificiale*, cit., 12 ff.; Wischmeyer, T. & Rademacher, T. (2020). *Regulating AI*, cit., 75 ff.; Chesterman, S. (2021). *We the Robots?*, cit., 63 ff. On the risk that latent biases embedded in data translate into discriminatory outcomes, and on the COMPAS experience as a paradigmatic case of algorithmic risk assessment in the judicial field, Pasquale F. (2015). *The Black Box Society*, cit., p. 19 ff.; for a recent systematization, Ruffolo, G. & Amidei, N. (2024). *Diritto dell'intelligenza artificiale*, cit., § 1.4.

This displacement raises difficult questions concerning responsibility, reasoning, and reviewability of decisions[57]. The algorithm is not responsible, is not dialogical, and is incapable of justifying its choices in argumentative terms. Its structural opacity makes it problematic to verify the reasons leading to a given outcome, thereby undermining the requirement of transparency and reasoning that constitutes a core safeguard of jurisdiction.

Moreover, the ambition to entrust predictive calculation with the function of orienting or anticipating judicial decisions risks rigidifying the law through the reproduction of the past[58]. Algorithms learn from historical data and tend to replicate precedents, practices, and entrenched distortions, whereas law—especially in its constitutional dimension—is oriented toward transforming existing conditions and adapting to the concrete case.

Within this framework, the idea of a fully automated "predictive justice" proves incompatible with the judicial function. Algorithms may offer valuable assistance by identifying precedents, inconsistencies, or logical constraints, but they cannot replace the capacity for contextual evaluation and argumentative responsibility that remains non-delegable. The algorithm's blind spot ultimately lies in its inability to engage with the qualitative and relational dimension of legal decision-making. For this very reason, the use of AI in judicial proceedings must be confined within a paradigm of augmented intelligence, in which the machine supports—but does not replace—the human judge, who alone remains the holder of decisional authority and the responsibility that flows from it[59].

Within this perspective, the risks of opacity and automation bias are not mere side effects, but the very point of friction between calculation and jurisdiction. It is upon this friction that the limits of substitutive automation and the conditions for the admissibility of algorithmic assistance must be measured.

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[57] On the relationship between reason-giving and external reviewability of the exercise of judicial power as safeguards of rationality and responsibility in adjudication, see Taruffo, M. (1975). *La motivazione della sentenza civile*. CEDAM.

[58] On the axiological dimension of law and the risk that "predictive" rationality may rigidify the legal system through the reproduction of past practices, see Zagrebelsky, G. (2008). *La legge e la sua giustizia*. Il Mulino, 278 ff.; Ferrajoli, L. (2022). Il futuro del costituzionalismo. *Costituzionalismo.it*. (2), 182 ff.; more specifically on algorithmic prediction, Zaccaria, G. (2021). Mutazione del diritto: innovazione tecnologica e applicazioni predittive. *Ars interpretandi*, 1, 29 ff.

[59] European Ethical Charter on the Use of Artificial Intelligence in Judicial Systems, adopted by the CEPEJ (Council of Europe), 2018, especially the principles of human oversight, transparency, data quality and security, and accountability of the human decision-maker; Regulation (EU) 2016/679 (GDPR), Art. 22, on the right not to be subject to a decision based solely on automated processing and on the guarantees of human intervention, contestation, and the expression of one's point of view; Riccio, G. M., Scorza, G., & Bellisario, E. (eds.). (2018). *GDPR e normativa privacy. Commentario*. Ipsoa, 225 ff.; Sandulli, S. (2018). Algoritmi, trasparenza ed effettività del consenso. *Il diritto dell'informazione e dell'informatica*, 1528 ff. For the most recent regulatory framework, see Regulation (EU) 2024/1689 (AI Act), especially with regard to the qualification of AI systems used in the administration of justice as "high-risk" systems and the related obligations concerning governance, transparency, and human supervision.

8. CONCLUDING REMARKS

The present reconstruction supports a clear conclusion: the idea of enforcement proceedings as an "automatable segment" of civil procedure is the product of a historically contingent representation, rather than a structural *datum*. The codified tradition—from the nineteenth-century separation between adjudication and enforcement to its systematic arrangement in the 1940 Code—has undoubtedly fostered an enforcement paradigm centered on the executive title and on the tendential externalisation of cognition[60]. Within this framework, enforcement appears as a constrained and largely predetermined activity, and therefore—at least in appearance—susceptible to mechanisation. It is against this background that the contemporary appeal of the "robot judge" gains immediate plausibility: where procedure seems reducible to a standardised sequence, automation promises efficiency at no apparent theoretical cost.

Yet the very evolution of the system shows that contemporary enforcement can no longer be reduced to a merely serial mechanism. In practice, the procedure contains moments in which the judge is required to govern conflicts, balance competing interests, and safeguard the legality and proportionality of coercive action. The emergence of endo-executive cognition thus marks a decisive point: it is not a pathological deviation from the model, but rather a functional response to the complexity of coercive enforcement as it operates in the law in action. In other words, enforcement "works" not because it excludes decision-making, but because it concentrates it in forms compatible with its claim-satisfaction function and with the system of remedies.

This insight produces a first methodological implication: discussing AI in justice without distinguishing between repetitive activities and decision-making functions leads to a fundamental misunderstanding. Even where enforcement presents itself as a formalised procedure, judicial intervention never coincides entirely with an external verification of regularity. It entails choices concerning the direction and regulation of the procedure, incidental assessments of the legality of coercive action, proportionality control in relation to the enforcement aim, management of adversarial participation, and coordination among competing positions. The decisive distinction, therefore, is not between "phases" of the process, but between delegable operations and non-delegable endo-executive decision points, which require reasoning, adversarial safeguards, and responsibility. Within this space, automation may at most serve an organisational and informational support function; it cannot replace the core of the judicial function, which remains imputable, reasoned, and subject to review.

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[60] In legal scholarship, it has been emphasised that recent organisational reforms of civil justice—and, in particular, the establishment of the Office for the Process—while pursuing objectives of efficiency and backlog reduction, raise significant concerns with regard to the transparency of decision-making, the redefinition of responsibilities, and the perception of the judge as the central actor of jurisdictional activity. Ghirga, V. M.F. (2022). L'ufficio del processo: una sfida. *Rivista di diritto processuale*, 1, 177; Carratta, A. (2019). *Decisione robotica e valori del processo*, cit., 134–135.

A second, systemic consequence follows. The debate on the “robot judge” should not be treated as a futuristic hypothesis, but as a critical category capable of testing the resilience of procedural guarantees under efficiency-driven pressure. The promise of algorithmic technical neutrality risks obscuring a basic reality: decision-making systems always embed classificatory choices and design options; in data-driven models, these choices are grafted onto data that are never “pure”, but selected, structured, and potentially biased[61]. The result may be a displacement of discretion into an opaque domain, removed from adversarial scrutiny and difficult to impute, with direct consequences for the reasoning and external controllability of decisions. In this context, the danger lies not in the use of AI as such, but in cognitive delegation and the automation bias it may generate: algorithmic output, perceived as reliable and “objective”, tends to become a practical standard of conformity, compressing the responsibility of the human decision-maker. This dynamic is further confirmed, by contrast, through observation of legal systems that have experimented with advanced forms of judicial digitalisation, where system efficiency is pursued through a programmed reduction of decisional variability. Comparative analysis thus highlights that, within the European paradigm of jurisdiction, reasoned and imputable discretion is not an obstacle to efficiency, but a precondition for its compatibility with procedural guarantees.

From this perspective, enforcement proceedings offer a particularly instructive vantage point precisely because they disprove—from within—the myth of automatism. Early termination and other instances in which the judge interrupts, redirects, or governs the trajectory of enforcement make it evident that efficiency is not achieved by neutralising jurisdiction, but by disciplining and rendering controllable the points at which jurisdiction must intervene. Enforcement “functions” not when the judge is eliminated, but when the decision-making nodes at which coercive action might otherwise degenerate into sheer force are clearly identified and effectively safeguarded.

A third implication, of a policy-oriented nature, follows from this analysis: the decisive question is not whether AI should “enter” the justice system, but under what conditions[62]. From a constitutionally oriented perspective, technological innovation is compatible with adjudication only if it remains within a paradigm of augmented intelligence: transparent and verifiable tools, governed by high-quality data, and—above all—subject to effective human

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[61] A historical reconstruction of the interactions between technological innovation, forms of information control, and transformations of the public sphere shows that technical change never operates as an unequivocal determining factor. Rather, technological innovations are embedded within cultural, institutional, and epistemic processes already in motion, shaping—and being shaped by—them. Landi, L. (2011). *Stampa, censura e opinione pubblica in età moderna*. Il Mulino, 11.

[62] From a broader perspective, it has been observed that contemporary technological transformations place a renewed responsibility on jurists—and particularly on scholars of procedural law—not to oppose scientific progress as such, but to govern its institutional impact, preventing technical efficiency from expropriating the human dimension of adjudication. The risk is not merely that of error, but that of its symbolic removal. Verde, G. (2025). Il giurista nel XXI secolo: lo studioso del processo civile. *Rivista di diritto processuale*. (3), 831–832.

supervision. In this direction, AI may improve access to sources, document management, detection of inconsistencies, scheduling support, and the handling of repetitive tasks; but it cannot become a device for substituting judicial choice, nor a technological alibi capable of attenuating the duty to give reasons and the personal responsibility of the decision-maker.

In conclusion, enforcement proceedings overturn a widespread assumption underlying much contemporary debate: they are not the most easily automatable terrain, but the one in which the structural limits of substitutive automation appear most clearly. The figure of the enforcement judge, far from being a technical residue destined to fade away, is confirmed as a living safeguard of legality. It is precisely this safeguard—and its irreducibility to calculation—that points the way toward a technology compatible with procedural guarantees: not a jurisdiction delegated to machines, but a jurisdiction capable of using machines without losing its public, responsible, and human character.

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