

# IUS PRAETORIUM: BALANCING LEGAL RIGIDITY AND THE REQUIREMENTS OF EQUITY IN THE EVOLUTION OF ROMAN LAW

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## Abstract

*The Romans were a profoundly traditionalist people. Within their deeply conservative mindset, the law of the citizens, known as ius civile, was considered intangible. Law emanated from the people gathered in assemblies, the sole body entitled to create law; thus, in the conception of the ancient Romans, it could not be altered.*

*However, as the society evolved toward an exchange economy, the old civil law, rigid and formalistic, became an obstacle to progress. It took the genius of the Roman Praetor and the grace of the jurisconsults for the civil law to be adapted to new social conditions. Under the appearance that ancient forms continued to function unchanged, outdated legal norms and institutions were draped in new, more fluid, and more equitable attire.*

*Thus, Roman law evolved through procedural means, by virtue of the Praetor's Edict and the creative interpretation of Roman jurisconsults. They succeeded in adapting the norms of civil law to current needs arising from existing practice. Furthermore, regarding regulatory technique, they created new legal institutions with a high degree of subjectivization and abstraction, which remain successfully applicable in modern law.*

*Through their creative activity, the praetors established a new branch of law—the Praetorian or Honorary Law, considered by Marcian as the “living voice of the civil law” (viva vox iuris civilis). Equity (aequitas) played a pivotal role in this creative process, serving as the valuing concept that guided the praetor in driving the progress of law through procedural channels.*

*So, this article will demonstrate that it is so true: the Praetor did not break the law; he built a bridge between what was written and what was fair.*

**Keywords:** praetor, edict, civil law, rigidity, ius praetorium, creative interpretation, equity.

## 1. Introduction

In the ancient era of Roman law, Rome was governed by ius civile, rooted in the Law of the Twelve Tables and the interpretations of the pontiffs. This system was characterized by a very rigid formalism: all acts of civil law required the utterance of extremely complex solemn formulas, the performance of specific gestures, rituals, and oaths. A single mistake in a verbal formula spoken before the magistrate resulted in the loss of the lawsuit. In legal literature<sup>1</sup>, this formalism was seen as a reflection of the spiritual foundation and intellectual qualities of the Roman people - the civil law being strict, rigorous, conservative, and steadfast.

At the same time, ius civile was an exclusive legal system, as it applied only to Roman citizens, remaining inaccessible to foreigners. It also possessed a static character, deeply connected to the traditionalism characteristic of the Roman people: although society was changing, the Romans did not admit that the law could be modified (let us not forget that the Law of the Twelve Tables remained in force for eleven centuries). Ius civile sought to be immutable and absolute. This leads us to wonder: what would Roman law - the law of the Quirites - have become if the praetor had not intervened? Would it have become obsolete? Would we still be writing about its greatness today?

The present research analyzes the evolution of the Roman legal system under the influence of the institution of the praetor, marking the transition from archaic formalism to a legal model governed by pragmatism and equity. This creative tension between ius civile, the rigid law of Roman citizens - and ius praetorium, the law created by the praetors, demonstrates that the praetor's activity was not merely a simple administration of justice, but a genuine work of legal creation that laid the foundations of modern private law.

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<sup>1</sup> Grigore Dimitrescu, Drept roman, vol. I, Imprimeriile Independența Publishing House, București, vol. I.

The study aims to highlight the praetor's role in adapting ancient law to the realities of an expanding imperial society. Thus, the praetor succeeded in transforming the Roman legal system: through the edict and procedural mechanisms that allowed the principle of equity to permeate legal relations, the praetor managed to "help, supplement, or correct" (*adiuvandi, supplendi vel corrigendi*) civil norms, providing legal solutions where the letter of the law had become insufficient or inequitable.

In essence, this creative tension between *ius civile* and *ius praetorium*, ingeniously exploited by the praetor in court practice, ensured the survival of Roman law. As we shall observe, the praetor was not a mere magistrate, but a true creator of law, whose activity established the groundwork for modern civil law.

## 2. The Emergence of the Praetorship

The institution of the praetorship was created in 367 BC through the Licinian-Sextian laws<sup>2</sup>. The urban praetor (*praetor urbanus*) was a high-ranking magistrate invested with *imperium*, elected for a one-year term. Initially, the urban praetor merely organized the procedural framework necessary for parties to enforce their rights; subsequently, his role evolved toward resolving litigation between Roman citizens. Starting in 242 BC, the peregrine praetor (*praetor peregrinus*) was also created to settle disputes between Roman citizens and foreigners, or those arising solely between foreigners.

Upon taking office, Roman magistrates (consuls, praetors, censors, ediles, and provincial governors) enjoyed *ius edicendi* - the right to publish an edict outlining how they intended to exercise their duties and the legal procedures they would employ for that purpose<sup>3</sup>. This edict served as a program of activity and was valid for one year, coinciding with the duration of the magistracy. The provisions adopted by the praetor in the edict were not mere inventions; they were concrete expressions of social needs which the praetor had the intuition to frame in legal formulas to garner popular favor. Throughout his mandate, the magistrate could not deviate from the commitments made in his edict because, by a provision of the *Lex Cornelia*, it was mandated that praetors must administer justice in accordance with their own edicts.

Among the edicts of the magistrates, the praetor's edict was the most significant, as this magistrate exercised the most important judicial functions. While other magistrates also possessed certain judicial powers, their primary activity lay in the administrative field; consequently, their edicts are not of particular interest for the study of Roman private law.

Through their edicts, both the urban and the peregrine praetors provided the parties with the most suitable procedural means to enforce their substantive rights. Thus, whenever a person had a legal claim, they had to approach the praetor, expressing their demands while adhering to very complex formal conditions. If the solemn words required to be spoken were pronounced incorrectly, the party would lose the lawsuit.

If the plaintiff expressed their claims and the defendant raised their objections in compliance with the solemn forms required by law, the magistrate would take note of them and send the parties to be judged before a judge (*iudex*). We observe that in the ancient era, governed by the procedure of the *legis actiones*, the praetor's role was limited to supervising the utterance of the solemn words. The magistrate could not grant an action if it was not provided for by law and, similarly, could not refuse a trial if the action was established by law<sup>4</sup>.

In the same formalistic spirit that characterized the rules of procedure, depending on the plaintiff's claims and the defendant's attitude, the magistrate would utter one of the following three solemn words: *do*, by which the magistrate confirmed the judge chosen by the parties; *dico*, by which the magistrate provisionally assigned the object of the dispute to one of the parties; and *addico*, by which the magistrate ratified the declaration of one of the parties.

<sup>2</sup> The adoption of the laws proposed by the plebeian tribunes Gaius Licinius Stolo and Lucius Sextius Lateranus (known as the *Leges Licinae Sextiae*) ended a long period of social and political conflict between patricians and plebeians. The most important provision was the restoration of the consulship as the supreme magistracy and the requirement that one of the two consuls be a plebeian. In 366 BC, Lucius Sextius Lateranus became the first plebeian consul in Roman history.

<sup>3</sup> Emil Molcuț, *Drept privat roman. Terminologie juridică romană*, Edition revised and supplemented (Universul Juridic Publishing House, Bucharest, 2011), p. 41.

<sup>4</sup> For further details, see Elena Anghel, *Drept privat roman. Izvoare, procedură civilă, persoane, bunuri, succesiuni* (Universul Juridic Publishing House, Bucharest, 2025); The evolution of contracts in Roman law, in *Lex ET Scientia International Journal LESIJ* no. XXVIII - 1/2021, p. 112-118; Ionuț Ciutacu, Explaining the Relationship between Roman Civil Law and Praetorian Law, in *Proceedings of the 29th International RAIS Conference on Social Sciences and Humanities*, 2022, p. 64-68; Ionuț Ciutacu, *Modalități de exprimare a bunei-credințe în dreptul contractual roman*, in *Studii și Cercetări Juridice-Serie Nouă* 1/2025, p. 109-115.

The magistrate's right to organize a trial was called *iurisdictio* and was of two kinds: *iurisdictio contentiosa* (contentious jurisdiction), which occurred when the interests of the parties were contradictory and the trial concluded with the pronouncement of a sentence of condemnation or absolution; and *iurisdictio gratiosa* (gracious or voluntary jurisdiction), which occurred when the parties' interests were aligned and they cooperated with the magistrate within a fictitious procedure organized to achieve certain legal effects (for example: in *iure cessio*, adoption, or emancipation).

The praetor, the most important judicial magistrate, enjoyed not only *iurisdictio* but also *imperium* - the power of command. This consisted of the right to command the Roman army; to exercise jurisdiction in criminal, civil, and even administrative matters; the right of coercion; and the right to summon the people in assemblies. By virtue of this power, the praetor could resolve certain disputes through administrative channels without organizing the two-phase trial. Thus, the praetor had several administrative procedures at his disposal: praetorian stipulations (*stipulationes praetoriae*), *missio in possessionem*, interdicts, and *restitutio in integrum*.

Praetorian stipulations (*stipulationes praetoriae*) are verbal contracts concluded by the parties through question and answer, by order of the praetor, for the purpose of resolving certain disputes. For example: the defendant would promise to pay a certain sum of money to the plaintiff if any damage occurred in the event that the defendant failed to take the necessary measures to repair a wall of his house which threatened to collapse onto the plaintiff's property (*damnum infectum*, meaning damage not yet caused, but imminent).

*Missio in possessionem* consisted of sending the plaintiff into the detention or possession of the defendant's assets to compel the defendant to adopt a certain attitude. Following the previous example, if the defendant did not comply with the magistrate's order, the latter would send the plaintiff into possession of the defendant's assets to induce him to conclude the stipulation. If the defendant still did not comply, the magistrate would order a second induction into possession, and the plaintiff would become the owner of the defendant's land.

Interdicts are provisions by which the praetor ordered the parties to perform or refrain from performing a certain legal act. Interdicts are of several kinds: prohibitory, which stop an action (such as interdicts aimed at removing the disturbance of a person's possession); restitutory, which order the restitution of an item; and finally, exhibitory interdicts, which contain an order to produce something (such as those by which a father requires a third party to disclose whether or not they are holding his son)<sup>5</sup>.

If the party to whom the interdict was addressed complied and executed the magistrate's order, the situation was resolved; however, if the order was not fulfilled, the second phase of the trial would follow to determine whether the person to whom the interdict was addressed acted justly in failing to execute the interdictal order.

*Restitutio in integrum* (restoration to the previous condition) consists of the praetor annulling a legal act harmful to the plaintiff, restoring the parties to the position they were in before that act was drawn up. This measure contradicted civil law because it nullified the effects of an act considered valid under *ius civile*. For a *restitutio in integrum* to be granted, certain conditions had to be met: there must be an injury; the grounds on which the interested party's request is based must be provided for in the edict; there must be no other way to redress the injury suffered; and the party's request must be addressed to the praetor within a short period of time.

For example: if the praetor finds that Flavius was compelled by violence to alienate his land, he will then annul the sale and grant Flavius an action in *rem* (*vindicatio rei*), through which he may reclaim the alienated land as if the sale had never taken place (*restitutio ob metum*). However, in this case, the plaintiff was restored only in law (*de jure*), not in fact (*de facto*). To be restored in fact as well, the plaintiff had to bring a new legal action and obtain a judgment of condemnation.

### 3. The Role of the Praetor in the Formulary Procedure

Toward the end of the Republic, as trade developed and more complex exchange relations emerged, discrepancies began to appear between the old, formalistic, and often outdated civil law and the demands of practice. In this context, the task of adapting old forms to new interests fell to the praetors. The *Lex Aebutia* was adopted between 149 and 126 BC, marking the transition to a new procedural system called the formulary

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<sup>5</sup> Vladimir Hanga, Mircea Dan Bocşan, *CURS DE DREPT PRIVAT ROMAN*, Universul Juridic Publishing House, Bucharest, 2006, p. 107-108

procedure, in which the praetor's role became paramount. Under this procedure, the trial continued to take place in two phases: the first phase before the praetor, and the second phase before the judge (*iudex*), who was a private citizen without legal expertise.

In the formulary procedure applied during the classical era, once the praetor was convinced of the justice of the plaintiff's claims, he would issue a formula - a small judicial program through which he provided the judge with written instructions on how to resolve the case. The formula drafted by the praetor consisted of a report containing the legal elements of the case and included the plaintiff's claims (*intentio*), their legal basis (*demonstratio*), as well as the authorization given to the judge to settle the case (*condemnatio*). After drafting the formula, he handed it to the parties, who were then required to appear before the judge for the pronouncement of a judgment. The praetor would address the judge as follows: "Julius shall be the judge. Julius, ascertain whether the plaintiff, who claims the Cornelian estate belongs to him, is right. If he is right, condemn the defendant to restore it; if he is not right, absolve the defendant."

Through the formula, the praetor provided the judge with written instructions (*formulae*) and empowered him to examine the substance of the matter, not just the form, assessing the case before him in good faith (*bona fides*) - that is, in accordance with the real intention of the parties.

By introducing equity into the legal landscape, an element previously unapplied in formalistic law, the praetors exercised the most significant judicial functions, as they organized the trial of private lawsuits and, through the use of procedural means, sanctioned new substantive rights and expanded the scope of legal regulation. In this way, the praetors influenced the evolution of legal regulation and, although formally they could not create law (*praetor ius facere non potest*), in reality, they shaped the evolution of civil law and created new legal institutions which, toward the end of the Republic, formed a new branch of Roman private law: praetorian law (*ius praetorium*).

Thus, while in the procedure of the *legisactiones* the magistrate had a mechanical role, in the formulary procedure, the praetor's mission consisted of the fact that he could create, outside the law, new actions - praetorian actions, thereby legally sanctioning social institutions necessitated by the development of society.

Furthermore, within the new procedure, the magistrate was able to resolve the most difficult cases in the most equitable manner, even if the ancient civil law did not contain sufficient norms for a just resolution of the cause. The praetor could bring many improvements to the law in force, in relation to the needs of social life, through the so-called exceptions (*exceptiones*), by which he ordered the judge not to condemn the defendant if certain factual elements were verified as accurate<sup>6</sup>.

The actions in factum and the exceptions became the "primary vectors for the infiltration of the principle of *aequitas* into private law relations." In addition to civil formulas, the praetor's edict also included honorary or praetorian formulas—that is, formulas created by the praetor to give legal effect to new relationships imposed by social development. With the help of these new formulas, the praetor succeeded in ensuring remarkable progress for Roman legal institutions<sup>7</sup>.

In the *in iure* phase, the praetor became an architect of the judicial system: he balanced two opposing forces: *ius civile*, stable but often petrified in archaic and rigid formulas, and *aequitas*, fluid, adaptable, and connected to social needs and morality (the art of the good). Thus, the praetor only maintained the appearance that the civil law remained unchanged, as the Romans desired; however, he appealed to equity and, through an extensive interpretation, adapted the rigid institutions of the ancient civil law to new realities, so that the letter of the law would not crush the spirit of justice.

The praetor remains the "*viva vox iuris civilis*" (the living voice of the civil law), as described by Marcianus, because he acts within the system, giving "voice" to the civil law to make it applicable. But, in essence, he becomes the voice of equity, for he interprets and molds the civil law - which was far too strict and stifled by rigors - so that it might remain just.

By passing the ancient civil legal institutions through the filter of his own reasoning and interpretation, the praetor transformed the law from a barrier to evolution into *ars boni et aequi* (the art of the good and the

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<sup>6</sup> Thus, the praetor orders the judge to investigate whether Primus obligated himself to Secundus for the sum of 10,000 sesterces and, if so, to condemn the defendant; however, if Primus obligated himself to Secundus while being compelled by the latter through violence, then Primus is to be acquitted. Although Primus's obligation is valid from the perspective of civil law, by verifying the respective exception as accurate, the plaintiff's claim will be dismissed. In this manner, praetorian law sanctions violence, and in other cases, fraud (*dolus*). See Vladimir Hanga, Mircea Dan Bocșan, *CURS DE DREPT PRIVAT ROMAN*, Universul Juridic Publishing House, Bucharest, 2006, p. 52.

<sup>7</sup> *Idem*, p. 97.

equitable). The praetor's edict represented one of the most important instruments for the evolution of Roman law, functioning as a mechanism for adapting the rigid norms of *ius civile* to new social and economic realities through the medium of equity (*aequitas*).

In a formal sense, the praetor's edict was valid for one year, matching the duration of the magistracy. However, certain provisions of the edict that proved useful were adopted by subsequent praetors and thus became permanently fixed within the edict<sup>8</sup>.

The creative activity of the praetor was so intense that the legal norms introduced through the edict became very numerous, shaping a new branch of law: praetorian law. As defined in the Digests of Emperor Justinian, praetorian law is that introduced by the praetors to assist, supplement, and correct the civil law in accordance with the public good ("*ius praetorium est quod praetores introduxerunt adiuvandi vel supplendi vel corrigendi iuris civilis gratia propter utilitatem publicam*").

This definition highlights a new social reality of Rome: the dualism between civil law and praetorian law. Thus, the norms of civil law are supported, supplemented, and corrected by the norms of praetorian law, as necessitated by the transformations of social life. Therefore, the praetor acts through three channels to influence the ancient civil law.

Through *adiuvandi iuris civilis gratia*, the praetor came to the aid of the civil law, in the sense that he interpreted civil law texts in such a manner that they could be applied to new cases arising in practice (extensive interpretation).

Through *supplendi iuris civilis gratia*, the praetor supplemented the civil law texts by creating new legal principles or procedural means, with the aim of expanding the scope of application of the civil law<sup>9</sup>.

Through *corrigenendi iuris civilis gratia*, whenever he found that certain civil law texts were outdated, the praetor would override them. In this way, the praetor rose above the civil law, correcting it in accordance with equity and facilitating the administration of justice in cases where the old civil law proved to be inequitable or unadapted.

Praetorian law was not merely a set of rules and innovative procedural means, but a "living" mechanism through which the archaic rigidity of written laws was softened by practical needs and the moral sense of equity (*aequitas*). *Ius Praetorium* was not a negation of the law, but its salvation; for without the flexibility and creative spirit of the praetor, Roman law would have collapsed under its own rigidity and would not have become the foundation of modern Europe.

Unfortunately, although the praetor's creative activity reached its zenith in the 1st century BC, during the classical era, Emperor Hadrian ordered the jurist Salvius Iulianus to codify the praetor's edict and give it a definitive form, binding upon all subsequent praetors. Thus, even though they still enjoyed *ius edicendi*, the praetors could no longer create new institutions, and their creative activity came to an end.

#### 4. The Praetorian Legacy

The entire activity of the praetor was guided by the idea of equity. If today we refer to equity in the sense of achieving justice beyond the rigid letter of the law, we owe this to the praetor. He succeeded in aligning the ancient system of civil law with the necessities of the era, using equity as his benchmark. Roman law thus became *ars boni et aequi* - an art of the good and the equitable - meant to breathe life into the old, rigid, and formalistic legal institutions.

As has been emphasized in legal literature<sup>10</sup>, the reform of civil law based on the idea of equity was achieved through broad means of interpretation. We cannot encompass the entire praetorian legacy, shaped by considerations of equity, within this section, but we shall evoke some of the praetor's most significant achievements.

The praetor imposed the standard of honest behavior guided by *bona fides*: good faith requires not only that you respect the clauses of a contract, but also that you behave as an honorable man (*vir bonus*).

<sup>8</sup> In this regard, Cicero states that, in his time, the praetor's edict consisted of two parts: *edictum vetus* (*pars translativum*), which included the provisions passed from one praetor to another, and *edictum novum* (*pars nova*), comprising the new provisions introduced by each individual praetor. See Emil Molcuț, op. cit., p. 42

<sup>9</sup> For example, initially, theft was only punished if committed by a Roman citizen, as foreigners rarely came to Rome. With the development of the exchange economy, when foreigners began arriving in Rome, the praetor supplemented a deficiency in the civil law and granted the *actio furti* even against peregrines who committed theft. Elena Anghel, op.cit., p. 63

<sup>10</sup> Vladimir Hanga, Mircea Dan Bocșan, op. cit., p. 41

Furthermore, as noted above, in matters of interpretation, the praetor imposed equity beyond the letter of the law, protecting the parties' intention rather than just the literal meaning of the words. To uncover the intention with which a legal act was concluded (*voluntas*), equity transcends what was written by the parties and searches behind the literal text of the instrument.

On grounds of equity, by analyzing a factual situation, the praetors could refuse to grant a plaintiff an action even if the civil law allowed it, or they could grant the action but introduce an exception (*exceptio*) in favor of the defendant which, if proven well-founded, would change the outcome of the trial in the defendant's favor. Thus, exceptions proved to be the most significant method of introducing equity: even if someone was right according to the civil law, the praetor would block their action if it was exercised in bad faith (*exceptio doli*).

The entire activity of the praetor was guided by certain general principles that he inscribed in his edict upon taking office. In addition to various special provisions (edictic clauses), we find in the edict the formulas for the various actions provided for either in the edict itself or in the civil laws. Many of the institutions regulated through the edict bore the name of the praetor who introduced them, for example: *actio Publiciana*, the action introduced regarding praetorian property by the praetor Publicius, intended to protect the good-faith possessor even if they were not yet the legal owner.

The field of property law was also reformed by the praetor, who created, toward the end of the Republic, a new form of ownership called bonitary (praetorian) ownership, protected by the praetor, in opposition to quiritary ownership, sanctioned by the civil law.

Praetorian property emerged in connection with the use of *traditio* (delivery), a method created exclusively for transferring ownership of *res nec mancipi*. To transfer ownership of *res mancipi*, the Romans generally used *mancipatio*; however, this involved very complex solemn forms, so in practice, Romans began to transfer *res mancipi* through *traditio* as well. In such cases, according to the civil law, the seller (*tradens*) remained the legal owner of the asset and could bring an action in rem (*vindicatio*) against the possessor<sup>11</sup>. By sanctioning the seller's bad faith, the praetor provided the buyer with an exception (*exceptio rei venditae et traditae*), through which the buyer could dismiss the plaintiff's claim as being contrary to equity. In this way, the praetor protected good faith.

For the purpose of adapting the ancient civil law to new realities, the praetor allowed *traditio* to be used for the transfer of *res mancipi*; however, in this case, the acquirer does not become a quiritary owner, as the rigorous requirements of the civil law were not met. Instead, he would acquire a new form of ownership, which the Romans called in bonis (the transferred thing is held within the acquirer's patrimony). Praetorian (bonitary) ownership was based on a legal fiction—namely, that the period required for usucaption had already been completed.

To legally protect this form of ownership, the praetor created a praetorian action called the Publician action (*actio Publiciana*), which he granted to the person who had acquired ownership of a *res mancipi* through *traditio*; however, the praetor considered this person an owner by usucaption (requiring all the conditions for usucaption to be met, except for the expiration of the time limit). Upon the completion of the usucaption period (one year for movable property and two years for immovable property), the praetorian owner became a quiritary owner.

Another field that demonstrates the praetor's creative brilliance is the law of succession. The entire Roman successoral system was reformed by the praetor on grounds of equity because, over time, the principles of inheritance according to the rules of *ius civile* fell out of step with social conceptions. For a long time, agnation (civil kinship) was the sole foundation of succession among the Romans; thus, only civil relatives had successoral capacity. The system of the Law of the Twelve Tables did not take cognatic kinship into account, excluding emancipated children and other blood relatives (*cognati*) from the succession.

Toward the end of the Republic, aiming to correct these deficiencies in the civil law, the praetor initiated a series of reforms to recognize blood kinship (cognition) as a foundation for succession, as well as to strengthen the relationships between spouses within a marriage without *manus* (*sine manu*). The succession established through the praetor's reforms was called *bonorum possessio* (possession of the successoral goods) and led to the creation of four classes of praetorian heirs:

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<sup>11</sup> It is assumed that the trade in slaves contributed significantly to the emergence of praetorian property. As slaves were usually purchased in groups, it was difficult to repeat the complex ritual of *mancipatio* for each individual sale. The praetor considered it useful and just to defend the good-faith buyer, even if the legal formalities had not been observed. V. Hanga, M.D. Bocşan, op. cit., p. 170.

Bonorum possessio unde liberi included all sons of the family, including those who were emancipated, as the emancipated children came to the inheritance as blood relatives, provided they performed the collatio bonorum (the contribution of their own goods to the estate).

Bonorum possessio unde legitimi consisted of agnates and gentiles, who came to the inheritance only in the absence of descendants from the first category. At first glance, it might seem that through this reform the praetor simply confirmed the provisions of the Law of the Twelve Tables; in reality, however, the praetor introduced an innovation: if the nearest agnate repudiated the succession, it did not become vacant as it did under the system of the Twelve Tables, but instead passed to the next category of heirs.

Bonorum possessio unde cognati designated blood relatives who were not also civil relatives - namely, the mother and children resulting from a marriage without manus, who inherited from each other as blood relatives. These were called to the inheritance only if no civil relatives existed, as an agnate, regardless of degree, would exclude the cognates.

Bonorum possessio unde vir et uxor designated the husband and wife married without manus, who inherited from each other only in the absence of civil or blood relatives (those married with manus inherited from each other as civil relatives). Thus, in the absence of heirs from the first three classes, the praetor called the surviving spouse (vir et uxor) to the inheritance.

However, it must be emphasized that bonorum possessio granted to someone not called to the inheritance under civil law was a more fragile form of possession. The praetorian heir was "assimilated" to the civil heir, meaning he did not acquire quiritary ownership over the inherited assets, but only praetorian ownership. Furthermore, the successoral actions granted for or against him were not civil actions, but praetorian ones, based on the fiction of being a civil heir.

Also regarding successoral matters, it is noted in legal doctrine<sup>12</sup> that the jurists of Rome did not bequeath us a unified theory of legal acts, instead confining themselves, as usual, to specific solutions for each concrete case. Consequently, there was no general theory of nullity, and the duality between civil law and praetorian law contributed to the variety of causes for the inefficacy of a will.

## 5. Conclusions

The study of Roman law demonstrates that the law, no matter how well-crafted, cannot survive without a mechanism for adapting to ever-evolving social realities. The praetor utilized equity and social utility to overcome the strict formalism of *ius civile*, assisting, supplementing, or correcting the ancient civil law in accordance with the public good. Through his instruments (*adiuvandi*, *supplendi*, *corrigendi*), the praetor transformed the law from a static structure into a living organism, capable of responding to the needs of a constantly changing social and economic reality. The validity of a law does not reside in its antiquity, but in its capacity to serve the public utility and to ensure a constant balance between the rigor of the norm and the necessities of society.

*Ius Praetorium* emerged as a parallel, more flexible system based on equity, functioning to facilitate the administration of justice in cases where the old law was inequitable or unadapted. Through the edict, the praetor demonstrated that the absolutism of the ancient *legis actiones* had to be transcended, introducing the formulary procedure, which allowed for the adjudication of matters based on good faith (*bona fides*) and equity. I believe that the most significant achievement of praetorian law was the overcoming of archaic formalism. By introducing the formulary procedure, the praetor shifted the focus from rigid formalities and rituals to the merits of the case, allowing justice to center on factual truth and the parties' intention, rather than merely the correct utterance of sacramental words. This openness toward equity and good faith facilitated the integration of foreigners and regulated international trade, providing Rome with historical longevity. Thus, through the intermediary of the praetor, Roman law succeeded in placing substance before form, introducing equity into legal relations, and becoming a universal system (*ius gentium*).

The Praetor did not break the law; he built a bridge between what was written and what was fair. Without the praetor's intervention in balancing the rigidity of the civil law, Roman law would have remained an archaeological document and would not have become the legal foundation of the Western world.

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<sup>12</sup> Vladimir Hanga, Mircea Dan Bocşan, op. cit., p. 224.

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