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## **The Importance of Praetor Activity**

In ancient Rome the state was strongly linked to its citizens. The term of *civitas*, city-state, denominated all the citizens. The republic (coming from *res publica*) was first used during the Emperor's Age, which was understood as *libera res publica*, Cicero interpreted as *res populi*, the thing of people. Starting from the Republic era the Romans called themselves *senatus populusque Romanus*.

The system of early republic came to its existence at B.C. 510 after the last Roman King Tarquinius Superbus was displaced. The new state was formed by the magistrats, the senates and the comitia.

The magistrats were the public servant and public offices with the outmost power. Some of the magistrats were inherited from the royal era, and some lived through the empire era. The Roman magistrats were elected for a period of one year, they were not remunerated for their work, and they could resign from their position.

The magistrats could have *imperium* and *non-imperium*, from their role they could be categorized as ordinary and extraordinary, and depending on their jurisdiction they could be greater or smaller public officers.

The consul, the praetor, the censor were *magistratus maior*, while the aedilis, the quaestor and the tribune plebis were *minor magistratus*. Among the privileges that magistrats maiores had was wearing the purple toga, Etruscan origin, and the use of chairs ornated with ivory inlaid.

The magistrats could earn the *potestas*, the public office, which by definition could be larger or smaller. The *collega-s* had the same power, they could proceed with any case by themselves, so they were entitled to prevent the implementation of decisions.

The *potestas* contained the *ius auspiciorum*, the *contionem habendi ius* and *ius intercedendi*. The *ius edicendi* could only be used by the *magistratus curules*.

The praetor took over the court related activities from the consul at B.C. 367. The praetor possessed the right of *minus Imperium*. His task was the *iurisdictio*, but the other responsibilities he could exercise only as deputy consul. It is important that until B.C. 337 this position could be filled in by a patrician. B.C. 242 saw the creation of the office of praetor peregrinus. The urban praetor and the praetor received free hand in deciding disputes based on *ius civile* or the *ius gentium* standards. The former ruled disputes in between Roman citizens, while the latter decided upon issues in between the peregrinus.

The establishment of an office of praetor peregrinus was needed due to the ever growing settler population within Rome. The peregrinus and Roman citizen often clashed on judicial

terms, so during the 4<sup>th</sup> century B.C. the above-mentioned office was established, since the settlers could not turn to the praetor, the latter having mandate to decide only upon problems in between Roman citizens.

The 3<sup>rd</sup> and 4<sup>th</sup> praetor was chose to govern Sicily at B.C. 227. The 5<sup>th</sup> and 6<sup>th</sup> praetor was elected the lead Hispania during B.C. 197.

During the reign of Sulla a number of eight praetor held the permanent criminal courts. During Caesar's time the praetor's number increased to sixteen. The promagistrates started to manage to provinces. The praetors were ruling in law matters within the city of Rome. All praetors were equal, but the praetor urbanus, the praetor maximus and senior praetors had their seniority recognized and respected.

The praetors were entitled to two lictors within the walls of Rome, while outside of the city the entitlement consisted of six lictors.

The necessary conditions for gaining the status of magistrat were determined in such a way that only members of rich and prominent families could apply for it. During B.C. 180 the lex Cornelia de magistratibus determined the minimum age of a praetor, that being 40. This law specified that at which age could a candidate be awarded with the title of magistrat. This cue was labelled *cursus honorum*.

The judicial system of the late republic was determined by the *ius civile*. Alongside *ius civile* the *ius praetorium* was developed.

The *ius civile* governed over all circumstances of everyday life of Roman citizens, regulating their links in with the state and other fellow citizens. According to Gaius ' *Omnes populi qui lefibus et moribus reguntur, pratim suo proprio, partum communi omnium hominum iure utuntur. Nam quod quisque ipse sibi ius constituit, id ipsius proprium est vocaturque ius civile, quasi ius propriu civitatis*'.

The concept of *ius gentium* and *ius naturale* was developed taking into account the Greek philosophy, these concepts being regulated by the *ius praetorium*. This former *ius* prevailed against civil law. The praetor's activities at this time, the '*dice praetor jus potes, non potes face*'. The praetor's activity first covered the application of XII board laws.

The praetors, using their *iurisdictio imperium*, created new judicial material, which they labelled *ius honorarium*.

The *ius honorarium* was mainly composed by edicts of praetors and other magistrats, especially the ones from *aedilis curulis*. It had two main constituent parts. The praetor to saveguard the citizen's interest developed new forms of judicial aids, which were not based on the rules of civil law. The praetor gave priority to the common law. In many instances the praetor's aid was against the civil law.

During the innovative activities of the praetor, he was held politically responsible for the expediency of the applied rules.

The innovative actions done by the praetor were done in the *iurisdictio* framework. The praetor's work provided an opportunity to promote or restrict the freedom of civil law. The only praetor under the civil law was the praetor urbanus. The praetor peregrinus could design its own judicial process, he took into account the legal forms that he liked, but having regard to the Roman process.

During the B.C. 2<sup>nd</sup> century the lex Aebutia de formulis brought the judicial process of praetor peregrinus to the level of civil law, taking into account the Roman process. By this act it became possible for Roman citizens to apply this code in front of the praetor urbanus.

Most likely before lex Aebutia came to existence the procedural methods of praetor peregrinus were applied. This law raised lex Aebutia to the level of civil law, the rules of the letter code remained intact, the *actio* continued to remain valid.

The praetor law was raised out of the out-of-process judicial aids of the praetor urbanus and the code developed by the praetor peregrinus, the latter being elevated by lex Aebutia.

According to Papinianus 'Ius praeterium est, quod praetores introducerunt adiuvandi vel supplendi vel corrigendi iuris civilis gratia'.

The ancient XII board law could not be repealed within the conservative Rome, so the only way was to easen the rules with the praetor law.

The ius civile and ius praetorium prevailed paralelly for centuries. The praetor issued each year an edictum, which became an important piece of legislation. Cicero labels the civil and the praetor law as being as the same level of judicial interpretation. According to him 'ex iure civile ac praetorio'.

The ius civile lived as ius strictum in the minds of Romans, being ancient, rigid and strict. The ius praetorium, and its effect on ius gentium and ius naturale, meant the elastic, flexible, fair praetor right, the ius aequum.

In the principat based system eighteen praetors were serving. Civil cases could only be handled by the praetor urbanus and praetor peregrinus. The other praetors could proceed on criminal cases, or they handled the treasury (praetor aerarii), maybe had limited power to primogeniture (fideicommissarii praetor), and guardianship matters (praetor tutelarius). For liberation processes the praetor de liberalibus causis was in charge, when for fiscal disputes in between the Empire's Treasury and citizens praetor fiscalis was the officer to turn to. Within the system of principat ius honorarium was composed by praetors, aedilis curilis, governors of provinces and provincial questors. From the edicts issued by magistrats, the most significant were the ones issued by praetors.

In Rome the magistrat curules procured the right to issue formal notices. In these edicts the magistrats explained their program, with concrete procedure plans, alongside administrative rule, which were intended to be applied during their office term.

The edictum praetorium served as a significant factor in the development of Roman law, during the development of interdictums by praetor urbanus. The praetor peregrinus developed the formal judicial process, next to the process of legis actio. Once the formal procedural setup was functional, some needs became enforceable, which till then could not be enforced by the civil law.

The praetors were not issuing new edicts based on different text, on a yearly basis. The parts of edicts, which were functioning, were kept and built into new issuings. Only few, one maybe two, points were selected by the praetors into the newly issued edicts, furthermore it was possible to amend an edict during the office year. Over time, the text of edicts became fixed, which were ever present in each praetors' issuing, they became what is known as edictum perpetuum.

The law sources of the edict were doubtful, when in B.C. 67 lex Cornelia de edictis praetorum stated that praetors were required to keep their edicts intact. During the Cicero era, these rules were so cristalized, that they were called 'one year laws' – lex annua.

Once the role of praetors was diminishing, the development of edicts was losing ground, and they became reliable law sources. The praetorian edicts were formed along three centuries, the rules were not organized. Around 130 Emperor Hadrian appointed the jurist Salvius Iulianus to organize the structure of this law material. The edictums of aedilis curulis were added separately to the work. Most probably he restructured the edictum provinciale.

## ZUSAMMENFASSUNG

Unter den Begriff den Staat verstand sie die Gesamtheit die Bürgern. Die Magistratus dürfte über Imperium, und über kein Imperium verfügen. Die Magistratus gebührte auch die Potes-tas. Von dem Jahr 367 war der Praetor auch der Vertreter den Consul. Von den Kompanie IV. bestehen die Praetor Peregrinus, als Abteilung. Mit dem Fall die Rolle der Praetor schloss die Entwicklung dem Edictum-Text.