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THE PRIMITIVE CHARACTER AND ORIGIN OF THE BONORUM POSSESSIO

BY GEORGE M. BUSH*

THE Bonorum Possessio, or Praetorian inheritance or succession, is one of the most important, complicated and difficult sections in the study of the Private law of Rome. This subject is not well known to students of Roman law, although so far it has been the object of much research on the part of many German and a few French, scholars.

The Bonorum Possessio existed during two distinct periods of Roman history: the Classical period and the period which dates from the second century to the reign of the Emperor Justinian.

The Bonorum Possessio of the latter period no longer consisted of the identical principal characteristics which it was originally composed of. The transformation of the primitive nature of the Bonorum possessio was not the result of any imperial desire or interposition or of any constitutional amendments, but was merely due to the hand of time, and it is impossible to proffer any approximately precise date which might be capable of marking, with certitude, the transition of the first period into that of the second. There were two important factors which were indubitably directly responsible for the change in character of the Bonorum possessio at the end of the Classical period; namely, the continuous decrease of the Bonorum possessio sine re and the disappearance of the ordo judiciorum.

Heritage, or succession, was regulated by the law of the XII Tables. Only four categories of inheritors were capable of inheriting:

1. Succession was granted through a testamentum:
   (i) Those persons who had been specially designated in a will;

2. Succession was granted ab intestato to the heredes legitimi:
   (i) The heredes sui;
   (ii) The heredes sui failing, to the agnati.

The agnati lacking, to the gentiles. Si intestato moritur, cui suus

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heres nec escit, adgnatus proximus familiam habeto. Si adgnatus nec escit, gentiles familiam habento. ²

If at the death of the de cujus—de cujus successione agitur there existed a successor belonging to an anterior order, the other successors belonging to a posterior order were deprived of the right to succeed or inherit. When a "representative" had been designated to accept, adire hereditatem, the succession of the de cujus, it was impossible for another "representative" to be instituted in his place, even if he who had been instituted, or designated to be a successor, desired to refuse acceptance, because a successor once designated no other could replace him. The succession was then hereditas jacens, without a master, nullius in bonis est. As long as the acceptance of the succession was postponed, the pontiffs, creditors and others were unable to obtain that which they had a right to claim. In the event that the successor died and that he had not already accepted the succession, the de cujus was without a "representative", notwithstanding the fact that there were other successors at ulterior degrees only too willing to take and accept the original deceased successor's place and functions. The succession had been offered, delata, to the successor and it could not be offered to anyone else. Hereditas non adita non transmittitur. Inasmuch as this condition of affairs was, for the following reasons, very unsatisfactory, the idea was conceived that the successor heres voluntarius and extraneus should be forced to accept the heritage, because: If the succession was hereditas jacens the:

1. sacra privata were neglected, which was a serious matter to a Roman.
2. chattels descended by inheritance were exposed to abandonment.
3. slaves descended by inheritance were without a master—and they could not serve as an instrument of acquisition to any one else.

To remedy matters the usucapio pro herede was legally admitted. This measure helped to prevent the vacancy to a certain degree. As long as the succession was hereditate jacente, any person could seize it and become possessor of it. This measure was of a nature to force the successor to accept the heritage as soon as possible. The usucapio pro herede served to stimulate the resolution of the successor. For

¹Ulp., Reg., XXVI, 1; Collat leg. mosaic., XVI, 4, No. 4.
a succession made by a will the *cretio* was introduced. No period of time was originally imposed on the *heres voluntarius* for the acceptance of a succession, with the evident result that he could adjourn indefinitely before taking a decision in favour of the acceptance or the repudiation of the succession. The Civil law attempted to find a remedy, by authorizing the testator to institute the successor *cum cretione*, that is to say to impose upon him a period of time, generally one hundred days, in which he could accept or refuse the succession. The *cretio* was accompanied by disinheritance for the successor who had not accepted the succession within the limit of time specified—(*cretio perfecta*). This procedure was, however, not applicable to the *heredes legiti mi*, neither to successors instituted *sine cretione*. The Praetor overcame this deficiency. He granted to the successor a period of time consisting of one hundred days, during which period of time he benefited through the *potestas deliberandi*. If he had not taken a decision within the one hundred days allotted to him, he was definitely excluded from the succession. The fact that he did not accept proved that he wished to remain *extraneus*.

The remedy, if such it could be termed, was not very efficacious or satisfactory. In fact, the "remedy" appeared to do more harm than good. As soon as a succession came into existence, every person, related or not related to the deceased person, could seize a portion of his patrimony, when possession for one year made him the legal successor. With this system in force, a successor was certainly never lacking, but it is very doubtful whether creditors found themselves in a better position in regard to their rightful claims due to this fact. When it was finally discovered and recognized that the innovation was impractical and unsatisfactory, it was decided to confer upon it special characteristics of a different kind. The *usuacpio pro herede* was maintained, but instead of the title of heir being granted, its effect only procured to the successor who held possession for one year the property of the hereditary object which he had seized, without legal title. Thus transformed, it could still be used to serve as a form of stimulant on behalf of the successor who would not take a prompt decision, but it eliminated the pledge, or contract, in favour of the creditors, who were no longer authorized to prosecute those to whose profit the prescription was accomplished.
Furthermore, in the event of the rightful heir refusing to accept the succession, or in the case that he died prior to the acceptance of same, the whole question was reduced to that state in which it originally existed prior to the introduction of the first usucapio pro herede. The heritage automatically became ownerless.

Similarly to all the juridical acts, the acceptance, adire hereditatem, was originally an oral and a "solemn" act. It was also termed cretio. After a time the simple expression of the will was sufficient, nuda voluntas. A tacit acceptance, pro herede gestio, was also recognized, resulting from any action of the successor which implied on his part the intention to act as a possessor.\(^2\) The fact that a successor accepted the succession implied that the heres extraneus had not secured anything during the period in which the acceptance had not been made by him. If the heres extraneus died without having accepted the succession, his vocation was not transmitted to his heirs. Such was not the case with the heredes necessarii who, if they died after the delatio, transmitted their rights to their own heirs.

The "repudium" of the succession was another decision which could be taken by the heres voluntarius. The ancient law did not recognize express repudiation. The succession was offered to the heir; if he did not wish to accept it, he only had to allow the period of the cretio to elapse, or such period as had been given to him by the Praetor for deliberation. In the ancient law non adire was applicable and not repudiare. From the date that the acceptance could be made nuda voluntate, the "repudium" could be express and result from a simple declaration. The effect was always the same whether the acquisition of the whole of the patrimony of the deceased person. necessary or voluntary heir—it was the successio in universum jus, the acquisition of the whole of the patrimony of the deceased person. All the corporeal and incorporeal belongings of the deceased person were transmitted to the heres who from that moment was held responsible for all the duties and burdens: care of the sacra privata, integral payment of the debts, accomplishment of the legacies and trusts imposed on him by the will. If the right to the succession possessed by the heir was contested by a third person, birth was given to a Civil action in rem created for the purpose of imposing

the recognizance of the state of heres, and which was in consequence the sanction of the right of heredity. This was the petitio hereditatis, an action by which the plaintiff, having proved his title of heir, claimed, as a consequence of this, either the whole of the succession, a particular part of it or some right of which it was in part composed of. Here appeared the fundamental difference between this action and the rei vindicatio, where only an isolated object was claimed and which was, due to this, termed by the interpreters of the law specialis in rem actio, whereas the petitio hereditatis was an actio in rem generalis.

The action petitio hereditatis was, in reality, a claim for the title of heres, and which was granted to any person who could consider himself in virtue of the Civil law, a testamentary or ab intestato heir. The action could be employed against every possessor pro herede, against that person who acted as the rival of the heir who was the plaintiff and who made out that he had the right in his quality of successor in universum jus, to keep the objects which were claimed of him. Such was the case where a person said he was heres or bonorum possessor. But the action could also be used against the possessor pro possitore, that is to say the person who could produce no other argument to prove his title to possession other than the fact of the possession itself. The defendant could be a possessor rei or a possessor juris. The possessor rei was a person who held a corporeal object which formed a part of the whole of the succession, the possessor juris was the person who intended to keep and exercise a right belonging to a succession. At the time of the formulary system, when the petitio hereditatis was begun by formula petitoria, the temporary possession was, as with the rei vindicatio, left to the defendant and this would explain the reason why it was advisable to request the bonorum possessio.

The Praetor, who was always desirous of combatting archaïsms and discovering improvements, introduced a means of evasion and liberation from the shackles imposed by the law of the XII Tables. In the event of the Praetor being asked to grant the possession of a succession he gave it to the demander. Furthermore, he placed in the hand of the demander a more efficacious weapon than the heres-

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\[\text{Dig., De hered. pet., v. 3. Ulp.}\]
**ditiatis petitio.** However, if the demander allowed the period to elapse without applying to the Praetor, the latter at once gave the temporary possession to him whom the Civil law would call to the succession and who was the next to follow in the order of rotation. This threat proved satisfactory, inasmuch as it hastened the decision of the heir. If the demander delayed until the short period established by the Praetor had expired, the succession did not remain indefinitely without a master, for another successor could obtain the temporary possession of same. If the heir died or renounced the succession, vacancy was not the natural sequence: the ulterior successors, who had been up to then prevented from inheriting, were able to obtain the possession of the succession, and they could hold this succession until such time as it was transformed into true property. It is to be noted that the aim of the Praetor was to find, as soon as possible, a “suitable representative” for the deceased person and to nominate at once as a successor, in default of the real heir, the next person who had the right to the succession, and, furthermore, to guarantee to the latter person the peaceful possession of the succession in question. Thus were attenuated the rigorous principles of the Civil law.

In time, as the new conditions existing were more and more understood and appreciated, the new institution developed itself and the Praetor became still more daring in introducing innovations, destroying the obscurities of the ancient law, establishing new regulations, creating new classes of successors, by conferring certain specific rights to successors of his own creation in opposition to rights possessed by the successors only recognized by the Civil law. The power and importance of the Praetor increased rapidly and he was able to apply his solution of difficulties without intervention on the part of the Civil law.

A good example of the discretionary powers of the Praetor is offered by the following case: A will was discovered at the decease of a testator. This will appeared to contain all the essential conditions exacted by the Civil law, but it lacked one thing, the *cretio.* How was it possible to hasten the acceptance of the will through the help of the *scriptus?* The Praetor proposed giving to the successor the *bonorum possessio secundum tabulas,* if he made the *agnitio* within the imposed period of time. However, since the
testamentary heir would hardly have procured any special benefit through this *bonorum possessio secundum tabulas*, if the proof of the validity of the will had been exacted of him, as in the case where he employed the *hereditatis petitio*, and that, furthermore, on the other hand the Praetor could not grant the possession to any person who took advantage of a supposed will, it was decided that certain factors would suffice for verifying and establishing the validity of the *testamentum* and claim.

If the will possessed the seven seals, the Praetor recognized that there existed a sufficient guarantee, inasmuch as this fact implied the presence of seven witnesses; there was nearly all the proof required to establish the validity of the act. However, the Praetor eventually became less lenient, and required the proof that the testator was a Roman citizen at the time of his death and, furthermore, that he was *sui juris*. The absence of these two essential requisites was the most frequent cause of the absolute nullity of the will. The granting of the *bonorum possessio* in accordance with these principles was not always definite, for, if a person could produce the proof of any irregularity in the will, it was considered that the *delatio* had never existed, the *bonorum possessio* reputed *non data* and offered to the nearest *ab intestato* heir. Nevertheless, the Praetor had attained his object: the succession had had a "master".

It is to be noted that if the *scriptus*, instead of requesting the *bonorum possessio*, allowed the period given to elapse, the first class, or category, of *ab intestato* heirs were called. The *delatio* made in their favour, the testamentary heir could no longer compel his rights to be recognized, except by employing the *hereditatis petitio sine re*, which required the proof of the will and prevented any ulterior *delatio*.

If the Praetor discovered any irregularity in the will, the *bonorum possessio* became *non data*, and the succession could not be granted by him if the will was not valid and in accordance with the requirements imposed by the Civil law. But there were causes of nullity of such minor importance, that it would appear unjust to prefer *ab intestato* heirs in place of those expressly designated by the testator as successors. The Praetor was not in a position to prevent the Civil law heirs from overthrowing the *testamentum*;
nevertheless, he could give, and gave, the *bonorum possessio* to the *scriptus*, until such time as they should do so, and to maintain it against the *bonorum possessores ab intestato* created by him. When a will was *non juri factum*, due to the non observance of certain essential forms, such as, for example, the solemnity of the *mancipatio*, or the *irritum* resulting from a *minima capitis minutio* of the *de cujus*, having disappeared at the time of his decease, or *ruptum* through the *agnatio* of a posthumous person who later on died before the testator, or *injustum* due to the omission of a *suus*, the heir obtained, nevertheless, the *bonorum possessio secundum tabulas* without risk of such becoming *non data* owing to one of the defects previously mentioned.

In all probability, the next of kin who were *ab intestato* heirs could begin the action *hereditatis petitio* and cause the *bonorum possessio* to be without effect. If, however, they did not employ these means, the *scriptus* remained *bonorum possessor* with effect, and he did not have to fear any interference on the part of the other praetorian successors who might attempt to resist his claims through the nullity of the will. This represents the second aspect of the *bonorum possessio secundum tabulas* and was that aspect to which was given the name of *bonorum possessio supplendi juris civilis gratia* in opposition to the *bonorum possessio confirmandi gratia* and the *bonorum possessio corrigendi gratia*.

In the beginning the Praetor gave the *bonorum possessio* to persons invested *jure civile* with the right to be called to the succession; for example, to a person regularly instituted, to the *sui*, to the *agnati*. The Civil law heirs found the same benefit therein as would be found by any "proprietor" who might simply wish to obtain more possession rather than actual proof of his title. Invested with a means of possession, the interdiction *quorum bonorum*, the heirs started by obtaining the possession of the hereditary objects, or goods, without it being necessary for them to prove their quality of heirs. Once in possession of the *bona* in question they were defendants in lien of possible plaintiffs and they could repel those who did not prove that they had held rights superior to those held by them. By granting the *bonorum possessio* in these hypotheses, the Praetor in reality only recognized the rights of the Civil law
heirs, at the same time rendering the way more easy with which they might be defended and have their interests protected. The *bonorum possessio* in this case was granted *confirmandi juris civilis causa*.

Afterwards the Praetor went so far as to confer the same privileges to persons whom the Civil law had not recognized as true heirs, but who, the Civil law heirs lacking, seemed worthy of having the goods, of which the heritage was composed, given to them, due to the relationship which existed between them and the deceased person. In this case the Praetor did not confirm the principles of the Civil law; he only completed the Civil law and enlarged its too restricted sphere of usefulness. The *bonorum possessio* was granted *supplendi juris civilis causa*.

At a later period in the history of Roman law, the Praetor became more daring. He allowed persons rigorously excluded by the Civil law from the succession to obtain the *bonorum possessio*. The Praetor became the “reformer” of the Civil law, and attempted to exterminate what he considered to be its iniquities! The *bonorum possessio* was granted *corrigendi juris civilis causa*. Thus there was established, progressively, a new successional regime complete in all its details and symmetrical to the legislation of the Civil law.

If the *bonorum possessor* was confronted with a *heres* he could not keep the succession. What he had obtained was only temporary, for the possession held by him had only the value which a measure of procedure could confer upon it, and merely destined to regulate, for the time being, a state of affairs which finally had to turn to the advantage of the true “proprietor” of the succession. If the *heres* took an action *petitio hereditatis*, he was quite certain of winning his case and the possession of the *bona* held by the *bonorum possessor* had to be handed over to the real *heres*. Therefore, in the earlier history of this system, the conflict between the *heres* and the *bonorum possessor* always resulted in favour of the former. The *heres* could always have the *bonorum possessor* dispossessed and have his vocation reduced to naught. The *bonorum possessio* was then reputed to be *sine re*—without effect. Later the Praetor became more bold;

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4G. II. 148, 149; Ulp., Reg., XXVIII, 13.
he granted to the *bonorum possessor* a possession which was more certain, and protected him from the claims of the *heres*. He allowed him to repulse the *petitio hereditatis* by the *exceptio doli*. The *bonorum possessio* was given *cum re*—with effect. The possessor then held all the advantages to be had, except the title.

The transformation, which took place and which furthermore appeared to have resulted from the work of Imperial rescripts, diminished the number of cases where the *bonorum possessio* could be given *sine re*. The heir who had been instituted in a *testamentum ruptum*, provided that he had obtained the *delatio*, was protected from any prosecution on the part of the legitimate, or rightful heirs; he who had been instituted in a *testamentum non jure factum*, was sustained in his possession; at first only in regard to the scriptus of a former *testamentum* valid in accordance with the principles of the Civil law; at a later period even against the *ab intestato* heirs.

If a *testamentum* did not exist, or if one existed but its nullity was duly established according to the principles of the Civil law, the *sui* immediately obtained the *bonorum possessio unde sui*, but if the *sui* were lacking the *delatio* was granted, in default of these, to the profit of the *gentiles*. Whatever the case, the *bonorum possessio* was *cum re*, the *possessor* being at the same time a Civil law and Praetorian successor.

If the heirs allowed the period given to them by the Praetor to elapse, those who were in the order to follow could make the *agnitio*; however, the *bonorum possessio* held by these was only *cum re* provided that the legitimate heirs renounced to the acceptance or died prior to it. This may be referred to as the first method, based on the Civil law and which had secured admittance in the *ab intestato* succession through the Praetor, but this system did not produce the two-fold advantages which were required of it. The established succession of the *sui heredes* and the *agnati* being called to the inheritance as pertaining to the *unde legiti mi*, the Praetor could not assign the *bonorum possessio* other than to the *proximus agnatus*.

It is to be noted that in the complete Praetorian system, there were four orders of heirs in all:

1. The *liberi* to whom the Praetor granted the *bonorum possessio unde liberi*.
2. The *legitimi* who had right to the *bonorum possessio unde legitimi*.

3. The *cognati* who secured the *bonorum possessio unde cognati*.

4. The surviving spouse who could claim the *bonorum possessio unde vir et uxor*.

The order of the *liberi* consisted of a certain number of descendants of the deceased person. In this class of descendants there figured first the *sui*. By giving them the *bonorum possessio unde liberi* the Praetor only confirmed the Civil law. Eventually he went so far as to correct it, by giving the *bonorum possessio* to emancipated children whom the Civil law excluded from the inheritance, inasmuch as these had ceased to be *sui*. This admission of emancipated children within the rank of the *ab intestato* inheritors, next to that of the *sui*, was the natural consequence of the gradual changes which had taken place in the manners and customs of Rome. In former years the act of emancipating children was one which resulted in the loss of some right for the child who had been the object of this measure. At a later period the principle was reversed and the emancipation was regarded as the conferring of a special favour on the child. The Praetor was able to consider that the emancipation had taken place, not in the sense of a forfeiture and to harm the child, but as an act intended to benefit him. He could even take it for granted that the child was still an active member of the family. It is true that the child was no longer a *suus* but he had the quality and the rights of a child, *liber*. This the emancipation could not have taken away from him. The "modern" conception outlined was not the result of any interpretation of the law of the primitive times, as may be readily imagined.

After the *liberi* had been called by the Praetor all those persons were called to whom the law of the XII Tables and the posterior Civil law granted the *legitimate inheritance*. To these *legitimi* the Praetor offered the *bonorum possessio unde legitimii*. This possessio could be asked for by the *sui* who had permitted to elapse the periods of time in which the possessio could be claimed without claiming the *bonorum possessio unde liberi*, then by the *agnati* after

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51. *pr. Dig., Quis ordo. XXXVIII, 15, modest.*
62. *No. 4, Dig., Unde legitimi, XXXVIII, 7, Ulp.*
which by the *gentiles*. In this case the Praetor did not introduce any changes to the Civil law, and this *bonorum possessio* was *confirmandi juris civilis causa*.

After the *legitimi* the Praetor offered the *bonorum possessio* to the *cognati*, that is to say to those who were related to the deceased person by ties of blood, *quos sanguinis ratio vocat ad hereditatem*. In this case the Praetor did not confirm the Civil law, inasmuch as the *cognati* were not *heredes legitimi*.

The Praetor also did not contradict the Civil law, since he only called the *cognati* if the *liberi* and *legitimi* were lacking. The *bonorum possessio unde cognati* was therefore granted *supplendi juris civilis causa*. All the *cognati* were not called by the Praetor to the inheritance, but first those who were the nearest relatives of the deceased person, *proximi cognati*, and, eventually, the following degrees of *cognati* up to the sixth degree inclusively and in the case of the seventh degree the children of cousins, *sobrino subrinave nati*. Outside of this the *cognati* who were too distantly related were not taken into consideration. When there were several *cognati* pertaining to the same degree, the heritage was divided between them.

If the *cognati* were lacking, the Praetor, as a last resource, called to the succession the legitimate surviving spouse, on the condition, however, that the marriage, the *justae nuptiae*, had not been dissolved by divorce. It is to be noted, nevertheless, that as long as the manus existed, there was no justification for the *bonorum possessio*. A woman was called as a *sua* to the succession of her deceased husband, but if she died prior to her husband she could not leave a succession inasmuch as she had no patrimony. In the case of a marriage *sine manu*, the surviving spouse held no title empowering him, or her, to obtain the succession left by the deceased spouse. Eventually, at a later period, and as a measure of favour, the Praetor admitted the remaining spouse within the rank of the successors, but only after all the *cognati* had been called. The *bonorum possessio unde vir et uxor*, was granted *supplendi juris civilis causa*.

To return to the question of the *bonorum possessio unde legitimii*: If there existed any *agnati* belonging to various degrees and the first *agnatus* did not request the *bonorum possessio* or renounc-

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72, Dig., Unde cognati, XXXVIII, 8, Gaius.
ed to it, the others were, notwithstanding this fact, entirely incapable of securing the heritage. Furthermore, the delatio to the profit of the gentiles was not feasible, inasmuch as after the proximus agnatus the nearest heirs were not the gentiles, but the remaining agnati. To overcome this imperfection the Praetor permitted the agnati the most remote to make the agnitio, in virtue of the lien of “blood relationship” which might exist between them and their deceased “relative”, and created in their favour a new order of successors, the order unde proximi cognati, which came immediately after that of the proximus agnatus. This “concession” once granted, the Praetor could not arrest the advancing tide of “leniency” and “generosity” which was submerging the Civil law! He was now obliged to grant the bonorum possessio to all the cognati who belonged to the same order, and in a subsequent or following, order to the surviving spouse, unde vir et uxor. Only the bonorum possessio granted to the two last classes mentioned could be made without effect by the gentiles, which was not the case for that of the agnati.

It may be considered that the Praetorian system of ab intestato heritage was brought to the summit of perfection when this important magistrate introduced the bonorum possessores unde liberi. The source of this new group was connected with the bonorum possessio contra tabulas. It is to be noted that in ab intestato succession—as in the case of heritage by testamentum—the gradual growth of the bonorum possessio was the same: established confirmandi gratia it finally became supplendi gratia and later on corrigendi gratia.

It is to be noted that once the bonorum possessio had become permanently established in Rome and had also become fully recognized by its people and legislators, the Praetor had also to have recourse to it to correct the imperfections of the Civil law. It is due to an imperfection that the bonorum possessio contra tabulas came into existence.

All the descendants sui other than the filius belonging to the first degree could, in accordance with the precepts of the Civil law, be disinherited inter caeteros—and the omission of these in the will did not affect the validity of the testamentum. A part of the heritage was granted to them. If a filius suus had not been disinherited
nominatim, the whole testamentum was null and void. For the disin­inheritance to be in order and valid, jure praetorio, it had to be made nominatim—in the case of all male descendants. In case of disin­inheritance not regularly established or through omission, the Praetor gave to the disinherited descendant the bonorum possessio contra tabulas, because there was no longer any practical necessity for any form of distinction. There was no justification whatever for this distinction, the more so considering the fact that any of the postumi could “break up” the will if they had been omitted from mention in the testamentum and that the very same effect was produced by the agnatio of some posthumous masculini generis or other, but not disinherited nominatim. Due to the bonorum possessio contra tabulas this deviation from the common rule finally vanished. When the name of a heres suus had not been mentioned in the testamentum by the de cujus, or had been only disinherited inter caeteros, the Praetor granted him the bonorum possessio contra tabulas if he was masculini generis and the will had been repealed. It was not completely annulled, but only as much as was necessary to permit the bonorum possessor to obtain advantages no less important than those secured by the filius suus who had been omitted from the will. The suus inherited contrary to the intentions of the testator, and for that reason the interpreters of the law referred to a “succession contrary to the testament.”

The descendants who were not free from the potestas caused the Praetor to think of those who had been under the rule of the potestas and who should have been, in accordance with reason, as­similated to the first category. This was done, when all the liberi existing, or not existing, under the potestas of the testator were call­ed by the Praetor to the bonorum possessio contra tabulas. This was a new innovation and principle, the use of which was found in the bonorum possessio commisso per alium edicto and in the bonorum possessio unde liberi. Thus all the issue of the deceased person, without distinction, could obtain the ab intestato succession prior to all other claimants.

One of the principal purposes which the Praetor had in mind when he created the bonorum possessio, was to find some person to whom he could offer the succession, and it was, apparently, prac­tically an indifferent matter to him whether the person upon whom
his choice had fallen was, or was not, as heres. It sufficed for the
time being and until such time as the hereditatis petizione was begun,
to grant him the benefits to be obtained from the conditions con-
ferred upon the honorum possessor. More than this the Praetor
could not possibly do. He attributed, therefore, the possession of
the heritage to the successor of his choice, which he was at liberty
to do, the fact duly taken into consideration that he was the primary
regulator of all matters pertaining to the question of possession.