

# THE RENTAL MARKET IN EARLY IMPERIAL ROME

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In Rome of the early empire, most of the residential population lived in rented apartments (*cenacula*). Only the privileged few could afford single-family dwellings; the character of this minority is vividly illustrated in Juvenal's famous line on Nero's persecutions: 'rarus venit in cenacula miles' (10. 18). Almost all of the non-privileged many, if they could afford accommodation, were obliged to dwell in buildings that they did not own, in exchange for rent that our sources agree was exorbitantly high.

However, not everyone in the tenant class was on equal footing, despite recent suggestions to the contrary.<sup>1</sup> The range of accommodation regularly available to the urban masses was, as will be shown below, quite varied, though this range was often effectively limited by the wealth and other social characteristics of the prospective tenant. The rental market of Rome can be reconstructed from three kinds of sources: literary references to rental; the types of rental situations described in legal texts; and the archaeological remains of apartment houses, particularly those in Ostia.<sup>2</sup> These sources converge to suggest a model of the urban rental market that is rather more complex than the one which has appeared in recent scholarship. It must be stressed, however, that the new model suggested below is still just a model, and that variations from it must have been numerous. For instance, no ancient authority conclusively demonstrates that a lease like the typical modern American lease (an apartment taken on a year term for exclusive occupancy of the tenant and his dependants, with monthly payment in advance and many services supplied by the landlord)<sup>3</sup> was legally impossible in antiquity, or was not in fact developed; but the Roman leases actually described in the extant sources are markedly different, and the ruins of Ostian apartment houses seem to accord well with the leases to which these sources refer.

## I. SUBLEASING OF ROOMS IN APARTMENTS, AND APARTMENT LEASES

If some large and sumptuous apartments be left to one side, the great majority of Ostian rental accommodations fall into two classes. The first of these typically exhibits a standard plan of apartment suite; it is thus described by Russell Meiggs in specific relation to the *Casa del Soffitto Dipinto* (II, vi, 6):<sup>4</sup>

The rooms are served by a corridor which runs along the front of the building. The main room lies at the north end of the corridor and occupies the whole depth of the apartment: it is lighted from the street by three large windows. The second room in size and emphasis is at the south end of the corridor; it too is lighted direct from the street, but by only a single window. The three remaining rooms are smaller and open off the west side of the corridor. Their lighting is indirect, through the corridor, and their wall decoration is less elaborate; these are rooms of secondary importance, probably bedrooms. The corridor, liberally lighted from the street, is much wider than a corridor need be: it is both hall and corridor, as if it were the vestigial remnant of the atrium.

<sup>1</sup> The model of the rental market proposed in this article is intended to replace the 'accommodation pyramid' described by R. F. Newbold, *Latomus* 33 (1974), 863-5; based on L. Homo, *Rome Impériale et l'Urbanisme* (1951), 565, 592-3; see also R. Pöhlmann, *Die Übervölkerung der Antiken Grossstädte* (1884), 107-9. (Newbold's model, which supposes for Rome an efficient disposition of housing space with no *de facto* segregation of rich and poor, is shaky on legal points, esp. 863-4.) I have frequently cited Enid Gaudie's masterly *Cruel Habitations: A History of Working-Class Housing 1780-1918* (1974), on Britain.

<sup>2</sup> On the remains, I have mainly used J. E. Packer, *The Insulae of Imperial Ostia, MAAR* 31 (1971); on which see however H. Riemann, *Gnomon* 47 (1975), 186-201; R. Meiggs, *Roman Ostia*<sup>2</sup> (1973), 585-6, 597-8. On similarities with Rome, see Packer, 74-9 (Rome's *insulae* were for the most part 'far less

methodically planned than any yet found in Ostia', 77); but see idem, *Boll. Com. Rom.* 81 (1968/9), 127-48, on the *Casa di Via Giulio Romano* in Rome. See also A. G. McKay, *Houses, Villas and Palaces in the Roman World* (1975), 80-99, who adds little in this area.

<sup>3</sup> On the modern lease, see 'Javins v. First National Realty Corp.', in *Federal Reporter* 428 (1970), 1071-83, esp. 1074-5 (U.S. Court of Appeals, D.C. Circuit; Wright, J.). In big-city slums, however, this formal contract becomes month-to-month, and in fact tends to be executed informally in a fashion not unlike the contract described in the second section of this paper: G. Sternlieb, *The Tenement Landlord* (1966), 88 (for Newark, N.J.).

<sup>4</sup> R. Meiggs, op. cit. (n. 2), 247; the 'bedrooms' here and elsewhere tend to average c. 20 m<sup>2</sup>, and thus are quite large.

This basic plan, widely found in Ostia,<sup>5</sup> consists then of two larger rooms at either end of a corridor, all three of these rooms being directly lighted; and a series of smaller and indirectly lighted rooms (probably bedrooms) lying off the corridor. Whether the bedrooms were lighted or not seems to be primarily a function of whether or not the rear wall of the suite was free to the air; at Ostia, examples of directly lighted bedrooms are III, ix, 3-4, and III, ix, 10. The central corridor is the principal means of passage among the large rooms at either end of it and the small rooms lying off it. It has not been observed that these rooms can all be named, on the basis of a passage in the *Digest*,<sup>6</sup> examined below.

James E. Packer, in his recent study of Ostian population statistics, assumed that each of these apartments (except for the largest ones) was inhabited by one and only one family.<sup>7</sup> But legal sources show that this assumption was not necessarily valid. These sources demonstrate that it was legally permissible for the owner of an entire housing unit (or a lessee from the owner, acting as an entrepreneur)<sup>8</sup> to rent out portions of that unit to various tenants; the normal unit of lease was called a *cenaculum*, or upstairs apartment flat.<sup>9</sup> The tenant of the *cenaculum* might have in turn the right to sublease parts of the flat to various subtenants; this practice, which he could use for his profit, was called *cenaculariam exercere*.<sup>10</sup> The *cenaculum* (along with its synonym *aediculae*)<sup>11</sup> is a general description of any multiple-room apartment within an *insula*, apartment building; but the word is usually confined to the better class of apartments, which would include most commonly the type described above. I shall refer to this type as the *cenaculum*-form.

Difficulties arose because of the praetorian liability occurring when anything was poured or thrown down from upstairs windows, thereby causing damage in the common way below; this 'quasi-delictual' liability ran not to the culprit, but to the one dwelling in the room on which the window opened. A problem resulted when a *cenaculum* was under lease to more than one tenant. Ulpian suggests that the praetor should solve part of the problem in this way (23 *Ed.*, *Dig.* 9. 3. 5. 1-2):

... Nam et si quis cenaculariam exercens ipse maximam partem cenaculi habeat, solus tenebitur: sed si quis cenaculariam exercens modicum sibi hospitium retinuerit, residuum locaverit pluribus, omnes tenebuntur quasi in hoc cenaculo habitantes, unde delictum effusumve

<sup>5</sup> It is Packer Type II C and D: op. cit. (n. 2), 8-10, 18-19; according to p. 91, above thirty-five such ground-floor plans are known. (A remarkable new variant: M. L. Veloccia Rinaldi, *Rend. Pont. Acc. Arch.* 43 (1970), 165-85.) While all these apartments have the same general floor plan, many (like the *Casa a Giardino* III, ix, 13-20) are two-storied and were doubtless much more desirable; in general, we also do not know whether ground-floor plans continued in upper floors, as Packer (p. 70) assumes. On Type II C at Rome, see P. Ziçans, in *Opusc. Arch.* 2 (1941), 191. To this tenant-group should be added the lessees of houses, of large apartments within houses, and of luxury apartments generally. Using information provided by Packer at 69-71 and 88-92 (but after making certain obligatory corrections), I would estimate that these forms of accommodation housed c. 17-1800 persons, both slave and free; of this group, about 40 per cent lived in houses, 20 per cent in luxury apartments, and 40 per cent in Type II C and D *cenacula*. Ostia's total population within the walls should perhaps be put at 20-35,000.

<sup>6</sup> The legal sources are mostly contemporary with Ostian evidence (about A.D. 100 to 225). On the orientation of juristic writings toward the city of Rome, see above all F. Schulz, *Principles of Roman Law* (1936), 33-4.

<sup>7</sup> J. E. Packer, op. cit. (n. 2), 69-70; but see R. Meiggs, op. cit. (n. 2), 597-8.

<sup>8</sup> The main texts concerning such entrepreneurs are *Dig.* 13. 7. 11. 5; 19. 1. 53 pr.; 19. 2. 7-8, 30 pr., 58 pr., 60 pr. This practice protected the owner against the risk of incomplete occupancy (on which see Suet., *Tib.* 35. 2), insulated him from the day-to-day business of handling tenants, and limited the owner's losses in the event that the *insula* became

uninhabitable; see esp. M. Kaser, *ZRG* 74 (1957), 157-69. Middlemen may have been common; did Crassus act personally as landlord in the huge section of Rome that he owned (Plut., *Crassus* 2)? On Cicero's property, see n. 49; in a forthcoming article in the *Classical Journal*, I will argue that his urban tenements must have been managed in this way. *Dig.* 19. 2. 7 suggests speculation among entrepreneurs. But observe the presence of slave *insularii* in the great Julio-Claudian families (*CIL* vi. 3973-4, 4347, 4446, 6215, 6217, 6296-9, 7291, 7407; cf. vi. 9292, 9479-83, 33863; *Juv.* 3. 195), and in the *familia Caesaris* (*CIL* vi. 8856, xiv. 2769; cf. vi. 8855; Suet., *Claud.* 38. 2); cf. G. Boulvert, *Esclaves et Affranchis Impériaux* (1970), 37, 139. As *institores*, the *insularii* usually bound the building's owner: *Dig.* 14. 3. 5. 1. The *exactor ad insulas* (*CIL* vi. 9383) collected rents, cf. *Dig.* 13. 7. 11. 5.

<sup>9</sup> For this meaning, see G. Calza, *MAAL* 23 (1915), 591-5; Calza used almost no secondary sources in this famous study, and so missed the crucial discussion of E. Cuq, *Dict. Ant.* s.v. 'locatio conductio (rei)', 1287 (with no archaeological reference). The text discussed below was therefore ignored until G. Hermansen rediscovered it, *Phoenix* 24 (1970), 342 f.; but he did not realize its full purport.

<sup>10</sup> Ulpian, *Dig.* 9. 3. 5. 1, quoted below. See in general L. Amirante, in *Studi B. Biondi* 1 (1965), 455-65. On the right to sublease, see A. Pernice, *ZRG* 19 (1898), 94-5; T. Mayer-Maly, *Locatio Conductio* (1956), 27, 30. The commonness of the practice cannot be established.

<sup>11</sup> H. Rowell, *CPh* 52 (1957), 217-21. The upper-class connotation of *cenaculum* is implied in Pompeian advertisements for lease: *CIL* iv. 138, 1136.

est. 2. Interdum tamen, quod sine captione actoris fiat, oportebit praetorem aequitate motum in eum potius dare actionem, ex cuius cubiculo vel exedra deiectum est, licet plures in eodem cenaculo habitent: quod si ex mediano cenaculi quid deiectum sit, verius est omnes teneri.

The theme is set by 9. 3. 5. 1: the tenant of the *cenaculum*, having sublet parts of it, is solely liable if he retains most of the *cenaculum*, but jointly liable with his subtenants if he retains only a small lodging for himself. In 9. 3. 5. 2,<sup>12</sup> Ulpian suggests a modification of this rule. He drives toward the legal point (expressed already in 9. 3. 5 pr.) that, if only one tenant of a *cenaculum* controls access to a room from which an object drops, that tenant should be solely liable for the resulting damage; but if more than one tenant has access, they should all be held jointly liable.

This text envisages a division of the *cenaculum* into three types of rooms: *cubicula* or bedrooms; *exedrae* or sitting rooms<sup>13</sup> (both of which could be inhabited by one tenant and, it may be, his family); and the *medianum* or central corridor,<sup>14</sup> held in common by all the tenants. As applied to the Ostian *cenaculum*-form, the *cubicula* are plainly the (usually windowless) rooms off the main corridor; the *exedrae* are the directly lighted rooms at either end of this corridor; the *medianum* is the corridor itself.<sup>15</sup>

The pattern of rental that emerges from this text involves a common corridor with (locked) private rooms lying off it and allotted between the principal tenant and the subtenants according to their rental agreements; probably *exedra-cubiculum* units were most common. This pattern of rental allowed several families to occupy a single apartment simultaneously.

As for the leases concluded between the principal tenants of *cenacula* and their landlords, the rental contracts envisaged in the legal texts concerning *locatio conductio rei* (leasehold) of urban dwellings normally run for a year or multiples of years, and the shortest payment-period envisaged is for a full half-year payable *at the conclusion of the period*.<sup>16</sup> Similar terms of lease and similar payment-periods are provided in most Egyptian leases for houses.<sup>17</sup> Such a lease-form, with payment *after* use, is very favourable to the tenant and

<sup>12</sup> On the action, see W. Wolodkiewicz, *RISG*<sup>3</sup> 12 (1968), 371-9; and the bibliography in M. Kaser, *Das römische Privatrecht*<sup>2</sup> II (1975), 428, nn. 24, 27. On the text of 9. 3. 5. 2, G. Beseler, *Studi P. Bonfante* II (1930), 71, doubted 'quod sine captione actoris fiat', perhaps rightly, although it is good as law: F. de Visscher, *La Régime Romaine de Noxalité* (1947), 531-2.

<sup>13</sup> See esp. Cic., *de Or.* 3. 17; *TLL* s.v., 1319 ll. 30-44 (esp. the references to Vitruvius). *Exedrae* are commonly rented in papyrus leases: see n. 17 below (A. Berger, 360, n. 134). See now S. Settis, *Aufstieg und Niedergang* I. 4 (1973), 666-71 and 672-5.

<sup>14</sup> On the word, A. Herdlitzka, *RE Suppl.* VI 386; G. Hermansen, *op. cit.* (n. 9), 345-7. Idem, in *Polis and Imperium: Studies E. T. Salmon* (1974), 167 f., adds little.

<sup>15</sup> Modern authors therefore err in referring to the *exedrae* as the *tablinum* and *triclinium*, and to the *medianum* as the 'atrium-hall'; e.g. J. E. Packer, *op. cit.* (n. 2), 8-10. This text supports Calza's view, *op. cit.* (n. 9), 595, against the relation of the *cenaculum*-form to the Italic *domus*; it goes against those seeking a relationship, e.g. most recently B. M. Boyle, *Journ. Soc. of Archit. Hist.* 31 (1972), 257-8. A good survey is now in L. Capogrossi Colognesi, *La Struttura della Proprietà* II (1976), 286-303.

<sup>16</sup> Ulpian, *Dig.* 43. 32. 1. 4 (citing Labeo); see L. Homo, *op. cit.* (n. 1), 595. Such an instalment payment is a *pensio*, see L. Wenger, *Canon in den römischen Rechtsquellen und in den Papyri*, *SAWW* 20. 2 (1942), 35-8. For annual *pensiones* see esp. Suet., *Nero* 44. 2; *Dig.* 36. 2. 12. 5. For multiple-year leases, *Dig.* 19. 2. 24. 2 (a *domus*), and 60 pr.; 43. 32. 1. 4; *CIL* IV. 1136. Payment *after* use is presumed in texts concerning tenants' justified withholding of rent, see esp. *Dig.* 19. 2. 27 pr. (*deductio ex mercede*), on which A. Watson *The Law*

*of Obligations in the Later Roman Republic* (1965), 115-16. For payment *before* use, there is only Ulpian, *Dig.* 19. 2. 19. 6. Note, however, that the entrepreneurs discussed above (n. 8) paid in advance: *Dig.* 19. 2. 7, 30 pr.; this accords with the nature of their lease.

<sup>17</sup> Lists of published leases, with payment terms, in A. Berger, *Zeitschr. f. Vergl. Rechtswiss.* 29 (1913), 327-30 and 377-90 (esp. 378-85); supplemented by G. Mickwitz, *Geld und Wirtschaft im römischen Reich des vierten Jahrhunderts n. Chr.* (1932), 205-6; more recent lists (only) in A. C. Johnson, *Roman Egypt to the Reign of Diocletian* (1936), 262; O. Montevecchi, *Aegyptus* 21 (1941), 287-94; J. Modrzejewski, *JfP* 7/8 (1953/4), 217, n. 29; R. Taubenschlag, *The Law of Greco-Roman Egypt*<sup>2</sup> (1955), 364, n. 1; H. Braunert, in *Festschrift F. Oertel* (1964), 36 (Braunert's papyri republished as *SB VIII 9931-2*); O. Montevecchi, *La Papirologia* (1973), 217-18; *BGU* XII 2202, p. 124. Most leases are for houses or parts of houses, and envisage payment by years or half-years. Payment by month is uncommon and seems to be purchased at the cost of signing a multiple-year lease, e.g. *BGU* IV 1116 (13 B.C.); *BGU* I 253 (244-9 A.D.); *C. P. Herm.* 119 (A.D. 253-68); cf. Berger, *op. cit.* 385-6. Rent is normally paid at the end of the payment period, see Berger, 387-8, and note M. Kaser, *ZRG* 91 (1974), 162-3; where rent is paid in advance, a lease clause may secure against eviction, *P. Rein.* 43 (A.D. 102); *P. Tebt.* II 372 (A.D. 141); see Mickwitz, *op. cit.* 126, 205 n. 1. There are many similarities with the Roman rental market. Even the start of the rental year is similar: it usually begins in high summer (compare Montevecchi, *Pap.* 218, with the sources in L. Homo, *op. cit.* (n. 1), 581-2, on 1 July at Rome. The same contractual form was also probably used in Hellenistic Delos; S. Molinier, *Les maisons sacrées de Delos*

thus suggests a considerable amount of trust on the part of the landlord; as two poems of Martial show, not everyone could pay on the due date (3. 38. 5), and some tenants allegedly fell years behind (12. 32. 3). While a chance of full payment remained, the landlord was doubtless tempted to leave the tenant in detention of the premises; the risk was the landlord's, the security normally only a tacit lien on the tenant's personal property within the apartment.<sup>18</sup> This evidence decidedly implies that a degree of social status was involved in taking a long-term lease of the type described above.

Much of the Roman law on urban tenancy refers to such stable and long-term arrangements, because they created a lasting relationship between landlord and tenant, and also involved more money, so that significant legal problems were both likelier to occur and likelier to be pursued.<sup>19</sup>

## 2. THE RENTAL OF LODGINGS

The great majority of Ostia's tenant population did not live in organized *cenacula* such as those described above. Rather, they lived in the mezzanines or the backrooms of the ground-floor shops in which they worked,<sup>20</sup> or (more frequently still) they lived in small one- or two-room flats. The commercial leases associated with shop-dwellings were perhaps in most instances also stable and long-term, rather like the leases for *cenacula*.<sup>21</sup>

Few Ostian apartment buildings not of the luxury or the *cenaculum* class preserve an intelligible upper-floor plan; still, what survives of the *Caseggiato degli Aurighi* (III, x, 1) and the *Caseggiato del Serapide* (III, x, 3) is enough to tell the tale. A typical upstairs flat has one or two rooms no longer clearly differentiated by form and evident purpose from other rooms; usually the rooms are in rows along the side of the building, each room taking light from the street or a central courtyard; the flat is often reached by a long interior corridor.<sup>22</sup> On what terms these flats were rented is not known, but it is reasonable to suppose that in some instances the leases for them also were stable and long-term. The objection which the poor might have had to such leases is obvious: payment in a large lump sum is very burdensome for those living on near-subsistence incomes. For the same reason, landlords might well have been reluctant to rent to the poor on conditions of trust similar to those they applied to tenants of *cenacula*.

As I observed above, there is no compelling legal reason why antiquity could not have devised a lease-form like that of modern times, so as to accommodate the needs of the poor. If such a form was not devised (and no evidence of any survives), perhaps the reason is that quite a different type of lease was common among the poor. The upper stories of some Ostian apartment houses display the small flats described above; but in the second story of the *Casa di Diana* (I, iii, 3, 4), and also in the first story of the slum-like *Caseggiato del Temistocle* (V, xi, 2), this pattern coexists with long rows of crudely partitioned cubicles that

(1914), 58-9. Monthly rent is known from Nicarchos, *Anth. Pal.* 11. 251 (Athens?; cf. I. Casaubon (1592) on Theophr., *Char.* 10. 2); payment by prytanies, Ammon. 414 (probably for state-owned houses; cf. Xen., *Poroi* 4. 19).

<sup>18</sup> This lien was a normal lease term, and finally was implied by law in the absence of provision to the contrary (the first such implication is from Neratius, *Dig.* 20. 2. 4 pr.); see now W. Schuller, *Labeo* 15 (1969), 267 f. Martial 12. 32 gives a lurid picture of its operation.

<sup>19</sup> On this aspect of the legal texts, see esp. D. Daube, *Roman Law* (1969), 71 f.; but also E. Volterra, *Riv. Ital. per le Sc. Giurid.* 11 (1967), 239-71. A. Pernice, op. cit. (n. 10), 95, erred on his own evidence in linking low social status with apartment rental; see esp. Cic., *Cael.* 17, with H. Rowell, op. cit. (n. 11), 219-20; T. Mayer-Maly, op. cit. (n. 10), 227-8; most modern legal literature is still confused, including, for example, M. Marrone, *La legittimazione passiva alla 'rei vindicatio'* (1970), 126-30. Of course, tenants not on long-term leases also fell under the rules of *locatio conductio*; thus Giton refers to his lodgings (see below) as a *con-*

*ductum*, Petron. 9. 4; cf. Mart. 9. 75. 1. But the contractual rules had little useful application to such lodgers.

<sup>20</sup> See G. Girri, *La Taberna* (1956), 37-43, who is widely accepted, for example by J. E. Packer, op. cit. (n. 2), 69. The statistics cited in n. 5 would suggest that c. 91-5 per cent of Ostia's population inhabited shops or small flats, or slept in the streets (cf., for Rome, Amm. Marc. 14. 6. 25).

<sup>21</sup> This is suggested by the pattern of Egyptian commercial leases, which also frequently introduce monthly rent payments; see esp. *P. Petrie* III 73 (third century B.C.), which may resemble a Roman shop lease: it is for a shop in a *synoikia* (below, n. 31), with monthly rent payment and renewal. A lease for five years of 'tabernae, pergulae' etc. is offered in *CIL* IV. 1136.

<sup>22</sup> For a description, J. E. Packer, op. cit. (n. 2), 177-85, cf. 69 ('an average living space of two rooms apiece'); plans, 106-7. Archaeologists tend to ignore the use of temporary partitions to divide larger 'rooms' into small 'apartments', both in these great *insulae* and in humbler structures like III, i, 12-13; but note Vitruv. 2. 8. 17.

are very poorly or indirectly lit.<sup>23</sup> The resemblance of such lines of rooms to hotel accommodation is suggestive. Consider, for instance, this description of the *Casa di Diana* by Meiggs: <sup>24</sup>

The division of the insula into independent apartments is not always apparent. In the house of Diana certain small groups of rooms seem to be interdependent, but it is not easy to see how the first floor was divided. It seems likely that this large building catered for rather different needs and was more elastic in plan, providing for the renting of much smaller apartments or even single rooms. There must indeed have been a large demand for temporary accommodation for visitors in Ostia, as well as many Ostians who could not afford to rent more than one or two rooms.

Actually, as was shown above, it was legally possible for Ostians to rent one or two rooms in an apartment suite. Still, it is likely that Meiggs is correct in seeing the somewhat more irregular wall pattern inside the *Casa di Diana* as indicative of a type of rental different from the apartment suites discussed earlier.

Here again the legal texts prove helpful. Another passage of Ulpian (*Dig.* 7. 1. 13. 8) discusses the situation where a legatee under a will is left the usufruct of a *domus*: <sup>25</sup>

Item si domus usus fructus legatus sit, meritoria illic facere fructuarius non debet nec per cenacula dividere domum: atquin locare potest, sed oportebit quasi domum locare.

The usufructuary is not allowed to divide up the *domus* into *cenacula*, that is, into the type of rentable apartments described above; nor may he set up spaces for rent (*meritoria*).<sup>26</sup> Ulpian adds that this latter term includes 'quae volgo deversoria . . . appellant', *deversoria* being lodging houses.

The best ancient description of a *deversorium* is the 'inn scene' in Petronius' *Satyricon* (94 f.), which was discussed in detail by the late Henry Rowell.<sup>27</sup> At 81. 1, Encolpius furtively rents a room (*locus*; cf. Greek *topos*) in a sea-side building which later turns out to be a *deversorium* (81. 3; 82. 4) or, what is the same thing, a *stabulum* (97. 1).<sup>28</sup> This *deversorium* belongs to M. Mannicius (95. 3), who is probably the *caupo* referred to at 98. 1; it is superintended by a gouty *procurator insulae* named Bargates, probably a freedman (96. 4). Bargates is assisted by a staff (*familia*, 95. 7) that includes his litter-bearers (96. 4), cooks or scullions, building attendants (95. 8) and assorted slaves (96. 6); there is also a woman who looks after the rooms and sees to meals ordered by guests (*aedicularum custos*: 90. 7; 92. 1), as well as letting in guests at night (cf. 79. 6). The establishment is therefore very large.

Encolpius had rented a single room (*cella*: 94. 4, 7; 95. 3, 5, 7), one of many such in the *deversorium* (97. 7). His door can be locked from inside or outside, as repeated references establish. The furniture of his room includes only a bed up against the wall (94. 8-9) and a large wooden candlestick (95. 6); one remembers the similarly Spartan furnishings in the rented garret of Cordus (Juv. 3. 202-7).<sup>29</sup> In addition to the riotous dinner described at 94 f., Encolpius dines in at 82. 1, and Bargates is interrupted at dinner in 96. 4; as the presence of full-time cooks also shows, it was common to have meals inside such a *deversorium* (cf. Suet., *Claud.* 38. 2). The residents, often drunk (cf. 93. 3), are referred to as

<sup>23</sup> *Casa di Diana*: J. E. Packer, op. cit. (n. 2), 127-34; plan, 94 (cubicles on second floor, rooms 6-7). *Caseggiato di Temistocle*: 193-5; plan, 110 (cubicles, rooms 10-14).

<sup>24</sup> R. Meiggs, op. cit. (n. 2), 249. This goes against the (quite impossible) view of Calza, accepted, for example, by A. G. McKay, op. cit. (n. 2), 96-7, whereby the first floor was a '*piano nobile*'; the ruins are irreconcilable with this thesis.

<sup>25</sup> The first sentence, at least, is not interpolated. On it, L. Amirante, *Labeo* 8 (1963), 207, with bibliography. This passage is crucial in establishing the two alternative modes for renting out space in *insulae*.

<sup>26</sup> This is the widest sense of the word, frequent in inscriptions (e.g. *CIL* VI. 15640; X. 1450, 3750); see *Dig.* 32. 91. 4; 47. 10. 5. 5; and below.

<sup>27</sup> H. Rowell, op. cit. (n. 11), 211-17. The scene is some Campanian city, probably Puteoli; on the influence of Roman housing patterns in Campania, see J. E. Packer, op. cit. (n. 2), 61-3. For the legal concept of lodging, see *The American Law of Property* 1 (1952), 192-4; at Common Law, it is distinct from tenancy (contrast n. 19 above).

<sup>28</sup> See H. Blümner, *Die römischen Privataltertümer* (1911), 455 n. 4; H. Rowell, op. cit. (n. 11), 226 n. 4; also F. M. de Robertis, *Ann. della Fac. di Giurisprud. Bari* 12 (1953), 125 n. 4, for legal sources.

<sup>29</sup> Compare E. Gaudie, op. cit. (n. 1), 97-100. Encolpius' room was 'furnished'. On locks, see also Mart., 7.20. 20-21.

*hospites* at 95. 5, 7; but as *deversitores* in a very similar scene at 79. 6. Obviously, they are the clientele of a *deversorium*.<sup>30</sup>

While it is not easy to characterize these *deversitores*, they are certainly not exclusively travellers. Encolpius himself had by the time of the riot already been in residence four days (81. 2), with no apparent intent to leave except when he willed. Others must have stayed much longer, as for instance the old woman with the bleary eyes and dirty linen cloak, who had a huge dog for a pet (95. 8); little likelihood that she was in transit. Still less so the lodger (*deversitor*) who at 95. 1-3, obviously regarding himself as on terms of intimacy with his landlord, brings in part of a meal previously ordered by Encolpius and his party, excoriates their wild behaviour in their room, and even tries to collect rent from them. His attitude may be described as proprietorial, bred of long familiarity with the surroundings. A mixture, then, of transient and permanent residents.

One final indication of the nature of Encolpius' *deversorium* may be observed. At 93. 3, Encolpius calls it a *synoecium* ('aliquis ex is qui in eodem synoecio potant'). Probably this word, which occurs nowhere else in Greek or Latin, is either a mistake for or a variant of the Greek word *synoikia*, a word used widely in Greek and Hellenistic sources to designate the lodging houses of the urban poor.<sup>31</sup> Herodian (7. 12. 6) refers to the densely crowded wooden tenements of Rome as *synoikiai*.

Back and forth the terminology weaves, from the hotels of travellers to the lodgings of the poor. At 80. 3, Encolpius names his *deversorium* (cf. 79. 6) a *taberna*.<sup>32</sup> In Cicero (*Inv.* 2. 4. 14-15), a *taberna* is an inn run by a *caupo*, and housing *diversores*; this sense (rather than 'shop') prevails into the second century A.D. *Taberna meritoria* is used of an inn where a traveller is murdered by his *caupo* (Val. Max. 1. 7, ext. 10); the term reappears in Suetonius (frg., p. 360) and in Isidore (*Orig.* 10. 182). *Tabernae* are the dwellings of the poor in Horace (*Carm.* 1. 4. 13; *AP* 229), and any residence at all in Ulpian (*Dig.* 50. 16. 183, if the text is right).

*Meritoria* are inns in the texts above, and also in the *Digest* (17. 2. 52. 15; 47. 10. 5. 5; 50. 16. 198); the word is also thus glossed. In Juvenal, they are the quarters of the poor (3. 234), a sense that reappears in the passage of Tertullian discussed below; and the word is also used of lodging houses in the *Digest* (7. 1. 13. 8; cf. 32. 91. 4).

At 91. 3 (cf. 94. 10), Encolpius names his lodgings a *hospitium*. In Pliny (*Ep.* 6. 19. 4) and in Apuleius (*Met.* 1. 7; 9. 4), the word is used of an inn;<sup>33</sup> so too in a legal text (*Dig.* 4. 9. 6. 3). *Hospitium* is the rented dwelling of a poor man in Juvenal (3. 166; cf. 7. 70), and reappears as a rented apartment in Frontinus (*Strat.* 4. 1. 10) and in the *Digest* (9. 3. 5. 1; 19. 2. 13. 7; 39. 2. 29).

<sup>30</sup> The suggestion of G. Bagnani, *AJPh* 79 (1958), 441-2, that *deversitor* means 'bartender', should be rejected. At 95. 8, *insularii* means 'building attendants' (as always in Latin), not tenants, contra H. Rowell, op. cit. (n. 11), 223-4.

<sup>31</sup> At Athens, *synoikiai* are lodging houses accommodating on short-term leases the lower classes (Is. 6. 19-21) or travellers (Ps.-Xen., *Ath. Pol.* 1. 17; Aeschin. 1. 43); they are often run by entrepreneurial middlemen called *naukleroi*: Is. 6. 19; Harp., Phot., Hesych., s.v.; Ammon. 330; Poll. 1. 75. As to the papyri, the subject has not been treated in secondary literature. These sources are helpful. It is a building with one (*P. Petrie* I 12. 7, *P. Petrie* II, p. 23: 238/7 B.C.; *PSI* x 1159. 19: second century A.D.) or more (*BGU* VII 1573. 25: 141/2 A.D.) owner, for whom it comes to be named (*P. Petrie* III 73: third century B.C.; *P. Fouad* III 59. 2: after 75/6; *P. Fayum* 37. 3: third century A.D.; *SB* VIII 9902 col. B II. 3: fourth century A.D.; compare, for Athens, Aeschin. 1. 125). It is managed by a superintendent (*P. Petrie* III 73) and has many tenants (*P. Fouad* III 59. 2; *P. Mich.* VIII 481. 34: early second century A.D.; *P. Fayum* 37. 3, a police report on a tenant), renting flats (*P. Fayum* 31. 13, with a note: c. A.D. 129; *P. Berl. Leihgabe* 16 col. B II, col. C 10: A.D. 161) or stores (*P. Petrie* III 73). A tenant pays six months' rent for another person

(*BGU* II 362 col. XIII 5: c. A.D. 215). *Synoikiai* are often associated with Alexandria (*P. Petrie* I 12. 7, with note above; *BGU* IV 115. 16, 19: 13 B.C.; *P. Mich.* VIII 481. 34). If *BGU* II 362 col. XIII 5 can be generalized, *synoikiai* may include apartment houses; there is no exact Greek translation of *cenaculum* in the sense of apartment. *SB* x 10233 (fifth century A.D.) may be a rent-receipt register from a lodging house.

<sup>32</sup> See T. Kleberg, *Hôtels, restaurants et cabarets dans l'Antiquité romaine* (1957), 19-25, who cites (129 n. 54) Cassiodorus, *ad Psalm.* 14. 1: 'Maiores nostri domus pauperum tabernas appellaverunt...'. Other probable examples of this sense (rather than 'shop') are Cic., *Att.* 14. 9. 1; Ascon. p. 37 c ('dormientem in taberna'); Tac., *Hist.* 1. 86. 2 ('in tabernis et cubilibus': 'in tenements and hovels'); so too, perhaps, Suet., *Nero* 37. 1; Juv. 1. 105. *Taberna deversoria*: Plaut., *Men.* 436; *Truc.* 697; Varro, *RR* 1. 2. 23; Suet., *Nero* 27. 3 (invariably an inn).

<sup>33</sup> See T. Kleberg, op. cit. (n. 32), 11-14, with other examples of 'inn'. Note especially *CIL* IV. 807 (Pompeii): 'hospitium hic locatur/triclinium cum tribus lectis'. *Deversorium* equals *hospitium*: Nonius p. 60; but *hospitium* is often used very generally in Latin, like 'quarters.'

Much the same pattern is observable in one of the rare pictures of lower-class housing in Rome, a famous passage from Tertullian's invective *Adversus Valentinianos* (7):

Primus omnium poeta Romanus (sc. Ennius) 'caenacula maxima caeli' simpliciter pronuntiavit, elati situs nomine vel quia Iovem illic epulantem legerat apud Homerum. Sed haeretici quantas supernitates supernitatum et quantas sublimitates sublimitatum in habitaculum dei sui cuiusque suspenderit extulerint expandierint, mirum est. Etiam creatori nostro Enniana caenacula in aedicularum disposita sunt forma. Aliis atque aliis pergulis superstructis et unicuique deo per totidem scalas distributis, quo haereses fuerint, meritorium factus est mundus. Insulam Feliculae credas tanta tabulata caelorum. Nescio ubi illic etiam Valentinianorum deus ad summas tegulas habitat.

Tertullian unfolds a distasteful picture of the heaven of the Valentiniani, a heaven which allegedly resembled one of the huge apartment houses of Rome.<sup>34</sup> These apartment houses rise floor upon floor (*tanta tabulata*), with their apartments (*cenacula* or *aediculae*) in turn subdivided by flimsy mezzanines (*pergulae*), the whole structure linked by countless stairs; the suggestion is of crowding and of squalor right up to the tiles. The Valentiniani had made the universe into a lodging house (*meritorium*); 'you would think this many-storied heaven was the Insula Feliculae!' If the Insula Feliculae at Rome could be called a *meritorium*, there seems little reason not to apply the same name to structures such as the *Casa di Diana* at Ostia.

As these examples indicate, Latin authors used with apparent indifference a wide variety of words to refer to one single form of housing, the lodging house. I have dwelt on this interchangeability of vocabulary because the most helpful legal texts refer to lodging houses as *cauponae*. In literary sources, *caupona* is used almost exclusively for 'inn', especially 'country inn'. So too in some texts from the *Digest* (4. 9. 2, 5), where only *viatores* are mentioned; both texts are from Gaius and date to the mid-second century. Most texts mentioning *cauponae* concern parts of the Edict where the word *caupo* was used (4. 9. 1 pr.);<sup>35</sup> these texts discuss the liability of a *caupo* for the safe-keeping of property entrusted by guests to him, and also for damage to or theft of guests' property (*Dig.* 4. 9; 47. 5). These references to *cauponae* are largely neutral in tone, equally applicable either to inns or to lodging houses. Were the Edictal liabilities extended, perhaps after Gaius, to embrace both inns and lodging houses?

The answer is yes. Paulus (*Sent.* 2. 31. 16) clearly equates *cauponae* with *meritoria*, *stabula* and *deversoria*: 'Quaecumque in caupona vel in meritorio stabulo deversorioque perierint, in exercitores eorum furti actio competit.' This text suffers from gross and inaccurate abbreviation, but the essential point is clear enough. Other legal texts (above, n. 28) identify *cauponae* with *stabula*. But there is specific legal evidence as well.

*Caupones* were liable under some conditions if property belonging to their guests was stolen. This liability included theft committed by some residents. The principal text is from Ulpian (*Dig.* 47. 5. 1. 6):

Caupo praestat factum eorum, qui in ea caupona eius cauponae exercendae causa ibi sunt: item eorum qui habitandi causa ibi sunt: viatorum autem factum non praestat.

The text<sup>36</sup> makes a crucial distinction between transients (*viatores*) and the permanent residents of *cauponae* ('qui habitandi causa in caupona sunt'). This distinction seems to interpret the wording of the Edict, which is preserved in 47. 5. 1 pr.: 'si quid a quoque

<sup>34</sup> On this passage see H. Rowell, op. cit. (n. 27), 220-1. The meaning of *pergulae* is uncertain; see G. Calza, op. cit. (n. 8), 586-7. The *Insula Feliculae* (or *Felices*), also mentioned in the *Notitia*, is one of several named *insulae* in Rome; most are named for an owner (cf. n. 31), but here the name is probably euphonic (cf. the *Insula Eucarpiana*, *CIL* vi. 10250).

<sup>35</sup> *Caupo* provides the crucial link to the urban *deversoria* of Petronius: see 39. 12, 61. 6, 62. 12, 98. 1. Latin apparently had no other common word for this occupation. For the Edictal provisions, see O. Lenel, *Edictum Perpetuum*<sup>3</sup> (1927), 131 (*receptum*); 205 (*damnum iniuria datum*); 333-4 (*furtum*).

<sup>36</sup> Interpretation is made difficult by the notorious problems concerning the development of the Edictal liabilities of the *caupo*; but this text is considered essentially classical even by the very critical S. Solazzi, *Scritti di Diritto Romano* III (1960), 506-8. See also M. Sargenti, in *Studi E. Albertario* I (1953), 555-8; F. M. de Robertis, op. cit. (n. 28), 134-43; and now W. Wolodkiewicz, *Riv. It. Sc. Giur.*<sup>3</sup> 14 (1970), 210-13, with further literature. The interpolation of the other two texts cited is arguably evident; the above authors discuss the matter at length. Compare *Dig.* 47. 10. 5. 5.

eorum quos ibi habebant (sc. caupones) furtum factum esse dicitur'; the Edict had thus implicitly recognized the role played by *cauponae* in housing a portion of the population. An appended and plainly interpolated sentence amplifies this principal text by naming the permanent residents *inhabitatores perpetui*. Another passage (4. 9. 6. 3), possibly interpolated following this text and in any event less carefully phrased, nevertheless clearly makes the same distinction: *caupones* are responsible for certain acts of permanent residents, but not for those of transients.

The sum of this evidence can be briefly stated: the Roman empire knew, and probably knew quite well and widely, places that housed both travellers and more permanent residents. Their double function ultimately received legal recognition. In the country, these *cauponae* or *deversoria* were inns and served an almost exclusively transient population; the upper-class sources mostly mention them as inns. In cities, similarly named structures housed both travellers and residents, side by side, so that 'inns' blended imperceptibly with the tenements of the poor; though doubtless, as at Ostia, a better class of *deversorium* was exclusively the hotel for wealthier travellers.<sup>37</sup>

### 3. THE TIERED RENTAL MARKET

It may be helpful, therefore, to distinguish more or less sharply between the long-term tenancy that is associated with the *cenaculum*-form; and the short-term tenancy, continuously renewed by both parties, that is associated with the inn-like *deversoria*. At root, this distinction would have social significance.<sup>38</sup> The making of a long-term contract, with delayed payment, implied trust in the tenant's future ability to pay; such trust derived from the landlord's assessment of the tenant's character and background. Rents for such privileged tenants were high; indeed, the lowest rent ever recorded for what may be identified as a *cenaculum* is HS 2,000 a year, the rent paid by a freedman in the second century B.C. (Plut., *Sulla* 1. 6). Rents mounted extravagantly in imperial Rome.<sup>39</sup>

On an entirely different plane of rental were housed the poor. As to the amount of rent, no accurate statistics survive. In Petronius 8. 4, rent is one *as* per night for a room in extremely unpleasant quarters.<sup>40</sup> For those who demanded conditions of even minimum decency, the price swiftly rose. In the late Republic, an unskilled labourer might make about HS 1,000 a year (Cic., *Rosc. Com.* 28). In 48 B.C., Julius Caesar remitted all Roman rents up to HS 2,000 a year, all Italian rents to HS 500 a year (Suet., *Caes.* 38. 2; Dio 42. 51. 1). Minimum rent for decent quarters in late Republican Rome perhaps approached this second figure. Tenney Frank suggested HS 360 a year, or about one HS a day.<sup>41</sup> Urban

<sup>37</sup> On hotels at Ostia, T. Kleberg, *op. cit.* (n. 32), 45-8, 53-6; R. Meiggs, *op. cit.* (n. 2), 428-30. The *Casa delle Volte Dipinte* (III, v, 1) may be a hotel: J. E. Packer, *op. cit.* (n. 2), 170. For Rome, compare Livy 45. 22. 2; Sidon., *Ep.* 1. 5. 9; *et al.*

<sup>38</sup> Broadly speaking, the distinction would help mark a typical boundary between upper and lower classes: see G. Sjöberg, *The Preindustrial City* (1960), 108 f., esp. 123-33. Observe the story of Vitellius who, at a time of personal financial stress, leased his *domus* and placed his family in a *cenaculum meritorium* (Suet., *Vit.* 7. 2). Lodging houses are also characteristic of Victorian city life, see E. Gaudie, *op. cit.* (n. 1), 152, 241-6; but I argue that in Rome, due to extreme overcrowding produced by inadequate transportation (Sjöberg, 92), they became the dominant form of housing for the lower classes. It may be noted that the tiered Roman market was closely reproduced in Athens and in Egypt (above, nn. 17, 31); in Athens, urban immovables were sharply divided into *oikiai* and *synoikiai* (Ar., *Thesm.* 272-73; Thuc. 3. 74. 2; Is. 2. 27; Aeschin. 1. 105, 124; Harp. s.v. 'naukleros'). What is apparently novel at Rome is the emergence of a relatively wealthy tenantry for apartments, and this despite the fact that 'there was probably something dubious or vulgar about renting'; E. Rawson, in *Studies in Roman Property* (ed. M. I. Finley, 1976), 87; see n. 19 above.

<sup>39</sup> Some statistics on luxury rent are collected by L. Friedländer, *Darstellungen aus der Sittengeschichte Roms* 11 (1922), 331-5. Many senators rented in Rome, usually at higher than HS 6,000 a year: Vell. 2. 10. 1; cf. Cic., *Pis.* 61; *Cael.* 17; Dio 46. 31. 3. Rents rose primarily because of land prices at Rome: see R. Duncan-Jones, *PBSR* 33 (1965), 224-5; compare Isaeus 11. 42, who gives a ratio, for two houses, of rent per year to value: 8.6 per cent. The government struggled to deal with resultant market problems: E. J. Philipps, *Latomus* 32 (1973), 86-95.

<sup>40</sup> This is a 'base rate' for housing of below-market quality, similar to rates occurring in the nineteenth century: E. Gaudie, *op. cit.* (n. 1), 159. One should distinguish 'physiological subsistence level' from 'cultural subsistence level': F. Heichelheim, *Wirtschaftliche Schwankungen* (1930), 100.

<sup>41</sup> T. Frank, *An Economic Survey of Ancient Rome* 1 (1933), 385, cf. 189; thus, about 35 per cent of a labourer's wages. On subsistence wages, R. MacMullen, *Roman Social Relations* (1974), 183 n. 1, with bibliography; the *Rosc. Com.* figure is a minimum daily wage, see M. Crawford, *Roman Republican Coinage* 11 (1974), 622-3. In 1885, half the London working class paid between one-quarter and one-half of their wages in rent: E. Gaudie, *op. cit.* (n. 1), 164.



*insulae* were considered an excellent, though risky, investment.<sup>42</sup> Some hypothetical net profits (before expenses) for the subleasing of *insulae* by entrepreneurial middlemen are given in the *Digest*: they range from 20 per cent to 33 per cent per year.<sup>43</sup> Profitability would depend in part on the amount of rent charged to tenants and the degree of crowding they would tolerate in exchange for that rent. The experience of the nineteenth century warns against undue optimism on this latter point; <sup>44</sup> 'what *meritoria* ever let one sleep?' laments Juvenal (3. 234), and the riotous scenes in Petronius illustrate this complaint. But the noise of crowding (Martial 12. 57) is just one of the many social problems associated with lodging houses in the sources.<sup>45</sup>

As to the manner in which permanent residents of these *deversoria* paid their rent, there is only one source that I know of on that point, and the source is not a good one on several different counts.<sup>46</sup> Vopiscus, professedly an author of the *Historia Augusta*, claims to have heard from his grandfather a story told by Diocletian (*Car.* 14. 2); it concerned the prediction which his Druidess landlady had made to the future emperor while he was staying 'in quadam caupona' during a military assignment in northern Gaul. Diocletian had encountered her to settle 'the account of his daily expense', *rationem convictus sui cottidiani*. This text implies daily accounting of rent, and perhaps daily payment.<sup>47</sup> In Petronius 8. 4, Ascyrtos pays in advance for one night's lodging. Weekly payment was more common in nineteenth-century working-class districts <sup>48</sup> (and it is still common today); but this may be primarily a function of the method by which workers are paid. It is probable that, in Rome as in the nineteenth century, the actual operation of the rental system required considerable restraint from the landlord in the collection of overdue rent.<sup>49</sup>

In summary, then, the remains of the apartment buildings at Ostia reflect a tiered system of urban leasehold that is detectable also at Rome in legal and literary sources. Those at a certain distance above the lower classes rented, for long terms, relatively large and high-quality apartments, in which they might sublease rooms in order to help pay their own rent; while the poor made do with short-term leases in tenements that physically resembled inns. This is the model that I promised above, and it is subject to the limitations I mentioned.

This model is interesting for its evidence of how thoroughly a basic economic structure like the urban rental market was, in the Roman world, not 'economic' in the modern sense of maximised profit, but instead interpenetrated by considerations of social status and subjected to social restraint and regulation. To such an extent was this true that the Roman market remained economically wasteful in many respects, particularly in its tendency to multiply risks; for example, the widespread use of entrepreneurial middlemen (above, n. 8) drove up the rents of everyone. The rich paid more because of delayed-payment leases, which had the disadvantage of being risky for the landlord; so too did the poor, above all because of the shortness of their term of lease. In neither case was the form of lease determined solely by the market's operation; delayed-payment leases, in particular, may have been an inherited feature, formed perhaps on the analogy of farming leases where delayed

<sup>42</sup> Gell., *NA* 15. 1. 3; Herodian 7. 12. 6; cf. n. 51.

<sup>43</sup> *Dig.* 19. 2. 7-8, 30 pr. (the latter text refers to the subleasing of *cenacula*); see R. F. Newbold, op. cit. (n. 1), 864-5. Similar practices in the nineteenth century netted 100 per cent profits: E. Gauldie, op. cit. (n. 1), 159.

<sup>44</sup> See E. Gauldie, op. cit. (n. 1), 82-92, with special reference to the problems created by lodgers.

<sup>45</sup> The legal texts variously concern themselves with flammability, poor construction, and prostitution.

<sup>46</sup> cf. R. Syme, *Emperors and Biography* (1971), 256; the source is late, the anecdote is apocryphal and does not concern Rome, and Diocletian was not a civilian. Probably bed and board were being paid for; cf. Polyb. 2. 15. 6 (inns in Cisalpine Gaul charge half an *as* daily for board). For such a billing, see *CIL* IX. 2689 (Aesernia, an inn). Diocletian's price edict omits to regulate rents.

<sup>47</sup> The word *meritoria* suggests straightforward exchange of money for services: Isid. 10. 182; cf. Livy 45. 22. 2. Such an arrangement could be

swiftly ended by unilateral action of either party; see F. Gallo, in *Syntelesia V. Arangio-Ruiz* II (1964), 1201-6. The main advantage of the short-term contract was that it gave *deversoria* a sponge-like ability to absorb a fluctuating number of lower-class tenants; for seasonal fluctuations in Rome's population, see R. F. Newbold, op. cit. (n. 1), 864-5.

<sup>48</sup> Most rents cited by E. Gauldie, op. cit. (n. 1), 157-68, are weekly, but not a few are daily. On payment of Roman workers, see F. M. de Robertis, *I rapporti di lavoro* (1946), 140-3; also the discussion in *Dig.* 19. 2. 51. 1.

<sup>49</sup> E. Gauldie, op. cit. (n. 1), 165-6; such allowance for arrears tends to raise rent overall. Cicero insisted on punctual payment (*Att.* 12. 32. 2), but still faced problems in collecting (*Att.* 15. 17. 1; 20. 4); on his urban holdings at Rome (including several *insulae*), I. Shatzman, *Senatorial Wealth and Roman Politics* (1975), 403-4; also P. Walcot, *Greece and Rome* 22 (1975), 122-8. Note the proverbially speedy *caupo compilatus*: Petron. 62, 12; cf. Mart., 7. 92. 5-6.

payment was economically rational. The survival of the delayed payment, one might hypothesize, was precisely due to the element of social trust it seemed to imply.

No impetus to the improvement of the rental market's efficiency appears to have existed. Even the simplest devices to eliminate local inequities in the market, such as public or private clearing-houses for rental information,<sup>50</sup> are never attested. The owners of *insulae* were apparently for the most part wealthy members of the upper classes, casually investing in the hope of a guaranteed return;<sup>51</sup> freedmen, by contrast, do not seem to have bought up urban housing, though Trimalchio did own an *insula* (Petron., *Cen. Trim.* 71. 2). What is even more significant is the absence of class-consciousness among tenants; for example, no source ever complains, in the fashion of the modern age, about the landlords of Rome as a class. Contrast the result when in 68 Nero, despite economic circumstances already very trying for the urban population, attempted to divert tenants' annual rental payments from their landlords to the *fiscus* (Suet., *Nero* 44. 2);<sup>52</sup> the measure brought on open resistance *from tenants*, who probably feared (quite rightly, as Suetonius points out) that the agents of the *fiscus* would be far less tolerant of payment compromises than were their own landlords. The perennial outcry of ancient authors about high rents in Rome does have an ironic aspect, therefore, although admittedly high rents were largely the result of over-intensive use of land.

As for the Emperor, little help came from that quarter. The Emperor owned some *insulae* which he managed through his *familia* (above, n. 8); nonetheless (nor is this surprising) no concept of public housing, or even of public responsibility for constructing sufficient units of housing, ever seems to have developed, despite the ready analogy of food distributions. In general, the market was left to function 'freely', with little regulation from above, no matter the hardship that was worked. Only great catastrophe elicited imperial subventions for housing, the most usual form however being outright grants to owners of property.<sup>53</sup> Remission of rent occurred only in revolutionary circumstances.<sup>54</sup> Rent control was unknown.

To be sure, some imperial legislation did affect housing; building codes and laws on demolition are the best known examples. All such legislation would doubtless profit from being considered in juxtaposition with the model proposed above. But, insofar as law was concerned, the rental market remained predominantly a creature of the private law;

<sup>50</sup> Tenants apparently obtained quarters on the information of crude advertising (e.g. Petron. 38. 10; cf. n. 33) or through oral report (e.g. Petron. 6-8). *Dig.* 19. 2. 60 pr. mentions the 'showing' of apartments to prospective sublessees; cf. *Mart.* 12. 32. 23-4.

<sup>51</sup> See above, nn. 8, 42, 49; on such investment, *Cic.*, 2 *Verr.* 3. 199; *Fin.* 2. 83; also *Att.* 1. 14. 7 (an *insula* owned by Quintus); *Cael.* 17 (Clodius); *Off.* 3. 66 (lower nobility); cf. *CIL* vi. 65, 67 (M. Vettius Bolanus, prob. *suff.* A. D. 66); *Dig.* 5. 3. 27. 1; note also the commonness of women as owners (Petron. 95. 3). Regular return is emphasized in *Cic.*, *Att.* 14. 10. 3, 11. 2; 16. 1. 5; cf. R. Duncan-Jones, *The Economy of the Roman Empire* (1974), 296, n. 3, for an isolated example of alimentary funds invested in urban properties; and note the early imperial extension of *superficies* to private property, cf. A. Paladini, *Nov. Dig. Ital.* s.v. 'superficie' (1971), 941-4, and F. Pastori, in *Studi G. Donatuti* 11 (1973), 871-96. Freedmen are known to have inherited *insulae*, at least: Petron. 71. 2; *Dig.* 37. 7. 7; *CIL* vi. 10248, 29791. A more diversified ownership is implied by Vell. 2. 130. 2; *Tac.*, *Ann.* 15. 43. 2. We might expect freedmen at the entrepreneurial level (compare, for Athens, Isaeus 6. 19). On urban investment, see now P. Garnsey, in *Roman Property*, (op. cit. in n. 38), 123-132; add to the sources above *Nepos*, *Att.* 14. 3; *Mart.*, 3. 31. 2; 4. 37. 4.

<sup>52</sup> See R. F. Newbold, op. cit. (n. 1), 866-9. These rents would have been due 1 July (above, n. 17). Suetonius clearly implies that landlords were not to be paid, and notes the *fiscus'* insistence on fresh coin.

For the economic background, see M. K. Thornton, *Festschrift f. Vogt (Aufstieg und Niedergang)* II. 2 (1975), 160-71, very superficial.

<sup>53</sup> See R. F. Newbold, op. cit. (n. 1), 861-3; exceptional: *Tac.*, *Ann.* 15. 43. 2. A Neronian measure encouraging the building of private homes (Gaius 1. 33) hardly represents a responsible approach to the problem of insufficient housing (pace Newbold); on competition in house-building among the wealthy, see esp. Strabo 5. 3. 7. The building codes looked mainly to outward appearance and public security. J. Vogt, *Das Erbbaurecht* (1950), 5-19, though exaggerated, is still interesting on the management of public urban properties.

<sup>54</sup> Remissions occur in 48 (*CIL* XIV. 4531, from Ostia; Suet., *Caes.* 38. 2; Dio 42. 41. 1) and in 41 (Dio 48. 9. 5); see Z. Yavetz, *Latomus* 17 (1958), 515-17; M. Frederiksen, *JRS* 56 (1966), 133-5, establishing the date of Caesar's remission; J. P. Royer, *Rev. hist. de droit* 45 (1967), 191-240 and 441-50. On the revolutionary nature of these remissions, *Caes.*, *BC* 3. 21. 1; Dio 42. 22. 3-4; 32. 2; on consequent anger among landlords, *Cic.*, *Off.* 2. 83, with Frederiksen, 138-9. I have no access to Z. Yavetz, *The Plebs Urbana and the Abolition of Debts* (1958), 149 f., in Hebrew; but cf. idem, *Plebs and Princeps* (1969), 45. Contractual remission, which seems to be associated with unexpected economic hardship (see most recently A. Thomas, in *Studi G. Donatuti* III (1973), 1271-7), occurred also in the case of urban leases (*Dig.* 19. 2. 5), a fact not often observed, but cf. J. Benöhr, *Das sogenannte Synallagma* (1965), 105-6.

therefore the profit would surely be much greater still were the juristic sources on rental housing to be treated from the same perspective. One might well anticipate that the writings of the jurists would not only reflect the Roman market, but also respond to it.<sup>55</sup>

One example suffices to illustrate this important topic. The juristic texts on the contract of urban leasehold, wherever their subject can be identified, are concerned with long-term rental. These texts enforce on the landlord an implied warranty of continuing habitability, a warranty which, though not unqualified, nevertheless extends throughout the term of lease even for many circumstances not within the landlord's physical control.<sup>56</sup> This legal position was remarkably progressive, as can be established by the fact that at Common Law no such general warranty was implied until 1970.<sup>57</sup> Of course, the Roman achievement must be evaluated in its proper context: it was the upper classes, with their long-term leases, who primarily benefited from the liberalism of the law. The lower classes, if they were dissatisfied with their quarters and could find an alternative, simply moved on.<sup>58</sup>

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<sup>55</sup> As is obvious from my remarks above, the juristic sources faithfully reflect rental institutions. Modern scholarship on Roman jurisprudence has inclined to the view that it was reflective of and sympathetic to its society and social structure, but internally oriented in its argumentation and (unlike modern law) not even in part aiming for the control and alteration of society. For bibliography, see M. Kaser, *Das römische Privatrecht*<sup>2</sup> (1971), 10-11, 183, 210-14; esp. L. Lombardi, *Saggio sul Diritto Giurisprudenziale* (1967), 36-54; B. Vonglis, *La Lettre et l'Esprit de la Loi* (1968), 200-1; further bibliography in M. Kaser, *Privatrecht*<sup>2</sup> II (1975), 569, 576-9; and note the comments of F. Wieacker, in *Festschrift M. Kaser* (1976), 3-27, esp. 5-6. What is needed is a view of Roman jurisprudence as an instrument of social control, in a framework which goes beyond the trivializing 'ideologies' currently fashionable in Italy, but which is not too all-embracing, either.

<sup>56</sup> cf. T. Mayer-Maly, op. cit. (n. 10), 153-6. This warranty, which goes beyond the normal duty to furnish the premises, is naturally limited by the state of Roman technology; however, it included, beyond the continuing basic inhabitability of the dwelling (19. 2. 27 pr., 28 pr.-1; cf. 39.2.13.6, 43.1),

its physical security and the non-obstruction of its lights—19. 2. 25. 2, on which A. Rodger, *Owners and Neighbours* (1972), 87-9. Gross violation justified the tenant in abandoning the premises; smaller violations perhaps allowed a deduction from the rent (*arg. ex Dig.* 19. 2. 27 pr., 28 pr.-1), but see G. Nicosia, *Riv. It. Sc. Giur.* 9/10 (1957/8), 424-6. Note also *Dig.* 43. 10. 1. 3: 'repair and deduct' authority for tenant's performance of a duty publicly imposed on the owner.

<sup>57</sup> In the case cited above, n. 3; see also 'Marini v. Ireland', in *New Jersey Reports* 56 (1970), 130-47 (Supreme Court of New Jersey; Haneman, J.); however, both these cases admit narrower interpretations than their general language suggests. In some jurisdictions (for example, in Great Britain) legislation replaces Common Law in this area. See generally C. Donahue, *Modern Law Review* 37 (1974), 242-63.

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