

FREE LABOUR AND PUBLIC WORKS AT ROME

By P. A. BRUNT

Some years ago I maintained that the common people in the city of Rome had to earn much of their living in casual employment, partly for instance in the unloading and portage of goods that arrived by sea, partly in the building trade.¹ This hypothesis cannot be established by the accumulation of literary or epigraphic testimony, nor from archaeological material, though I shall argue later that none the less it must be accepted; however, I did adduce two texts which, I thought, did not so much confirm as illustrate the use of free labourers in building. Professor Lionel Casson, who seems to disbelieve the hypothesis altogether, has recently shown that my inference from one of these texts (Cicero, *ad Atticum* XIV, 3, 1) was novel and somewhat arbitrary²; though I do not concede that it was necessarily incorrect, I therefore withdraw it from the debate. I might of course have cited certain other texts considered below (n. 89); there remains in any case, however, the famous passage in Suetonius, of which I took a conventional view and of which he now proposes a quite new interpretation. This seems to me impossible. Let us start by examining it, before coming to more general considerations.

I. THE STORY IN SUETONIUS, *VESPASIAN* 18

Suetonius writes: 'mechanico quoque grandis columnas exigua impensa perducturum in Capitolium pollicenti praemium pro commento non mediocre optulit, operam remisit, praefatus sineret se plebiculam pascere'. In Casson's words, 'for centuries this anecdote has been taken to mean that the engineer dangled before Vespasian some form of labour-saving device which Vespasian turned down in order to keep the workmen on the project from being fired and hence deprived of the chance to earn their daily bread'. Casson believes that this cannot be right, since the workmen would have been slaves. He writes: 'we happen to know that, when Vespasian started the rebuilding of the Capitolium, he tried to get the clearing of the ground, a job involving merely muscle, done for nothing: he shouldered the first load of soil himself by way of encouraging others to follow suit'. According to Xiphilinus, whose epitome of Dio (LXVI, 10, 2) he is citing, Vespasian acted thus 'evidently bidding the other men of most distinction to do likewise, in order that the rest of the populace might have no excuse for shirking the service'. Suetonius' version of the anecdote spares us this absurd conjecture (*Vesp.* 8, 5). Yet Vespasian can hardly, in any case, have been so naive as to think that the citizens would work just because the emperor and other *principes* each threw up a spadeful of soil, still less, as Casson suggests, can they have been invited to work for nothing. It is more likely that Vespasian's action was rather like the ceremony of laying a foundation stone.³ Casson's presumption that once Vespasian had found the *plebs* unready to work without pay, he resorted to a gang of slaves has no support in the story anyhow.

Casson also observes that a 'mechanicus' is not an 'inventor' and that 'commentum' may mean 'plan' and not 'invention'. 'Mechanicus' of course means 'technician' or 'engineer' (*TLL* s.v.), but 'commentum' in this context is far more likely to represent a device that an engineer might suggest, i.e. a mechanical invention, than the kind of plan

¹ *Past and Present* no. 35 (1966), section IV, reprinted in M. I. Finley (ed.), *Studies in Ancient Society* (1974), ch. IV; see authorized and revised German translation in H. Schneider (ed.), *Zur Sozial- und Wirtschaftsgeschichte der späten röm. Republik* (1976), which gives some additional bibliography.

² *Bulletin of the American Society of Papyrologists* xv (1978), 43 ff. Cf. also my *Italian Manpower* (1971), ch. XXI, cited as *IM*. Other works cited by name of author or short title: D. van Berchem, *Les distributions de blé et d'argent à la plèbe rom. sous l'empire* (1939); R. Duncan-Jones, *Economy of the Roman Empire* (1974); T. Frank, *Economic Survey of Ancient Rome* v (1940); G. Bodei Giglioli, *Lavori pubblici e occupazione* (1973); O. Hirschfeld, *Kaiserliche Verwaltungsbeamten* (1905); R. Meiggs, *Roman*

Ostia (1973); Henriette Pavis d'Escurac, *La préfecture de l'annone* (1976); F. M. de Robertis, *I Rapporti di Lavoro nel Diritto Romano* (1946) (*Rapporti*); *Lavoro e Lavoratori nel Mondo Romano* (1963) (*Lavoro*) (these two books are the most fully documented works known to me on the subject matter of this paper); E. de Ruggiero, *Lo Stato e le opere pubbliche in Roma antica* (1925); J.-P. Waltzing, *Étude Historique sur les Corporations professionnelles chez les Romains*, 4 vols. (1896-1900); I have been unable to consult Macqueron, *Le Travail des hommes libres dans l'antiquité rom.* (1958).

³ Mooney commenting on Suet., *Vesp.* 8, 5 aptly quoted as parallels Tac., *Ann.* 1, 62; Suet., *Nero* 19, 2 (cf. Dio LXII, 16, 2), to which Casson's explanation is inapplicable.

Casson proceeds to conjecture. On his view a technician suggested to Vespasian that he should be 'allowed to recruit a work party from the *plebs*, using the dole as a *quid pro quo*': after Vespasian had vainly exhorted the plebs to work for nothing, the technician proposed that they should be coerced, as a condition of receiving their grain rations; hence there would be no cost in labour, and the small remaining expenditure would be that of the equipment, which must in Casson's view hitherto have been supplied by the contractor providing the slave force. This hypothesis seems to me impossible.

(1) The recipients of the dole numbered 150,000–200,000, including some boys; was none henceforth to receive it except in return for work on the site of the Capitol, and if only some recipients were to be forced to work, how were they to be selected and by whom? ⁴

(2) The *mechanicus*, on any natural interpretation of Suetonius' words, promised that he would convey the columns to the Capitol at a very low cost, not that he had a plan by which some one else could so convey them. But the conscription of dole-recipients for a *corvée* would necessarily have been the task of the authorities who had powers of coercion.

(3) No doubt *corvées* had been imposed for public works in early Rome. The Caesarian charter of the colony of Urso in Spain empowers the local council to require five days' work a year of every male adult inhabitant and three days' work for each yoke of draught animals for such purposes (*ILS* 6087, xcvi). The document is in part tralatitian, and we cannot tell if the requirement was commonly, or ever, enforced. De Ruggiero adduced a few municipal inscriptions which (he thought) pointed to *corvées*; they are not unambiguous. It is, however, certain that humble people could be forced to render corporeal services to the state or to their local communities in the Severan period, and probable at all times.⁵ All this is irrelevant to the city of Rome. There is no evidence for forced labour there in the late Republic or Principate, or that its use was ever proposed.

(4) A *mechanicus* was not of rank and station to give the emperor advice of the type suggested by Casson. He was surely a professional expert like a *mentor* or architect. *Mentores* would receive an *honorarium*⁶ and they, like architects under a ruling of Severus, could be sued for furnishing false measurements; ⁷ though the jurists are chiefly concerned in this connection with land-measurements, what they say is plainly relevant to the *mentores aedificiorum*, who formed a *collegium* at Rome (*ILS* 1689), and to whom Trajan alludes in writing to Pliny (*Ep.* x, 18); the *mentor* is liable 'sive aream vel tignum vel lapidem metiendo mentitus fuerit' (*Dig.* xi, 6, 6 (Paul)). The profession of architect was considered by Cicero (*de offic.* i, 151) respectable for those inferior persons who needed to earn their living. Vitruvius indeed exalts the profession, nor was he himself alone in being well-educated and socially reputable (see e.g. *ILS* 7729),⁸ yet Trajan observed that most practitioners in Italy came from Greece (Pliny, *Ep.* x, 40), and over half the civilian architects attested epigraphically were slaves and freedmen.⁹ Architects in the office of the *curatores aquarum* ranked as mere *apparitores* (Frontinus, *de aqu.* 100, cf. Cic., *leg. agr.* ii, 32) and in

⁴ van Berchem, 28 f.; 145 f. In Suet., *Aug.* 41 we should perhaps read: 'ac ne minores quidem pueros praeterit, quamvis non nisi a quinto decimo (MSS: undecimo) aetatis anno accipere consuessent', assuming that until Augustus only boys who had reached the putative age of puberty were eligible, but that Augustus gave rations to younger boys. Perhaps Trajan simply revived Augustus' practice (Pliny, *Paneg.* 25–8; H. Kloft, *Liberalitas Principis* (1970), 99 n. 72, holds perhaps rightly that Pliny here refers to grants of money, but this will not make much difference, if the same persons received *frumentationes* and *congiaria*, see n. 75). Cf. n. 73.

⁵ de Ruggiero, 170, cf. also e.g. *Dig.* l, 1, 17, 7; 4, 12; 4, 4, 2; 5, 8, 4.

⁶ *Dig.* xi, 6, 1 *pr.* (Ulpian): 'crediderunt veteres . . . operam beneficii loco (sc. a mentoribus) praebere et id quod datur ei ad remunerandum dari et inde honorarium appellari'; this assimilated them to *advocati*, xix, 2, 38, 1; l, 13, 1, 10; both could receive fees for specific services, distinct from the salaries that might be paid by public authorities to doctors and 'professors' of the liberal arts (e.g. *Dig.* l, 13, 1).

⁷ *Dig.* xi, 6 *passim*; note 7, 3 (Ulpian): 'hoc

exemplo etiam adversus architectum actio dari debet qui fefellit; nam et divus Severus adversus architectum et redemptorem actiones dandas decrevit'; if this was a Severan innovation, the actions previously available against an architect must have been *ex locato conducto* (*operis faciundi*) or *ex stipulatione*, which were certainly available against the *redemptor*: Severus perhaps envisaged a case in which the architect was also *redemptor* (n. 9). Cf. *TLL* s.v. *mentor* A 6.

⁸ Vitruvius i, 1 is anxious to bring architecture into the category of arts 'quibus prudentia maior inest' (Cic., *de offic.* i, 151), arguing that it requires knowledge of literature, mathematics, history, philosophy, music, law and astronomy, as well as manual dexterity in draftsmanship. Martial v, 56 regards it as a profession for dullards.

⁹ I. Calabi Limentani, *Studi sulla società rom.* (1958), 174 ff. Architects as *redemptores*, *ibid.* (cf. n. 7). See also P. Gros, *Aurea Tempia* (1976), 55 f. *Contra* L. Richardson, *AJA* lxxxii (1978), 245 f. Cato and Vitruvius do not suggest that gentlemen were their own architects: Cic., *Q.f.* iii, 1, 1 f. shows what they might contribute to design.

the army (like *mensores*) as *immunes*, along with various craftsmen and clerks, i.e. as non-commissioned soldiers who were exempt from fatigues.¹⁰ Hadrian organized a staff on a military model of *fabri, perpendiculatores* (? = *mensores*), architects and every kind of person concerned in the construction or decoration of buildings, probably to accompany him on his travels (*Epit. de Caes.* 14, 5). Thus, though an architect or a *mentor* (n. 6) could be a man who enjoyed some esteem, this was often not the case; it is significant that neither profession appears among the liberal arts to whose practitioners the emperors granted valuable privileges (e.g. *Dig.* xxvii, 1, 6). It is inconceivable that a *mechanicus* had higher standing; one might assimilate him to the *ballistarii* in the army, who were also *immunes* (n. 10), or to the *machinatores*, Severus and Celer, otherwise unknown but perhaps men of free birth, whom Nero employed in the planning of his Golden House (*Tac., Ann.* xv, 42); one recorded *machinator* is a freedman (*ILS* 7727). Seneca connects those experts with high scaffolding and multi-storey buildings (*Ep.* 88, 22).

Architects and other such experts might also be contractors (n. 7), though Vitruvius evidently thought that it was the architect's function to draft the building contract with care for the interests of client and contractor alike (I, 1, 10). He refers to his own share in letting out a contract and superintending the building work at Fanum; the language used—'conlocavi curavique faciendam' (v, 1, 6)—arrogates to himself the functions of the local magistrate or curator, and he may well have held such a position at Fanum. He very seldom mentions workmen of any kind, no doubt because it was normally the contractor's business to provide labour.¹¹ If Vespasian's *mechanicus* was an expert adviser to the emperor, it was not then his office to propose the conscription of labour, and had such a person meddled in public policy, he would have earned not a reward but the retort 'ne supra crepidam sutor iudicaret'. If he was a contractor, it would presumably have been his responsibility to provide labour, but again he could not have proposed coercion. Perhaps indeed he tendered at an exceptionally low price and explained that a mechanical invention would permit him to economize on labour costs. But of course equally he could have suggested such a device in the planning stage, when the experts had to calculate costs, as for Claudius' harbour at Ostia (*Dio* lx, 11, 3; *Quintilian* II, 21, 18), or as part of the specifications in contracts for which others were to tender.

So it remains best to stick to the conventional interpretation which Casson was the first to assail. It is of course no objection, as Casson perhaps thinks (his n. 26), that it makes the technician propose 'replacing muscle with some other form of power'. One has only to read Vitruvius (x, 1, 3 f.) to see that this would not have been alien to the mentality of a technician. The famous verses on the saving of labour by the water-mill (*Anth. Pal.* ix, 418) illustrate the same fact. Technical inventions often made little headway in practice; the water-mill was not much adopted until late antiquity. That is a very different matter. In fact Vespasian would not adopt the invention proposed to him; it might not have been more practicable than the projects of Nero's *machinatores* to 'essay by art what nature denied' (*Tac., Ann.* xv, 43) or the machine for conveying stone from quarries designed by a certain Paronius (*Vitruv.* x, 2, 13 f.), but Vespasian did not reject it on this basis. He did not want to save labour costs, as he wished to maintain his *plebs*.¹² And that implies that he was paying wages to them for work on the Capitol. For much of this work nothing but muscle was needed, and that was all that many of the free poor in Rome could supply.

II. GENERAL CONSIDERATIONS: THE NATURE OF THE ARGUMENT

Casson proceeds that in order to buttress my scanty ancient evidence I tried 'to marshal support from other quarters'. This is to mistake the nature of my argument. Obviously a

¹⁰ *Dig.* l, 6, 7 (Tarutienus Paternus, *lib. 1 militarium*), also for *ballistarii*; cf. E. W. Marsden, *Greek and Roman Artillery, Historical Development* (1969), ch. VIII for some instances. See *ILS* 2034; 2057; 2421; 2459 (architects); 2058 f.; 5947a (*mensores*). There were no military engineer officers in the Roman army, certainly not the *praefectus fabrum* (Kornemann, *RE* vi, 1920 ff.), as some still suppose.

¹¹ *Fabri*: see note 29; plasterers, vii, 3, 10; *phalangarii*, who carried heavy loads: x, 3, 7.

¹² 'Pascere' can have a more general connotation than 'feed', *OLD* s.v. 3. Dr de Ste Croix thinks the whole anecdote fictional, as Vespasian could have used such an invention (if workable) for military fortifications, but admits that as Suetonius accepted it, it is at least *ben trovato* and shows that the *plebs* could be expected to get pay for public works.

couple of ancient texts could not have sufficed to *demonstrate* my hypothesis. An accumulation of evidence that slaves supplied most casual labour in Rome might have *refuted* it. No such evidence is adduced by Casson or can be found. The sceptic might then be tempted to conclude that my hypothesis and Casson's assumption that public construction was largely left to slaves are both equally arbitrary. However, more general arguments may enable us to choose rationally between them. There is an important point of methodology involved. Casson demands specific evidence and relies on an argument *e silentio*. But this is not justified in cases where specific evidence cannot be expected. Ancient authors show little or no concern with the labouring classes. Inscriptions cannot make good the deficiency in literary texts; the poor could not afford to put them up, and probably could seldom read them. No one can doubt that in a pre-industrial society the immense majority of the total population must have got their living by cultivating the land and raising animals. Yet, so far from this truth being susceptible of statistical proof for the Roman empire, hardly any persons slave or free, apart from *actores* and *vilici* (n. 51), who worked on the land are attested epigraphically.^{12a} A historic fact, far more certain than most propositions which the historian of Rome may justify with numerous citations from ancient sources, must be deduced from general considerations. The conditions of the urban poor are not much better attested, and in particular we cannot expect much information on the practice of hiring free labour (Part IV). It is the less surprising that we are not informed how far free or slave labour was employed in public works, since the little evidence we have for these works under the Principate leaves us uncertain even about the administration in which persons of note and substance were engaged (Part III). However, there was certainly a considerable but fluctuating demand for unskilled labour in building operations and other trades at Rome (Part V), and this demand could not have been met economically by exclusive reliance on slaves (Part VI). Free labour must have been cheaper, and it was available; the free poor needed employment (Part VII). The inference seems to me *certain* that free labour was extensively employed on public works at Rome. This makes it *probable* that the policy of promoting public works was *in part* designed to provide such employment, especially as it is associated with Republican politicians and with emperors, who desired to stand well with the urban populace; again, the absence of testimony expressly suggesting this for Rome can be accounted for (Part VIII). I do not mean to suggest that at Rome slaves were not used as well as free men in building work. A work force that could be kept continuously employed was probably servile, and in the absence of an apprenticeship system, it may well be that most skilled craftsmen were slaves (or freedmen), who had been trained at their masters' direction and expense. I am also not claiming that what is true for Rome holds for other towns in the empire. It will be apparent that some at least of the conditions that favoured the employment of the free poor at Rome did not subsist elsewhere. On the other hand, an argument *e silentio* will not in my judgement prove that in other towns hiring free labour was uncommon, and that the free poor were therefore mostly craftsmen working for their own account (a class which is of course well attested).

III. THE ADMINISTRATION OF PUBLIC WORKS AT ROME IN THE PRINCIPATE

It is only the chance survival of Frontinus' treatise *de aquis* that provides us with some information about the upkeep of the aqueducts. This confirms that the responsibility lay, as their title implies, with the senatorial curators, assisted by an imperial procurator, and shows that for the purpose of ordinary maintenance they had at their disposal two gangs of slaves, numbering 700 in all, and including some skilled craftsmen (*de aquis* 103; 112; 116); the architects in the curator's office (119, cf. the SC of 11 B.C. in 100) were among their salaried staff and obviously free men. It so happens that some of the slave craftsmen are commemorated on inscriptions.¹³ The first of the slave gangs had been formed by Agrippa; till his time all maintenance had been let out to contractors on terms that obliged them to employ a minimum number of slave workmen (96). All this shows that routine work which

^{12a} The indexes of *CIL* v, ix and x reveal six *coloni*, two *saltuarii* (slaves), an *ergastularius* and *topiarii* (slaves) and a freedman *pomarius*. There is more

information about employees in some imperial villas (Hirschfeld, 137-9).

¹³ Hirschfeld, 282.

could go on day by day was done by slaves. But large scale works were still contracted out to *redemptores* (119; 124, cf. *ILS* 3512); what workmen they employed he does not say: it was not his concern.

By analogy with the *cura aquarum*, we might readily assume that the various administrators in the Principate of the public buildings and temples of Rome, the urban streets and the Italian roads also had slave gangs at their disposal. But no inscriptions seem to survive that would prove this (though a little is known of clerical personnel, as well as of equestrian officials who assisted the senatorial curators).¹⁴ Nor is the assumption necessary, though it may be correct. It is possible that, as in the Republic, work was always contracted out. We do in fact know of contractors for the Italian roads,¹⁵ but perhaps (as in the case of the aqueducts) only for major repairs.

In the Republic of course all public works were contracted out by censors or other magistrates, and it was the responsibility of the magistrates to certify that the work done was satisfactory and to mulct the contractor, if it were not. The contractor, on his part, had to provide sureties and real securities for fulfilment of his obligations, no doubt because he would receive down payments in advance for the costs of the work to be done. These practices are well attested in municipalities both under the Republic and in the Principate.¹⁶ In the case of the maintenance of a single temple at Rome the work could be let out to a single *redemptor* (Cic., *Verr* II, 1, 130), while the paving of the Via Caecilia was divided into stretches, each of which was let out to a different *manceps*.¹⁷ Even in the Republic, however, building works at Rome could be on a scale beyond the resources of any individual contractor. Companies were formed for state contracts, in which large numbers of citizens (wealthy of course) had an interest as early as Polybius' time (VI, 17); he notes that they would bid, among other things, for the repair and construction of public buildings. Did this practice continue in the Principate?

Imperial building programmes often vastly exceeded most of those which the Republic had attempted before. But we know almost nothing of the administrative procedures employed. Emperors like Augustus frequently take credit for the erection of new buildings. But it seems improbable, and is certainly not recorded, that they engaged in personal supervision of the work. They must have left this to agents. The maintenance and repair of the aqueducts in Frontinus' time was clearly the responsibility of the *curatores aquarum*, and we may suppose that similar functions were discharged by the various curators and other officials concerned with public and sacred buildings, with urban streets and with the Tiber banks and city sewers; it is known that the *curatores viarum* acted in the same way (n. 15). But Frontinus (II-13) does not suggest that his predecessors had been concerned with building the new aqueducts provided by Augustus or Claudius, nor are any of the other officials actually recorded as having supervised new constructions. Claudius charged Narcissus with the draining of the Fucine Lake,¹⁸ and imperial freedmen may have superintended other public works, though Nero's *magistri* for the Golden House (p. 83) were perhaps of free birth. The appointment of Vespasian of the illustrious *eques*, L. Vestinus, to superintend the rebuilding of the Capitol (Tac., *Hist.* IV, 53), and by Titus of other *equites* to see to the ornamentation of public works and temples (Suet., *Titus* 8) may perhaps be treated as a development analogous to that whereby *equites* displaced imperial freedmen in the chief secretarial offices. However, with the possible exception of two equestrian officials in the third century, no later parallels can be found, and maybe the

¹⁴ Hirschfeld, 205-11; 258-72.

¹⁵ Tac., *Ann.* III, 31; Dio LIX, 15; Siculus Flaccus 146 L.; *CIL* VI, 8468 f.; Hirschfeld, 209.

¹⁶ Mommsen, *Staatsr.* II³ 443 ff., esp. 450 ff. (in 450 n. 3 he is mistaken on *CIL* XIV, 2922 = *ILS* 1420, which relates to Praeneste); the most important evidence is Cic., *Verr.* II 1, 128 ff.; for magisterial *probatio* see 133 ff. and 140; *iudicatio*, 130; *praedes praediaque*, 142-4. The *lex operum Puteolana* (*ILS* 5317), the most instructive municipal document, shows that the contractor might receive half the payment due after furnishing sureties and securities. The formula of magistrates: 'locaverunt ...

probaverunt' recurs often in early inscriptions (e.g. *ILS* 5325); for Rome see *ILS* 5892; cf. 6089 (Malaca) LXIII. The system survived in the Severan period, see *Dig.* XXII, 1, 17. 7; L, 8, 3 *pr.*; II *pr.*-1; 12 *pr.*; 10, 2, 1.

¹⁷ Degraffi, *Inscr. Lat. Liberae Reip. Rom.* 465 (= *ILS* 5799), cf. 464. In the former document public money is assigned 'mancupi et operis'; presumably the *manceps* is a small man, and the state itself pays his workmen; similarly Cato envisages that the land-owner may have to pay *operarii* brought in by a contractor for olive-picking (*de agris* 146, 3).

¹⁸ Tac., *Ann.* XII, 57; Dio LX, 33, 5.

senatorial curators, assisted by equestrian officials and imperial freedmen, were in charge of major new projects as well as of the upkeep of the old.¹⁹

Nor again do we know how the superintendents of such works, whoever they may have been, set about their tasks. Did they, for instance, use material and equipment owned by the state and employ the labour force themselves, whether it consisted of slaves owned by emperor or state or of workmen, slave or free, hired for the purpose? In private contracts the client might supply the material and the contractors the labour force (n. 27). It is clear from an inscription of A.D. 193 that the *a rationibus* had at his disposal tiles and other building material.²⁰ No doubt the stone or much of it used for public works came from imperial quarries.²¹ Still, the work of quarrying the stone, of transporting it to Rome and of using it in constructions may have been let out to various contractors. The abundance of evidence for imperial procurators and other staff concerned with the quarrying operations has indeed suggested to some that they took place under the direct management of officials, employing both slaves (who could be kept in continuous employment) and in the second century, if not earlier, convicts condemned to penal servitude; convicts were indeed available not only in the mines and quarries but also for public works; but it was perhaps an eccentricity of Nero to order that they should be transported from all parts of the empire to Italy for his building projects there (Suet., *Nero* 31. 3). It may, however, be noted that the exploitation of mines, or of particular pits, was sometimes let out to individuals or companies,²² and it would perhaps be rash to assume that the same system never obtained for any of the imperial quarries. We must certainly beware of arguing that epigraphic silence disproves reliance on contractors; for instance not a single inscription survives to attest the publicans who collected the *vicesima hereditatum* at least down to the time of Trajan,²³ and publicans concerned with other taxes are sparsely documented.²⁴ It may be then that the procurators of the quarries and their staffs supervised and checked the operations of contractors. In any event, there is no evidence such as exists for the quarries to suggest direct management of building operations in the city of Rome, and even if the state owned the material used, or much of it, it does not follow that it did not turn to contractors to carry out the actual building and to provide the labour. The fact that major repairs on the aqueducts and work on the Italian roads were let out on contracts suggests *a fortiori* that the same procedure was followed for new constructions too.

In that case who let out the contracts for such constructions and exercised the functions of *probatio* and *iudicatio*?²⁵ If it was nominally the emperor, by whose advice did he act? And who were the contractors? It is obvious that no single person could have furnished adequate financial guarantees for a building of the size of the Colosseum. Was the work then let out to a *societas*? This is plausible, yet there is no specific evidence for such *societates*, as there is for companies collecting taxes or exploiting the mines.²⁶ An alternative is possible. A contractor might undertake not to construct a whole building 'uno pretio' even for a private client, but to build for so many feet, supplying material and labour, or he might contract 'in singulas operas', which perhaps means that he was to be paid at a daily

¹⁹ Exceptions: *ILS* 1347 and 1430 f. Other equestrian officials (Pflaum, *Les Carrières Procuratoriennes équestres*, 1028 f.) look like assistants of the curators, as in my judgement the *procurator aquarum* merely (in form) assisted the *curator aquarum*. On the other hand, so many more *procuratores aquarum* (Pflaum, 1032) are attested that it may be that the curators of public works were only given such assistants when there was a special need, connected with new construction or major repairs. In any case I do not doubt that such officials, when appointed, and imperial freedmen actually carried out most of the administration. Only under Augustus (*ILS* 932) has a senatorial curator a title that specifically suggests that he was confined to maintenance work ('*curator aedium sacr. monumentorum public. tuendorum*'). See in general Hirschfeld, 265-72; de Ruggiero, chapters VII, IX and XI (which show how much more is known of Republican than of imperial practice).

²⁰ *ILS* 5920, cf. *CIL* VI, 455.

²¹ However, not all quarries were imperial, see *Dig.* VII, 1, 9, 2 f. and 13, 5 (Ulpian); XVIII, 1, 77 (Javolenus); XXIII, 5, 18 (Javolenus); XXVII, 9, 3, 6-5, 1 (Ulpian and Paul); XLI, 1, 8 (Marcian); L, 16, 77 (Paul).

²² Hirschfeld, 145-80. For penal servitude see S. Mrozek, *Eos* 1965, 341; Mommsen, *Strafr.* 949 ff. Nero's order was unusual, cf. Jos., *Bj* VI, 418; Pliny, *Ep.* X, 31 f.

²³ Pliny, *Ep.* VII, 14; *Paneg.* 37-9; they are indeed still found in Egypt under Pius (*P. Ross-Georg* II, 26), a fact unknown to me when I challenged Hirschfeld's assumption that Hadrian introduced direct collection in *Latomus* XXV (1966), 488 f.

²⁴ S. J. de Laet, *Portorium* (1949), Index s.v. *conductores, publicains*.

²⁵ The *curatores aquarum* had certain judicial powers (Frontinus 127 and 129) and no doubt *iudicatio* in regard to contracts they let out.

²⁶ For instance they are not mentioned in *Dig.* XXXIX, 4 nor in any other title.

rate for the labour supplied, when the client perhaps furnished the material; he remained liable for the quality of the work. We may think of the division of work on the Via Caecilia (n. 17). Different contractors could also of course have undertaken the excavation of the site, the transport of material, and various forms of ornamentation, as distinct from the basic construction.²⁷ All this must have multiplied the burden that fell on the public administrators, whoever they were.

Juvenal suggests that in Rome men who contracted for temples, rivers, harbours, drainage, burials and cesspools might rise from humble origins 'ad fastigia rerum' (III, 30-40). But the very few epigraphically attested *redemptores* look like small men, who could certainly have undertaken no more than repair of (say) an aqueduct or a parcel of some major construction like the Via Caecilia (n. 17). One of them was an officer of the *collegium fabrum tignariorum*.²⁸ The term *fabri* can of course denote all kinds of skilled craftsmen in wood or metals and is often made more precise by an adjective such as *tignarii*. Originally the *fabri tignarii* were workers in wood, but it is quite wrong to describe them, as for instance Tenney Frank did, as carpenters; we are expressly told that they were builders and that *tigna* could include all building materials. Even 'fabri' *tout court* often means builders. There is a further ambiguity in that it can refer either to masters or employers on the one hand or to wage-earners on the other.²⁹ Plainly it is a *faber* in the former sense who could be a *redemptor*. The corporation was organized in fifty decuries with over 1,300 members.³⁰ It should go without saying that if it included all or most of the 'builders' in Rome, 'builders' must be restricted to masters; many more skilled craftsmen must have been employed in Rome (Part V). There is no evidence that slaves were members. However, the masters need not all have been *large* employers, if indeed any were. Many of the known officers were perhaps freedmen; that was certainly true of the *redemptor* mentioned. Still, they were probably no less prosperous than their compeers at Ostia, where theirs was apparently the wealthiest of the guilds.³¹ That does not mean, however, that they had very large slave forces at their disposal; at Ostia, according to Meiggs, 'it is unlikely that the largest quarters known to us had room for more than twenty slaves'.³² A fragment of Venuleius, who probably wrote under Marcus or Commodus, is relevant: 'The person who has contracted to build an *insula* should not hurry, mustering builders from all quarters and providing a host of day-labourers (*plurimis operis adhibitibus*), nor on the other hand should he be content with one or two, but he ought to avoid extremes in accordance with the rational practice of a careful builder, having regard to time and sites'.³³ The implication is that a builder might have no more than one or two permanent employees, no doubt slaves, and that for a large private job, such as the construction of an *insula*, he would need to hire

²⁷ *Conductio* 'in pedes mensurasue': *Dig.* xix, 2, 36 (Florentinus); 'in singulas operas': 2, 51, 1 (Javolenus); it is not explicit that the *opus faciendum* is a building). Note 2, 30, 3 (Alfenus): 'Qui aedem faciendam locaverat, in lege dixerat: "quoad in opus lapidis opus erit, pro lapide et manupretio dominus redemptori in pedes singulos septem (sestertios septenos, Mommsen) dabit" . . .', cf. Cato, *de agric.* 14, 3; 16 for the client supplying material. The handiwork of different groups of craftsmen and the division of the work into different sectors have been discerned in the Colosseum (A. Boethius and J. B. Ward Perkins, *Etruscan and Roman Architecture* (1970), 222). Contract for transport of columns: *Dig.* xix 2, 25, 7 (Gaius), cf. Cic., *Verr.* II, 1, 147. Otho was supposed to be employing several contractors for his private house (Tac., *Hist.* 1, 27).

²⁸ *CIL* vi, 9034: 'Ti. Claudius Aug. l. Onesimus redemptor operum Caesar. quinq. coll. fabr. tignua lustrali xliix' (A.D. 79-83); Waltzing II, 118.

²⁹ *Dig.* L, 16, 235: "'fabros tignarios' dicimus non eos dumtaxat qui tigna dolarent sed omnes qui aedificarent", cf. xli, 1, 7, 10: 'appellatione tigni omnes materiae significantur, ex quibus aedificia fiunt' (Gaius); VIII, 5, 8, 1 (Ulpian). Thus Varro's *saeptorum genus fabrile* may be constructed of stone, brick or earth (*RR* I, 14, 1 and 4), and while Vitruvius

holds that the early *fabri* built in wood (iv, 2, 2), he speaks of *fabri* = skilled builders who work in all kinds of material (vi, 8, 9 f.). For *fabri* as builders see also Plaut., *Miles* 919; Cato, *de agric.* 14, 1 (for a villa); Cic., *Nat. Deor.* III, 65; Seneca, *Benef.* vi, 15, 8; *Nat. Qu.* vi, 30, 4; Colum. I *pr.* 4; Gell. xix, 10, 2; *Dig.* vi, 1, 67 (Scaevola). Frank, *ESAR* v, treating *fabri* as carpenters (see his index), has consequently nothing to say of the building trade, which must have been the most important of all trades at Rome. In *Dig.* xvii, 1, 26, 8 the *faber*, not necessarily a builder, who buys and trains a slave, is a master; in Cato, *de agric.* 21, 5 and Seneca, *Benef.* vi, 15, 8 he earns a daily wage. Waltzing II, 115-24 lists other *collegia* concerned in public works at Rome, e.g. *structores* ('id est, aedificatores', *CJ* x, 64, 1). A *lapidarius* and a *tector* are employees in *Dig.* XIII, 1, 5, 7; IX, 2, 27, 35.

³⁰ Waltzing I, 351; II, 118.

³¹ In *ILS* 7224 f.; *CIL* vi, 9405 only one or two officers give filiation. Cf. Meiggs, 319 for *fabri tignarii* at Ostia.

³² Meiggs, 317 and 226.

³³ *Dig.* XLV, 1, 137, 3. Venuleius: W. Kunkel, *Herkunft u. soziale Stellung der röm. Juristen*² (1967), 181 ff.

outside labour ; in order to meet the prescribed date for completion (which Venuleius goes on to discuss), he might be tempted to employ workmen of insufficient skill.

On all the questions discussed in this section we are reduced to surmises. They admit of more than one solution, and here we ought indeed to require better specific evidence than we possess, before choosing between them.

IV. THE HIRING OF LABOUR

If we know so little of the administration of public works at Rome, in which persons of note and substance were engaged, it is far less surprising that there is almost no evidence on the labour employed. Ancient writers belonged to the leisured class, or wrote for readers of that class, and the condition and employment of the poor were of no interest to them. So far as concerns Rome, even Juvenal, as Gilbert Highet remarks, depicts 'the peculiar sufferings of middle-class penury'.³⁴ He and his like lodge no doubt in wretched tenements, but they pay high rents for them by the year (III, 225). They have some furniture, enough to fill a wagon (10 ; 202 ff.), clearly more than the wretched artisan who had nothing to lose but his stool, his place of work and his little bedroom and bed (Cic., *Cat.* IV, 17). They practise 'artes honestae' (III, 21 f.), only to be outdone by Greek rivals (76-85). They are among those who live beyond their means 'ambitiosa paupertate' (180-3), and who, if disappointed, can buy an excellent house and garden in some country town (223-31). They are not recipients of the corn-dole, but hope to pay for toga, shoes, bread and heating from the *sportulae* of private patrons (I, 119 f.). The great mass of the inhabitants of Rome are outside Juvenal's purview.

Silence on the truly poor extends to the lawbooks. B. W. Frier has recently remarked that the legal texts concerning leaseholds of urban dwellings envisage contracts running for a year or multiple of years, or at least for six months, with rent often payable at the end of the period: 'such a lease-form, with payment *after* use, is very favourable to the tenant and thus suggests a considerable amount of trust on the part of the landlord'.³⁵ The landlord had indeed a lien on the tenant's personal property, but this was worth little unless that property were itself of substantial value. Frier rightly infers that the tenants were of fair social status; I would prefer to say, of some economic substance. These tenants, he argues, rented *cenacula*, but there was also much poorer accommodation (*meritoria*) on the upper floors of *insulae*, in which a man might rent a single room, paying probably in advance at a daily rate. Frier could cite only two texts to illustrate this hypothesis. Yet it must be correct. If the jurists are silent, it is surely because there would be no litigation between landlord and tenant in such a case: even when the landlord did not require a payment in advance, he would simply evict the tenant, if he did not pay promptly and could not provide the security for rent owed, usual with long-term leases. In general the jurists are interested only in issues that had come or might come to court. This also explains why they have so little to say about the hiring of labour, and particularly about the hiring of free labour.

Contracts for the hire of labour could be made by stipulation,³⁶ but it would seem that they normally took the form of *locatio conductio*, for which all that was required was the formless agreement of the parties; it was indeed essential that there should be an agreed *merces*, though on some views a contract was valid, if the *merces* were left to the arbitrament of a third party (Gaius III, 142 f.). The terms of the agreement were often embodied in a *lex*, the specific provisions of which might conform with or presuppose the normal usage of the locality but might also expressly vary it.³⁷ In *locatio conductio operarum* the workman was the *locator*, and the *merces* was his wage for one or more *operae*, obviously of a specific

³⁴ *Juvenal the Satirist* (1954), 8.

³⁵ *JRS* LXVII (1977), 27 ff.

³⁶ However, *Dig.* XLV, 1, 54, 1; 2, 5 perhaps refer only to *operae libertorum*, cf. n. 40.

³⁷ Variation of customary rules in *locatio conductio rei* by specific agreement: *Dig.* XIX, 2, 9, 2 with 15, 2; 13, 11; 19, 2. Gaius, in relation to leases of land, writes: 'conductor omnia secundum legem conductionis facere debet' (ibid. 25, 3); numerous texts indeed prove that in default of specific agreement general rules embodying current practice determined

the liability of the parties; these might be fixed by local customs (*Cy* IV, 65, 8 (A.D. 231)), but it seems to be a new development when Diocletian pronounced that the *lex* itself was only binding 'si nihil specialiter exprimitur contra consuetudinem regionis' (ibid. 19). None of the texts relates specifically to *locatio conductio operarum*, but the trichotomy of *locatio conductio (rei, operis faciendi, operarum)* is modern (Schulz, *Class. Roman Law* (1951), 542 f.), and the same principles should apply.

kind, each *opera* being a full day's service; 100 or 1,000 *operae* meant 100 or 1,000 workdays, and the *operarius* was essentially a day-labourer or 'journeyman', even though he might be engaged for a long period or even indefinitely.³⁸ Even if he was engaged for more than a day at a time, the practice probably preferred by old Cato,³⁹ his wage might still be fixed at a daily rate, though the Dacian documents discussed below (n. 52) show that it could be fixed for a period. The *operarius* might be either a free man or a slave. In the former case he might be a freedman who owed *operae* to his patron without payment, which in certain circumstances the patron could lease out or otherwise assign to a third party.⁴⁰ It would seem that other free men might also have assumed obligations to render gratuitous services, in which case they (like the freedmen) had to be maintained or left enough time to earn their own maintenance.⁴¹ No doubt it was normally the master who leased the services of a slave, but some texts (which I can see no reason to regard as post-classical) show that a slave could also hire himself out; he would be a slave working for his own account (a practice we know to have been common enough), paying his master (we must suppose) either a fixed sum or a proportion of his earnings.⁴²

The title in the *Digest* concerned with *locatio conductio* (XIX, 2) in Mommsen's stereotype edition contains thirteen and a half columns, of which only half a column, comprising nine texts, relates to *locatio conductio operarum*.⁴³ In the similar title of the *Codex* of twenty-nine constitutions not later than Diocletian's reign only one (IV, 65, 22) concerns the hire of (free) labour. By contrast a whole title of the *Digest* (XXXVIII, 1), running to over six columns, and one in the *Codex* (VI, 3), are devoted to the gratuitous *operae libertorum*, and there is also a short title in the *Digest* (VII, 7) on *operae servorum*. Moreover only two texts on *locatio conductio* clearly bear on the hiring of free labour, while six expressly mention the hire of slaves (n. 43), to which there are also allusions elsewhere. None the less, it is quite unjustified to conclude, on this or other grounds, that *locatio conductio operarum* was typically the hire of slaves (Appendix). We should only infer that litigation seldom resulted from contracts of hire, and that when it did, it was more apt to arise, if the employee was a slave, because the master, a man of substance, stood behind the slave.

Thus, if I have hired out my slave to you, and you steal him or wound him, I have an action *ex locato* (*Dig.* XIX, 2, 42 f.); likewise, if you do not return him at the end of the period of hire (*ibid.* 48, 1). Or, if the slave commits a theft it is arguable that the master can be sued *ex conducto* by the employer; Paul advised that a charge of theft should be laid (*ibid.* 45, 1). Again the employer may sue the owner of the slave hired as a muleteer, if his negligence has caused the death of the mule (*ibid.* 60, 7); in similar circumstances it would not be worth his while suing the free worker, who has no assets from which he can obtain damages. And in general he has no occasion to sue if the employee fails to do his work. The slave is probably subject to his discipline, and the free man can simply be discharged, or not re-hired.

One may note that by contrast the patron's claims to *operae libertorum* which freedmen had promised to render without remuneration at the time of manumission apparently generated not a little litigation or consultation of *jurisperiti* on the legal issues. This was not of course because the freedman was entitled to sue his patron (this was in general prohibited), but because he was protected by the praetor against excessive demands on the part of his patron; ⁴⁴ if he refused compliance, the patron could take him to court, and he might have a good defence. It was indeed only for his failure in the past to perform *operae* that he could be sued,⁴⁵ and the patron, if he succeeded, could only obtain judgement for the pecuniary

³⁸ *Dig.* XXXVIII, 1, 1; 3, 1; XL, 7, 20, 5, cf. de Robertis, *Rapporti* 24; *Cf* IV, 65, 22 (A.D. 293).

³⁹ *De agric.* 5, 4: 'operarium mercenarium politem diutius eundem ne habeat die'; punctuation and sense are disputed. For hire of *operarii* cf. 4 and probably 1, 3.

⁴⁰ *Dig.* XXXVIII, 1, 9, 1; 23 *pr.*; 25, 2 (*locatio*); 27.

⁴¹ *Dig.* XXXVIII, 1, 50, 1 (Neratius): 'non solum autem libertum, sed etiam alium quemlibet operas (evidently gratuitous) edentem alendum aut satis temporis ad quaestum alimentorum relinquendum' (cf. *ibid.* 18-20). Cf. XLVI, 1, 56 *pr.* (Paul): 'si quis pro eo, qui libertus non esset et operas praestaturum se iurasset, fideiussor erit, non tenebitur'. Could such a person be the *iudicatus* (Appendix 4)? It is

probably such gratuitous *operae* to which we may refer Paul's dictum (XXXIII, 2, 3): 'hominis quoque liberi operae legari possunt, sicut locari et in stipulationem deduci'.

⁴² *Dig.* VII, 1, 25, 2 (Ulpian); XIX, 2, 60, 7 (Labeo); XXXIII, 2, 2 (Paul), rejected by T. Mayer-Maly, *Locatio Conductio*, 123. Cf. J. A. Crook, *Law and Life of Rome* (1967), 187-91.

⁴³ viz. 9, 1; 42; 43; 45, 1; 48, 1; 60, 7 (slaves); 19, 9 (free man); 26 and 38 *pr.* (of general import).

⁴⁴ XXXVIII, 1, 2, cf. Lenel, *Edictum Perpetuum*⁸ (1956), 338 ff. The difficulties in interpretation do not concern my argument.

⁴⁵ XXXVIII, 1, 8 *pr.* cf. 7, 5.

value of the *operae* withheld.⁴⁶ The monetary equivalent might have been expressed when the obligation was imposed,⁴⁷ or it could no doubt be determined by the court on the basis of market rates. The freedman could also offer a sum in lieu of *operae*.⁴⁸ All this of course implies that the freedman concerned would be a person of some substance or earning capacity; it is significant that he might at the time of his manumission have furnished a guarantor for the fulfilment of his obligation to perform *operae* or pay compensation.⁴⁹ In the illustrative cases the jurists adduce he is sometimes a skilled craftsman or shopkeeper; he may also be an accountant, actor, doctor, etc.⁵⁰ Such persons were economically far above the mass of unskilled labourers, slave or free. We may doubt if unskilled slaves were often manumitted at all, any more than the farm-hands whom the elder Pliny describes as 'men without hope' (*NH* XVIII, 36); indeed, so far as the rural *familia* was concerned, even *vilici* and *actores* were seldom emancipated.⁵¹ The relative abundance of the juristic evidence on *operae libertorum* is thus explicable: the freedmen concerned were generally men of means, who would probably know their rights under the law and whom it was worth taking to court, if they were to challenge claims by the patrons that the court might uphold.

Very different was the condition of the three free workers in the Dacian gold mines, whose hiring is attested on fragmentary wax-tablets.⁵² They were all illiterate, though they could trace their signatures. We should not assume that they would even know what their rights were under the contracts, still less that they, or any such workers, were capable of enforcing them in the courts; the services of lawyers and advocates were not to be had for nothing; the courts might sit at some distance from their homes; and delay in hearing their claims might be protracted. The *Digest* (XIX, 2, 19, 9) does indeed record one case in which the *operarius* actually obtained the ear of an emperor (Severus), who laid down that the employer being deceased, the *operarius* was entitled to receive from his heir the entire annual wage due under the contract, provided that he had not found paid employment elsewhere in the interval; it is noteworthy that the man was an amanuensis (*exceptor*). There are also some other possible instances of litigation by persons who supported themselves by wage-earning. A man who had suffered injury (*pauperies*) by a domestic animal could obtain compensation from the owner for the costs of healing and for lost *operae*; likewise, if injured by *res deiectae vel effusae*, he could claim for the value of lost *operae*, past and future. The father of a shoemaker's apprentice had a claim for loss of earnings from his son's *operae*, if the shoemaker had hit him and put out his eye.⁵³ Such texts are so rare that we may reasonably suppose that *operarii* seldom appeared as plaintiffs in the courts.

But it was just as unlikely that they would be sued by their employers, who could hardly obtain damages from them for breach of contract, but whose economic power enabled them to protect themselves by the terms of the contract. If a worker was hired and paid on a daily basis, he could be turned off, perhaps without his wage, if his work was unsatisfactory. The Dacian contracts do indeed show that men could be hired on a quite different basis. One of the miners, Memmius, was to receive seventy *denarii* for a period of 176 days, to be paid at intervals unspecified but no doubt determined by local usage; in addition, he was to receive *cibaria*. Another, Restitutus, was entitled to 105 *denarii*, for an unknown period, again to be paid at intervals; he had already had twenty-five. The third was apparently engaged for a year and was also to be paid at intervals, but the wage is not preserved on the tablet. It seems to me probable that since the payments were not made daily all must have received *cibaria*. Diocletian's Edict on Prices assumes that most *operarii* would get their maintenance as well as a wage; where this is not to be provided, we should perhaps suppose that they were working at home, like tailors, and not on the premises of the employer.⁵⁴ On this view the provision of *cibaria* was the custom in the Dacian mines, and

⁴⁶ *ibid.* 23, 1; 26, 1; 39, 1, cf. next note.

⁴⁷ XXXVII, 14, 6, 1; XL, 9, 32, 2.

⁴⁸ XLV, 1, 54, 1.

⁴⁹ XXXVIII, 1, 8, 1; 37, 8; 44.

⁵⁰ *ibid.* 7, 5: *librarius* (cf. 49), *nomenclator*, *calculator*, *histrio*, *alterius voluptatis artifex*; 23 *pr.*; 24: *faber* (cf. 6 and 9, 1: *fabriles operae*) and *pictor*; 25-7: *medicus* and *pantomimus*; 42: *cerdo*; 45: *negotiator vestiarius*; crafts generally: 38 and 50.

⁵¹ Of nearly 80 *actores* and *vilici* recorded in the

indexes of *CIL* v, ix and x almost all are slaves, as the reader of the agronomists would expect.

⁵² *CIL* III p. 948, all transcribed by de Robertis, *Rapporti* 151 f., two in *FIRA* III no. 150; see especially J. Carcopino, *Rév. de Phil.* 1937, 101 ff.; V. Arangio-Ruiz, *St. et Docum. Hist. Iuris*, 1939, 621 ff. (who showed that the workers were free men.)

⁵³ *Dig.* XIX, 2, 19, 9; IX, 1, 3 (Gaius); 3, 7 (Gaius); 2, 5, 3 and 2, 7, 1 (Ulpian).

⁵⁴ Chapters VII and XX f.

implicit in the contracts; the express reference to it in Memmius' contract was redundant. Each miner is bound 'operas sanas valentes edere'. What if he falls sick and absents himself, or reports for duty when unfit? Presumably he suffers a proportionate deduction of pay and *cibaria*, as the employer may decide. If he withdraws his labour without the employer's consent, the employer may deduct five sesterces a day from his pay: this is a fine, since Memmius' wage at least is at the rate of under two sesterces a day. If a flood (*fluor*) prevents working of the mine, the employer 'pro rata computare debebit'; I take this to mean that he can make a proportionate deduction from the wages. It is true that this conflicts with Paul's statement: 'qui operas suas locavit, totius temporis mercedem accipere debet, si per eum non stetit, quo minus operas praestet' (*Dig.* XIX, 2, 38). But such general rules could always be varied by the express agreement of the parties (n. 37). Subject to the deductions mentioned, the employer must pay what is due at the stated times, or incur a penalty; and no doubt in law the worker can sue him if he fails to keep his bond. But in practice, as we have seen, he will have small chance of enforcing his rights, and he will depend on the good faith of the employer, or the continuing need for his services. We may recall the lament in the epistle of James (5, 4): 'the wages of the labourers who mowed your fields, which you kept back by force, cry out'. And the employer, who gives the workers their due, has no occasion to sue them for unsatisfactory work: he simply deducts wages. It is true that in 293 an employer did appeal to Diocletian to uphold a labour contract: I take it that his aim was not to obtain pecuniary compensation for default, but to compel the workers to fulfil their obligation; we have now reached a time when labour shortage was leading to more and more governmental coercion.⁵⁵

Inscriptions do little to penetrate the gloom that encircles the labouring classes in the Roman empire. Those which might be held to mention manual workers at Rome, but which in fact often relate to employers, fall into three categories. (1) Inscriptions of *collegia*. To say nothing of corporations of *mercatores* and *negotiatores*, the members may like the *fabri tignarii* have been masters rather than manual workers. Even with this reservation, it is clear that the surviving inscriptions give no clue to the relative importance of different trades; for instance Waltzing knew of only one for a college of ironsmiths and none for bronzesmiths.⁵⁶ (2) Manufacturers' marks on pots, lead pipes and bricks, which give us valuable information, but for a restricted range of industries. (3) Epitaphs. The cost of these sometimes handsome memorials was not negligible.⁵⁷ Hence, they were put up chiefly by those who prospered in their business. Surely they were more often masters than journeymen. Freedmen preponderate over both slaves and freeborn. No doubt the skilled and efficient slave would get his freedom, and the proportion of slaves employed in a craft is concealed in epigraphic statistics, since those who died before manumission would be less likely to leave a memorial. Freeborn workers may also be under-represented. Slaves and freedmen, trained and perhaps financed by masters and patrons, may have been more successful, and better able to commemorate themselves, perhaps also readier to name the craft by which they made their way in the world. Taken together, all this epigraphic evidence certainly gives us a false impression of trade and industry in Rome. Jewellers and goldsmiths—Gummerus⁵⁸ counted 112—vastly exceed craftsmen (or masters) of any other trade, no doubt because they were exceptionally affluent. By contrast textile workers are hardly attested epigraphically even in places known as centres of the woollen industry, where it cannot have been confined to household production.⁵⁹ Once again it is patent that

⁵⁵ *CJ.* IV, 65, 22. Cf. A. H. M. Jones, *The Roman Economy* (1974), ch. XXI.

⁵⁶ II, 122.

⁵⁷ R. Duncan-Jones, 127–31. The Chronographer of 354 (Mommsen, *Chron. Minora* I p. 146) says that Nerva provided a *funeraticium* of 250 HS for the urban *plebs*. Presumably, like *congiaria* (n. 75), this went to the grain recipients. It is not clear that it continued to be a regular grant. Members of *collegia* had somewhat similar burial allowances which were provided from their own monthly contributions. Some of them were able to build *columbaria* (which the rich might also construct for their freedmen and slaves); in these *columbaria* the *ollae* could be bought and sold (*RE* IV, 593 f.). Free persons in only casual

employment could hardly have afforded to make such provision for their remains, which must still have been thrown into public *puticuli* (Varro, *LL* V, 25; Horace, *Sat.* I, 8, 8–10).

⁵⁸ H. Gummerus, *RE* IX, 1496 f.; *IM* 386 f.

⁵⁹ H. J. Loane, *Industry and Commerce of the City of Rome* (1938), 64 n. 14; 'at Patavium, where large woollen mills are known to have been located (*Str.* 5, 1, 7), there are no epigraphical records of the slave weavers'. Note W. O. Moeller, *The Wool Trade of Ancient Pompeii* (1976). The dearth of records for textiles in South Italy is thus not as significant as *IM* 357; 362 f.; 367 f. may suggest. The workers may have been mainly slaves and freed (men or women).

arguments *e silentio* have little or no force. What is most germane to the present inquiry, we cannot expect inscriptions to reveal unskilled labourers who could have worked for daily hire. Such there may be among the many gravestones that record the names alone (e.g. *ILS* 7951 ff.), but most of them probably had no memorial of any kind (n. 57).

V. THE DEMAND FOR UNSKILLED LABOUR

Yet there can be no doubt that unskilled labourers, free or slaves, were required on a large scale. At Rome and Ostia great numbers must have been employed in unloading cargo and in transporting it from the docks to shops and storehouses. G. Rickman has brought out the amount of human labour required for portage; the warehouses were 'designed for *men* who carried the loads'. He writes of 'the large number of inscriptions recording *saccarii*'. But there seem to be only three at Rome (*CIL* IV, 274; VI, 4417; 5356), at Ostia none. The *geruli*, who are more amply attested, were taken by Mommsen to be public *apparitores*, 'Brief- und Actenträger', and the mere fact that they more often commemorated themselves confirms that they were of superior status. We hear a little more of *saccarii* or *baiuli* in the fourth century A.D. Inscriptions are commoner for the boatmen and divers engaged in the transport of goods up the Tiber to Rome; it is my impression that the corporations concerned consisted of employers.⁶⁰

As to the building trade, I remarked (n. 1) that 'in 1586 up to 6,000 workmen were engaged on public buildings at Rome, of whom 800 with 150 horses were needed to move the obelisk into the Piazza of St. Peter's; at the time the total population seems to have been under 100,000. In 1791 a third of all Paris wage-earners were occupied in the building trade'. Casson comments that 'this tells us absolutely nothing about Rome of the first century'.

Of course I was not inferring that in imperial Rome at any given moment 6,000 men were employed in public construction or that precisely one-third of all workers were builders. But scepticism about the relevance of the analogy seems to me simply astonishing. The Rome of the first century as of the sixteenth was a pre-industrial city, like eighteenth-century Paris. We should expect a comparable part of the labour force to be engaged in building operations, unless there were positive reasons to think that little new building took place. But just the contrary can be presumed. Most of the emperors were builders on a grand scale. Never was this more true than in the middle of the first century, with Claudius' construction of the port of Ostia and the Aqua Claudia, the laying out of Nero's Golden Palace and the rebuilding of much of the city after the great fire, and Vespasian's Forum and Colosseum, which, as Frank says, 'must have given employment to thousands of workmen for many a year', not to speak of the Capitoline temple with which we started. Domitian's new palace perhaps almost vied in splendour with Nero's. Trajan and Hadrian too were responsible for great buildings at Rome; thereafter some decline in public works may be discerned.⁶¹ Let us recall once more that 700 workmen were required for the mere maintenance of the aqueducts and that all major repairs were beyond the capacity of this force.

We also have to reckon with private building. Perhaps until Vespasian's time the size and luxury of the mansions of the great continued to increase.⁶² The frequency of fires and the shoddy construction of the tenements in which the poor dwelt must have meant that *insulae*, houses and shops needed continuous renewal or repair. All this activity must have reached an unparalleled peak after the great fire of Nero's reign. Juvenal (III, 190-202) and Gellius (xv, 1) suggest that in their day the dangers of conflagrations and collapses were still considerable, though Meiggs (ch. 12) argues from the remains at Ostia that thereafter at Rome too the new *insulae* were more solidly built. Be this as it may, it cannot be doubted that an immense number of labourers were employed for private account down to the time of Vespasian.

Naturally building required the services of skilled craftsmen, but much of the work

⁶⁰ G. Rickman, *Roman Granaries and Store Buildings* (1971), 8; 11; 79; 86, cf. Waltzing II, 59 f.; Meiggs, 278-98 and ch. 14; Mommsen, *Staatsr.* 3 I, 366. I wonder if they, or the *navicularii*, employed dockhands and porters.

⁶¹ Frank lists the imperial buildings in chs. II and III.

⁶² L. Friedländer, *Sittengesch.* II⁹ (1920), 327 f. (Eng. tr. II, 185 ff.).

(like that of portage) was suitable for those who could contribute only muscle and sweat. We may recall Diodorus' account of the way in which Dionysius I fortified Syracuse.⁶³ He divided the work into sections each under the charge of architects with masons (*oikodomoí*) for sub-sections, each of whom had 200 unskilled workers (*idiotai*), called up from the country, to work under him. In addition he had a great mass of men, apparently also unskilled, hewing the stone. It is alleged that altogether he employed 60,000 men and 6,000 yokes of oxen, and completed the operation in twenty days. All this seems rather schematic. The figures in particular can hardly be trusted. We may doubt if the urban population furnished none of the labour. But at least the story shows that it seemed perfectly credible that unskilled free labour would be used in case of need on building operations. And Roman methods of construction, it is held, minimized the degree of skill required.⁶⁴

VI. THE NECESSITY FOR EMPLOYING FREE LABOUR AT ROME

All this does not indeed prove that casual labour was free labour. Casson sees that the argument for this conclusion which I stressed was that it would have been wasteful to maintain slaves for industrial or commercial operations that did not provide continuous employment.⁶⁵ Thus, though building contractors had permanent gangs of slaves,⁶⁶ these gangs (like those under the curators of the aqueducts) would not have sufficed in times of a building boom, such as would be consequential on a catastrophe like the great fire of Nero's reign or the commencement of any large programme of public works. It must be remembered that public building was not continuous: under Tiberius, for instance, there was very little.⁶⁷ Indeed building was always in some degree a seasonal business: Frontinus says that it was best done between April and November, subject to intermission in a time of great heat, which had as bad an effect as frost (*de aquis* 123). In the country work had to be abandoned in the summer, if the place was unhealthy, i.e. probably malarial (Cato, *de agric.* 14, 5). The continuous employment of 30,000 men for eleven years, in the excavation of the Fucine Lake under Claudius (Suet., *Claud.* 20, 2), is something as exceptional as the near cessation of public building under Tiberius. Obviously the building contractor, again like the curators of the aqueducts, would need skilled craftsmen, such as Dionysius' *oikodomoí*, but he would naturally engage supplementary casual labourers.

So far as dock-work and portage were concerned, I argued that 'there was little sailing for half the year, and work must have bunched in a few months or weeks'. Rickman, however, supposed that goods unloaded and temporarily stored at Ostia during the sailing season would have been moved upstream to Rome throughout the year, and Meiggs has observed that the storage facilities at Ostia were in excess of the town's own requirements. In that case there was still more work available at Ostia in the summer, and one could readily suppose that it was supplied partly by the casual labour of persons normally resident in Rome. Rickman indeed assumed that the workmen were slaves, but there is no specific testimony either for or against his assumption, and the general argument on which I rely seems to invalidate it.⁶⁸ It may be remarked that in Paul's excerpts from Festus we read: 'baiulos dicebant antiqui, quos nunc dicimus operarios', and that Cicero twice couples 'baiuli' and 'operarii', probably treating *baiuli* as perfect specimens of hired free labourers; contemptuous as *operarius* is in his vocabulary, it does not seem to be the

⁶³ Diod. XIV, 18, to which Giglioli p. 29 called my attention. We are told nothing of the labour employed on Dionysius' other public works (xv, 13, 5); his hiring of skilled craftsmen for rearmament (xiv, 41 f.) is another matter.

⁶⁴ F. Rakob, *ap.* P. Zanker, *Hellenismus in Mittelitalien* (1976), 372.

⁶⁵ We could simply assume that slave-owners understood this, but Cato, *de agric.*, 39, 2 cf. 2, 2-3; 5, 2, offers confirmation; hence the landowner had not enough hands of his own for the various harvests or other major operations (building: Cato, *de agric.* 14; *pastinatio*: Colum. III, 13, 4 and 12; Ulpian, *Dig.* XLIII, 24, 15, 1) and had to hire extra workers or let out the operations to contractors: Cato 144-7;

Varro, *RR* 1, 17; Columella III, 3, 13 and 21, 10. For such casual work free men were inevitably employed, as Varro makes explicit, cf. Cic., *de orat.* III, 46. Varro (*loc. cit.*, cf. I, 4, 3) also recommends use of *mercennarii* on pestilential land; by the same token urban employers may have preferred to hire workers for dangerous operations, e.g. in building.

⁶⁶ Loane, *op. cit.* (n. 59), 79-85.

⁶⁷ B. M. Levick, *Tiberius the Politician* (1976), 123.

⁶⁸ See n. 60 and esp. Meiggs, 279-82; Pavis d'Escurac, 229-31. The famous relief which represents unloading of cargo (Meiggs, Plate xxvi a) casts no light on the legal status of the docker or porter.

equivalent of slave. The hired free porter in Petronius' novel of course illustrates my thesis, but does not prove it.⁶⁹

Casson, however, holds that 'slaves' labour did not have to be maintained all year round any more than free: as mentioned earlier, artisans and entrepreneurs did not necessarily own all the slaves they employed, they could rent any number they wanted for any length of time they wanted'. Now of course it is undeniable that slaves could be rented. But let us imagine the situation of A, the owner of slaves to be rented out to B, the employer who needs them for building and unloading and portering cargo. Are A's slaves employed in the period when they are not needed for these intermittent and largely seasonal activities? If so, what work are they engaged on, primarily in the winter months? I can think of none. It may be remarked that urban dwellers may well have earned money by going out into the country for the various harvesting operations (n. 65), but that these too provided no employment in the winter. But if A's slaves are unemployed for part of the year, A is bound to charge B for their maintenance throughout the year and not merely for that part of the year for which B hires them. Thus B will still pay indirectly for their full maintenance. And obviously the terms of hire must also include an element of profit for A, and he will look for a greater profit, when a building boom produces a scarcity of labour. In fact, for what this is worth, there is no specific evidence that there were masters who simply kept slaves for hiring out, and if any did so in the hope of making handsome profits in such a boom, they were likely to go bankrupt in times like the reign of Tiberius, when there was little public construction. Hiring was simply a matter of mutual convenience to owner and employer, when the owner had no use for a slave, perhaps a skilled man, for a particular period, but was unwilling to dispose of him permanently, and the employer had a temporary use for him, or alternatively could not find a suitable slave to buy, or lacked the capital for purchase. Arrangements of this kind do not imply that the entrepreneur would not wish to own slaves he could employ continuously, or that he was able to hire slaves in large numbers for casual and unskilled work.

VII. THE AVAILABILITY OF FREE LABOUR

Free labour was surely available. The Roman poor had to earn part of their living, and some had to earn the whole of it. The number of recipients of the grain dole was artificially limited,⁷⁰ hence many free inhabitants of Rome had to buy all their own food; it was surely on this account that it was necessary for the emperors from time to time to keep down the market price of grain.⁷¹ And even the *plebs frumentaria* needed cash. The grain ration at five *modii* a month was more than enough for a single man (though the *pistores* to whom it must have been taken for milling and baking presumably retained part of it), but insufficient for a family;⁷² and the deficit could hardly have been met by the enrolment of boys among the recipients.⁷³ Money was also needed to pay for shelter, clothing and oil at least (for light and cleanliness as well as food). Nor is it likely that the poor man was *content* to wash down dry bread with free water from the public fountains; he will have *wanted* to buy wine and condiments. Bread was surely far the most important article of diet, but it remains true, as I have observed before, that men could not live by bread alone.⁷⁴

Now it is true that payments in cash were also made to the registered recipients of the grain dole, though not to all free inhabitants of Rome.⁷⁵ The term *congiarium* indicates that

⁶⁹ Festus 32 L; Cic., *Parad.* 23; *Brut.* 257 (cf. *de orat.* II, 40, associating 'remigem aliquem aut baiulum'); *Tusc. Disp.* III, 77; Gell. v, 3, 1; Petron. 117, etc.

⁷⁰ van Berchem, 26-54, cf. *IM* 382.

⁷¹ Pavis d'Escurac, ch. XI, esp. 260 ff.

⁷² Cato gave his slaves 3-5 *modii*, according to the heaviness of the work they had to do, plus wine and salt and olives or oil, fish-pickle and vinegar (*de agric.* 56-8). Republican legionaries received only 3 *modii* (Polybius VI, 39), but perhaps rather more supplementary food.

⁷³ *IM* 382; 387 f. Both Suet., *Aug.* 41, 2 and Dio LI, 21, 3 refer to boys getting *congiaria*, but Pliny,

Paneg. 25-7 shows that when Trajan apparently reduced the qualifying age, the boys were enrolled on lists (25, 3; 26, 3) as entitled to distributions both of grain and cash (27, 1), cf. n. 75. For very young boys as recipients see *ILS* 6063; 6066 f.; 6069. The anecdote in Suet., *Aug.* 46 may support my deduction from *Paneg.* loc. cit., that relatively few among the *plebs frumentaria* had children born in freedom, but more will at least have had wives, and females other than widows do not seem to have benefited before Marcus' time.

⁷⁴ R. Duncan-Jones, *Chiron* VI (1976), 241 misunderstood my point.

⁷⁵ See, e.g. van Berchem, 127-30.

these distributions were originally designed to enable the beneficiaries to buy oil and wine. In the *Res Gestae* (ch. 15) Augustus mentions eight *congiaria* which he gave between 44 and 2 B.C., the sums varying between 100 and 60 *denarii*. Such infrequent distributions must have totally failed to provide an adequate supplementation to the grain dole. There is no complete tally of later *congiaria*, but in the first century they were apparently still made only on special occasions and at the rate of 75–100 *denarii* per head.⁷⁶ There seems to be no reason to question the testimony of Suetonius (*Dom.* 4) that Domitian gave only three, each of 75 *denarii*, in a reign of some fifteen years. In and after the second century the sums distributed tended to be larger, and the occasions more frequent; it may be no accident that after Hadrian, who himself gave at least seven *congiaria*, there was less employment to be obtained on public works (n. 61). So too it is only under Septimius Severus that the first evidence appears for regular distributions of oil.⁷⁷ But even if public subventions in the second century went further in covering the subsistence of the *plebs frumentaria*, they hardly obviated the need for earnings; would poor men have saved the substantial sums they might receive in one distribution to meet the costs of living until the always uncertain time of the next largess?

In any case, it seems pretty clear that in the first century *congiaria* were neither large nor frequent enough to pay for all the necessaries of life, grain excepted. The great houses, of course, still had their clients who received *sportulae*, but those of whom we know from Martial and Juvenal were persons who liked to be regarded as 'modici amici' of their patrons; Tacitus contrasts the 'pars populi integra et magnis domibus adnexa' with the 'plebs sordida et circo ac theatris sueta' (*Hist.* 1, 4), and it is beyond belief that any substantial number of the ordinary plebeians at Rome were supported by private charity; though naturally the magnates numbered their own freedmen among their dependants and would often provide for their subsistence in infirmity and old age, i.e. for shelter and clothing as well as food.⁷⁸

It is therefore certain that the free inhabitants of Rome always had to earn at least a large proportion of their livelihood. That is implicit in the arrangements made by Augustus for distributing the dole in such a way that the recipients were not to be diverted too often from their occupations (Suet., *Aug.* 40, 2). We should no longer echo the gibes of Juvenal (x, 78–81) and Fronto (*Principia Historiae* 17) that they cared for nothing but 'panem et circenses'. Balsdon's demonstration that only a rather small proportion of the population could have spent much time at public entertainments shows incidentally that both authors were ludicrously indifferent to the real needs of the common people.⁷⁹ However work-shy they may have been, and whether or not they shared the prejudices of upper-class writers against manual labour, and in particular to wage-earning (we do not know that they did), they had no choice but to seek employment.

But what sort of employment? Keith Hopkins remarks that 'in contemporary underdeveloped economies there is often in the capitals a fantastic fragmentation of services and retail sales. Expenditure by rich Romans must have had a considerable multiplier effect, as those who received money spent it—a process which was then repeated.'⁸⁰ The truth in

⁷⁶ Rostovtzeff, *RE* iv, 875 f. Marquardt, *Röm. Staatsverwaltung* II², 136 f. conveniently tabulated the evidence of the Chronographer of 354 and other texts, but more is known from coins (from Hadrian 'liberalitates' are numbered: Hadrian gave seven in twenty-one years, Pius nine in twenty-three, Marcus eight in sixteen from 161 to 177, and Commodus seven between 180 and probably 189) and from *tesseræ* (Rostovtzeff, *Röm. Bleitesseræ* (1905), 10–42). The Chronographer of 354 (n. 57), 145 f. is seldom aware of more than one per reign; if the sums he names in such cases all relate to the accession distributions, and not at times to the total largess of the reign, there is an enormous increase in scale from 75–100 *denarii* in the first century to 650 (Trajan), 1,000 (Hadrian), 800 (Pius), 850 (Marcus and Commodus) and 1,100 (Severus); I am uneasy about this hypothesis, since smaller sums appear for the shorter reigns in the early third century (e.g. 400

for Caracalla and 600 for Alexander Severus), and I suspect that we may have totals of largess, not necessarily accurate; in any case it seems evident that emperors were more liberal from Trajan's time and especially from Hadrian's. Oil: Pavis d'Escurac, 188–201; the *praefectura annonae* was concerned earlier with ensuring a supply of oil for the market.

⁷⁷ Friedländer (n. 62) I⁹, 223–32 (Eng. tr. I, 195 ff.).

⁷⁸ *Dig.* xxxiv, 1. A bequest of *alimenta* to freedmen was construed to include 'cibaria et vestitus et habitatio . . . quia sine his ali corpus non potest' (Javolenus, *ibid.* 6), though a testator might provide for food alone to be given (Ulpian, *ibid.* 21), or specifically require clothing, etc., to be supplied (e.g. Scaevola, *ibid.* 17). Such bequests were not limited of course to freedmen.

⁷⁹ *Life and Leisure in Ancient Rome* (1969), 267–70.

⁸⁰ *Conquerors and Slaves* (1978), 107, n. 19.

this observation is limited by the size of slave holdings in the great urban households. Many services which are performed by the free poor in the modern capitals Hopkins had in mind were certainly performed in Rome by slaves, when they were continuously required. The 'statistics', though not entirely reliable (p. 91), strongly suggest that free-born Romans had very restricted opportunities in such trades. In so far as small factories existed, the hands are slaves in all known instances. Yet in the Republic at least there was a notable immigration of peasants into the city.⁸¹ They must have found work, although they had no training in any urban craft. We simply do not know if this kind of migration continued under the Principate. Probably it did; on the one hand the class of smallholders in the country was certainly not extinct, and on the other the pressures that had caused their failure in the Republic will not (except for conscription) have ceased to operate. At any rate some farms will have been so small that subdivision between several sons could only have been disastrous. There was surely at all times a great mass of men in the city who were only fit for unskilled and casual labour. Precisely such labour was in demand.

To the employer the existence of a pool of free men needing employment was a godsend, all the more as a great many of them were indeed obtaining part of their subsistence from the state. Whereas he was obliged, directly or indirectly, to provide full maintenance for slaves whom he owned or hired, and if he hired them, a profit for the owner too, he could well have kept down the wages of workers from the *plebs frumentaria* to the level that would give them an essential supplement to the grain doles and *congiaria* supplied by the public purse. In much the same way under the so-called Speenhamland system English farmers early in the nineteenth century could pay exceptionally low wages to labourers who were receiving 'outdoor relief' from Parish funds.⁸² It is simply incredible in such circumstances that Romans preferred to employ slaves.

VIII. PUBLIC WORKS AND SOCIAL POLICY

It is not my contention that the provision of employment was the only or chief reason for which Vespasian or other statesmen in antiquity initiated public works on a large scale. In a recent book Gabriela Bodei Giglioni has sought to deny or minimize this explanation for public building in antiquity.⁸³ She has stressed that it could only be undertaken when financial resources permitted; this is obvious, but does not in itself explain why money was spent on bricks and mortar. Of course many different motives operated. Temples glorified the gods and attested the piety of the founders. Walls and military roads answered military purposes. Many other buildings provided for the needs or amenities of the urban population. Secular and sacred constructions alike might enhance the grandeur and beauty of a city. They might also preserve for posterity the fame of the builder; in Rome, from the time of the Aqua Appia, his name might be attached to the building, or inscriptions and reliefs might record who had constructed or even repaired it. The triumphal arches of emperors, or the Columns of Trajan and Marcus, are only the most ostentatious examples of this desire for perpetual commemoration. Giglioni, who accepts the usual interpretation of the anecdote about Vespasian, holds that there is hardly any other testimony to show concern for providing employment.⁸⁴ But perhaps this argument from partial silence is not so strong as she thinks.

In the first place I have the impression that ancient writers supply no general explanation at all for a policy of public works. For instance, Augustus himself proudly catalogues the new buildings and repairs due to his own munificence, without indicating why he chose to spend so liberally in this way (*RG* 19-21). It is true that Vitruvius ascribes to him, no doubt rightly, the objective of revealing the 'maiestas imperii' by the impressive character of Rome's public buildings (1 *pr.* 2), and that Suetonius says that their dignity and beauty

⁸¹ *JRS* LII (1962), 70, where I probably underrated the extent of immigration before grain was distributed free.

⁸² J. Steven Watson, *Reign of George III* (1960), 527 f.

⁸³ In *Gnomon* L (1978), 550 f. H. Beister justly

criticized her book (n. 1) for requiring specific evidence and setting aside considerations of probability.

⁸⁴ She also adduces Jos., *AJ* xx, 219-22, which Casson, n. 27, interprets as wholly exceptional.

justified his boast that he found the city built of brick and left it built of marble.⁸⁵ Clearly these texts do not fully explain Augustus' building policy. The restoration of numerous old temples, and the construction of others, also served the purposes of his 'religious revival', just as the improvements in Rome's water-supply answered the urgent needs of the swollen city population. For the most part the reasons for public building were so evident that they could be left unstated. And that allows us to suppose that the provision of employment was no less obvious as a motive, albeit often subsidiary, to all who knew that this was at any rate a necessary concomitant to any large scale building.

But secondly, I suggest that it was natural that where other justifications for great expenditure on buildings could be found, this motive should not be avowed. It savoured of currying favour with the masses. In the *de officiis* Cicero has a long discussion of the forms of *private* liberality to the needy, which may be approved. He censures indiscriminate largess of money, lavish profusion on games and shows, and even expenditure on public works, except on walls, dockyards, harbours, aqueducts and other constructions of benefit to the state; only respect for Pompey's memory makes him diffident, as he says, in criticizing theatres, colonnades and new temples.⁸⁶ To allay this upper-class prejudice, it was preferable for great builders to stress that they were honouring the gods or augmenting the dignity of the city when in fact, as Cicero clearly implies, they were also assisting the needy. It need hardly be said that Cicero's objections would have had no point at all, if all the building work had been done by slaves, and that such men as Cicero, who normally opposed any *public* expenditure for the benefit of the poor, would have had no sympathy with any outlay from the treasury for public buildings, merely or mainly to provide work for them.

According to Plutarch, Pericles proposed his great building programme at Athens precisely in order that the people should have a share in the state's revenue, provided that they would work (*Per.* 12, 5). If only because metics and slaves as well as citizens were employed, we cannot suppose that this was the sole purpose of the programme. We do not even know what authority Plutarch had for his conception. Giglioni regards it as wholly anachronistic.⁸⁷ This seems to me implausible, but on Giglioni's own view it betokens that to a Greek living under Roman rule the provision of employment actually appeared the most natural explanation for large expenditure on public buildings, at any rate when initiated by a politician who appealed to the populace.

All were naturally defensible on various grounds, but all must have provided employment, and it seems improbable that their authors did not have this in mind. Surely it is no accident that 'popular' politicians at Rome are associated with great public works.⁸⁸ Both Appius Claudius the censor, who built the Aqua and Via Appia, and Manius Curius who drained the Velina Lake and constructed Rome's second aqueduct, seem to have sought the support of the masses. This is certain of Gaius Flaminius, who was responsible for the road and circus bearing his name. All three acted as censors, an office to which the great *populares* of the late Republic did not attain. However, even as tribune, Gaius Gracchus is reported to have secured the enactment of laws for constructing roads and granaries, under which he himself was charged with the administration; according to Plutarch he was surrounded by contractors and craftsmen, and Appian says that he laid both classes under an obligation to him. He is evidently referring to free *workers*, just as when he tells of the artisans who gave their services in certain aedilician constructions to a survivor from the proscriptions of 43.⁸⁹ Like his *lex frumentaria*, these operations may suggest that he realized that the

⁸⁵ *Aug.* 28, 3, cf. *Caes.* 44, 1; in general, he records imperial contributions merely as instances of liberality or prodigality (*Tib.* 47; *Gaius* 21; *Claud.* 20; *Nero* 19 and 31; *Otho* 7, 1; *Vesp.* 9; *Dom.* 5), occasionally remarking on their utility.

⁸⁶ *De Offic.* II, 52-60, inadequately treated by Giglioni, 189.

⁸⁷ Giglioni fails to notice (p. 10) that the theoretic fund of the fourth century, which Demades could call the cement of the democracy (*Plut., Mor.* 1011 B), was largely used for public works, see, e.g. G. L. Cawkwell, *JHS* LXXXIII (1963), 56 f.; G. E. M. de Ste Croix, *CR* N.S. 14 (1964), 191. Her own view that

Pericles' aim was to put money in circulation and to raise the general level of prosperity by the 'multiplier effect', for which there is also no documentation, seems to me much more anachronistic, involving sophisticated economic theory. For recent scepticism on *Plut., Per.* 12 see A. Andrewes, *JHS* xcvi (1978), 1 ff.; I am not persuaded by his view on Plutarch's source, and wonder how the thetic rowers earned their living when not in the fleet.

⁸⁸ I suggested this in *Social Conflicts in the Roman Republic* (1971), pp. 58; 63; 86; 144; 146.

⁸⁹ *Plut., C. Gr.* 6, 3 f. (*technitai*); *App., BC* I, 23; IV, 41 (*cheirotechnai*).

settlement of poor citizens on the land was not a sufficient solution of the problem of unemployment, or (if we wish to be more cynical) that it would not by itself give him sufficient political backing.⁹⁰ Dispossessed peasants needed an alternative livelihood to that in the country which they doubtless preferred.⁹¹ In later days again both Pompey and Caesar, each of whom wooed popular favour, were to be great builders. Augustus spent most lavishly on public works, when he not only had the spoils of Egypt to finance it, but also most needed to consolidate 'universal consent', including that of the urban *plebs*. Of course, just because there were other reasons for the construction of temples, aqueducts, etc., it is not surprising that large scale building is not exclusively associated with *populares*. Nor should we expect the critics of *populares* to censure them for projects which could easily be justified by their public utility, when they could concentrate their invectives on more overt *largitiones*: the case that *populares* made for their projects is lost.⁹²

Augustus wrote that he would have abolished the grain dole but that he was sure that it would one day be revived through desire for popular favour (Suet., *Aug.* 42). In fact, like his successors, he had to keep the urban *plebs* content, for personal security and comfort. But the grain dole was not enough, and the provision of employment from public funds remained important. The death of Tiberius, so parsimonious in this regard, provoked a paroxysm of popular joy (Suet., *Tib.* 75). By contrast, Nero, hated by all the respectable classes, was regretted by the masses in Rome.⁹³ It is unlikely that his artistic tastes and appearances as an actor or flute-player much appealed to them, though his chariot-driving doubtless did. May it not be that they were thankful to a ruler who had spent vastly on his own palace and subsidized the rebuilding of Rome after the great fire? Vespasian was always remembered for his thrift—or avarice. Yet he too was prodigal in building. It was a prudent course, to secure the affections of the urban population.⁹⁴

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⁹⁰ Giglioli notes (98) that there was no Via Sempronia and that no milestones refer to Gracchus. But Degross prints in *ILLRP* texts of only twelve Italian milestones of Republican date, at least six of which do not refer to the original author of the road concerned (his note to 450 cites two other milestones commemorating the author of the Via Aemilia, but this does not much affect the picture). Gracchus may well have rebuilt parts of existing roads, an ever recurring need, and Giglioli's hesitancy in accepting the testimony of Plutarch and Appian is quite unjustified.

⁹¹ For criticisms of H. C. Boren's view (*Am. Hist. Rev.* 63 (1957/8), 890–902, reprinted in R. Seager, *Crisis of the Roman Republic* (1969)) that urban unemployment helps to explain Ti. Gracchus' initiative see M. H. Crawford, *Roman Republican Coinage* (1974), 636 cf. 699; F. Coarelli, *PBSR* xlv (1977), 1 ff. Coarelli regards the Gracchan period as one of 'extraordinary activity' in public building. This does not exclude intermittent employment crises. If we assume with Crawford that new issues

of coinage were directly related to public expenditure in the years of issue, the cost of public buildings, especially the Aqua Marcia, no doubt explains the size of issues between 146 and 136; Gracchus became tribune in Dec. 134, and one or two years is a long time for an unemployed labourer.

⁹² Some of the public works I have in mind were outside Rome and would no doubt have given employment to citizens living in the country or in small towns; however, the poor at Rome could also have gone out to labour on them, as they could have supplied many of the seasonal labourers for harvesting operations; in the old days Londoners would pick the Kent hops.

⁹³ Tac., *Hist.* I, 4, 3; 78, 2; II, 95, 1; Suet., *Otho* 7, who significantly records that Otho proposed to spend 50 million HS on the completion of the Golden House.

⁹⁴ I am indebted for sundry points to G. E. M. de Ste Croix, G. E. Rickman and members of the editorial committee.

APPENDIX

MERCENNARIII

1. It has been thought (a) that *locatio conductio operarum* originated in the hiring of slaves (e.g. F. de Zulueta, *Institutes of Gaius* II (1953), 172; F. de Robertis, *Rapporti* 3-5; 127 ff.; 231) and (b) that *mercennarii* were treated more or less as slaves; on either view the hiring of free labour can be regarded as rather abnormal. These theories seem to me mistaken.

2. No doubt the conception of hiring *operae* is too abstract to be primitive, and we may agree that the slave-owner who hired out his slave was originally said 'servum locare' and not 'operas servi locare'; this formula is retained in *Dig.* XIX, 2, 60, 7; XXXIII, 2, 2; *Cj* IX, 47, 8. But equally the free man could 'se locare' (cf. J. A. Crook, *Law and Life of Rome* (1967), 196 f.). This was in fact the formula still sometimes used of the free man who contracted to fight beasts (*Dig.* XXII, 5, 3, 5; *Collatio* IX, 2, 2). In any case, the origins of *locatio conductio operarum*, which are the subject of various conjectural hypotheses, and the actual operation of the contract in the classical period must be distinguished.

3. There is no question but that upper-class writers regarded wage-earning as servile, although Chrysippus' view that the slave was 'perpetuus mercennarius' (Seneca, *Benef.* III, 22) should not be cited in this connection; his purpose in offering his definition was not to downgrade the free wage-earner but to establish that the slave was just as much a person capable of moral action (cf. *SVF* II, 1118) and deserving humane treatment (*ibid.*, III, 352), cf. Cicero, *Offic.* I, 41 from Panaetius, who was probably echoing Chrysippus: '(servis) non male praecipiant qui ita iubent uti, ut mercennariis: operam exigendam, iusta praebenda'. It does not follow, however, from the view expressed, for instance, by Cicero (*ibid.* I, 150) that 'est . . . ipse merces auctoramentum servitutis', that *mercennarii* were in any way assimilated to slaves legally. That was no doubt the condition of *auctorati*, who contracted to fight as gladiators. They were indeed liable to be punished like slaves by their employers, from whom, like slaves, they could actually be stolen (*RE* II, 2274). But it is plain that we should not argue from their status to that of *mercennarii* in general. It is only they, and not other *mercennarii* as such, who appear in classifications of *infames*, as debarred from sitting on municipal councils (*Table of Heraclea* 112 f. and 123), from testifying against defendants under the Julian laws *de vi* (*Collatio* IX, 2, 2) and no doubt from suing 'pro alio, nisi pro certis personis' (Lenel, *Edictum Perpetuum*, 79); they alone are assimilated to slaves in cases of adultery, *Collatio* IV, 3, 2. Cf. also *CIL* XI, 1418. It seems to me that in Pliny, *NH* XIV, 10 ('ut vindemiator auctoratus rogam ac tumulum excipiat') 'auctoratus' is merely a contemptuous non-technical term for 'operarius'.

4. Nor again must any inference be drawn from the condition of the *nexus* who 'suas operas in servitute pro pecunia quam debebat dat, dum solveret' (Varro, *LL* VII, 105). The *nexus* was not a *mercennarius*, and this form of debt-servitude had been abolished in the fourth century B.C. Almost certainly in later times the *iudicatus* condemned for debt, whom Gaius III, 199 assimilates to the *auctoratus*, and who lost his freedom, in all but name, could in practice be made to work for his creditor, much like the *nexi* (cf. Sallust, *Cat.* 33; Colum. I, 3, 12; von Woess, *ZSS* XLIII, 485 ff.), cf. n. 41. But the *iudicatus* too was not a hired employee, and the fact that some *operae* performed by free men were servile does not show that all were. Other texts which have been cited for the legal degradation of *mercennarii* are equally inconclusive.

5. *Digest* VII, 8, 1-8 concerns the bequest of *usus domus*; the beneficiary can live in the house with his *familia*, freedmen, and clients, or with a *hospes* or *inquilinus*, and Ulpian says 'et cum his, quos loco servorum in operis habet, habitabit, licet liberi sint vel servi alieni' (*ibid.* 4 *pr.*). In my view the *liberi* can be (i) persons 'in causa mancipii', whom Gaius expressly describes as 'loco servorum' (I, 138 cf. III, 114; 123); (ii) *liberi homines bona fide servientes*; (iii) perhaps also *iudicati*; there is no reason at all to suppose that the expression in Ulpian extends to all *mercennarii* who shared the beneficiary's house; much less, of course, does it apply to all his *mercennarii* as such. Justinian gives the same rule in *Inst.* II, 5, 2; a man can exercise *usus domus* 'cum uxore sua liberisque suis, item libertis nec non aliis liberis personis, quibus non minus quam servis utitur'; if the servitude of the person 'in causa mancipii' was now a thing of the past (IV, 8, 7), there were still *liberi homines bona fide servientes* (e.g. IV, 4, 6). The same categories can be meant in *Dig.* XLIII, 16, 1, 17, where Ulpian tells us, in commenting on the interdict 'unde tu illum vi deiecisti aut familia tua deiecit', that the term *familia* includes 'eos quos loco servorum habemus'; here indeed it is evident that they are not *mercennarii*, since if it is my hired labourers who have ejected you by violence, you will be entitled only to the 'utile interdictum' (*ibid.* I, 20); the contradiction between this text and L, 16, 195, 4, also ascribed to Ulpian (in the former *filiifamilias* are excluded from the *familia*, and in the latter included) does not concern us. The rule that a man can be sued under the *Lex Aquilia* for an injury done by a free person on his command 'si modo ius imperandi habuit' (*Dig.* IX, 2, 37 *pr.*) probably again refers to a free person who

is in *causa mancipii* or *bona fide serviens* or perhaps the *iudicatus*. None of these texts shows that the employer exercised over the *mercennarius* any of the rights a master exercised over slaves.

6. The ship operator and the keeper of an inn or stable were subject to certain liabilities arising from the conduct of their employees, whether free men or slaves, see *Dig.* IV, 9, 7 *pr.*; XLIV, 7, 5, 6; XLVII, 5, 5 f. The purpose of these rules is clearly to protect third parties. The employer, in the last cited text, can acquit his liability when incurred through a culpable slave by *noxae datio*, but has to pay in full, if the employee is a free man or *servus alienus*. The *caupo* is also liable for thefts committed by permanent residents. This makes it clear that there is no implication that all persons through whom liability is incurred are subject to the authority of the person liable. Similarly publicans are liable for certain wrongful acts committed by their *familia*, and for this purpose the *familia* includes not only their own slaves (provided that they are already members of the staff employed in collecting taxes, L, 16, 195, 3), but also *servi alieni* or *liberi*, if similarly employed (XXXIX, 4, 1, 5 f.). The praetor was thus protecting the taxpayers against all employees or agents of the publicans. No doubt in all these texts the free employees may include *mercennarii*. But they are treated as agents of the employers, as in VIII, 6, 20, where Scaevola says that one may retain *usus* of a servitude through a *mercennarius*, *hospes*, visiting doctor, tenant or fructuary. It is patent that here the *mercennarius* is no more assimilated to an owner's slave than any of the other agents mentioned. Similarly I can prohibit a construction erected *vi aut clam* on my land through a slave, *procurator* or *mercennarius* (XLIII, 24, 3 *pr.*). What the texts do illustrate is the fact that free men could be employed in place of slaves or along with them (cf. *FIRA* I² 105, 49, Vipasca); further, though only to a limited extent, they could be the agents of the employer; for another instance see XXXIX, 5, 6.

7. According to Paul 'si libertus patrono vel cliens, vel mercennarius ei qui eum conduxit, furtum fecerit, furti actio non nascitur' (XLVII, 2, 90). Since in the Severan period it had become usual to treat theft as a criminal offence and not as a civil delict (Ulpian, *ibid.* 93), it is also relevant that 'furta domestica si viliora sunt, publice vindicanda non sunt, nec admittenda est huiusmodi accusatio, cum servus a domino vel libertus a patrono, in cuius domo moratur, vel mercennarius ab eo, cui operas suas locaverat, offeratur quaestioni: nam domestica furta vocantur quae servi dominis vel liberti patronis vel mercennarii apud quod degunt subripiunt' (Marcianus, XLVIII, 19, 11, 1). The first rule is easy to understand. It would be senseless for the employer to sue an impecunious day-labourer for theft: his remedy was to dismiss the thief. The second rule does assimilate *mercennarii* to slaves, but only if they live in the employer's house; I can see no justification for excising 'nam . . . subripiunt' as an interpolation (de Robertis, *Rapporti* 131 f.) since it harmonizes with the earlier occurrence of 'domestica' and with the words 'in cuius domo moratur'. Now the slave is of course subject to chastisement by the master, and the freedman has at least no remedy against the patron who flogs him within moderation (XLVII, 10, 7, 2; 10, 11, 7, both texts held by some to be post-classical); can we then conclude that the employer can in these conditions beat his hired employee? There is no trace of such a right in the title *de iniuriis* (XLVII, 10). It seems to me sufficient to suppose that the employer can turn the employee out of his home as well as out of his job. The words 'si viliora sunt' may indeed suggest that he can demand punishment under the criminal law if the theft is more than trivial larceny. (It is certain from XIX, 2, 45, 1 (Paul) that I can sue the owner for thefts committed by the slave in my hired service.) It is interesting that some *mercennarii* might actually live in the employer's house; we might perhaps think of craftsmen employed in a business, which was carried on in the employer's home; it seems unlikely that free *mercennarii* were used as domestic servants. But even such free workers would not be members of the *familia* as defined for any purpose of Roman law, which could for instance embrace both *servi alieni* and *liberi homines bona fide servientes* (XXI, 1, 25, 2; XLVII, 8, 2, 14); *mercennarii* are never expressly included. De Robertis (*Lavoro* 104-6) is quite unjustified in claiming that the free agricultural *operarii* mentioned by the agronomists belonged to the landowner's *familia*.

8. Moreover, suppose that I have wrongly interpreted the legal texts cited; still, they all related to *mercennarii* in special circumstances, and not to the mass of hired labourers who worked in the fields, at least for seasonal operations, and in the docks, building trade and the like, many probably hired only for the day. No doubt they were economically dependent on the employers, but there is nothing at all to show that they were legally assimilated to slaves. The enigmatic remark of Paul, 'homo liber, qui statum suum in potestate habet, et peiorem eum et meliorem facere potest: atque ideo operas suas diurnas nocturnasque locat' (*Sent.* II, 18, 1) perhaps indicates that the terms of *locatio* might degrade the free man, as the gladiator's *auctoramentum* undoubtedly did, but clearly it does not imply that they necessarily had this effect. And even if they did, it would not follow that this was because hired labour was usually slave labour; it might rather be the consequence of the economically depressed condition of free workers, which made them accept the same kind of discipline as that under which slaves worked. None of the evidence reviewed shows that the hiring of free labour was of secondary importance in imperial times.