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# Demolitions, Collapses and the Control of the Housing Market in Rome

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(Version autrice)

## Introduction

The development of the housing business in Rome in the last centuries of the Republic is linked to the considerable expansion of urban markets throughout the empire<sup>1</sup>. A characteristic feature of this flourishing activity is the development of high buildings, often called *insulae*, and intended for the rental market<sup>2</sup>. In this context, sources draw our attention towards the frequent destructions of private buildings, either accidental or deliberate.

**Strabo, *Geograph.* 5.3.7.** τῆ δ' ἀρετῇ καὶ τῷ πόνῳ τῆς χώρας οἰκείας γενομένης, ἐφάνη συνδρομὴ τις ἀγαθῶν ἅπασαν εὐφυῖαν ὑπερβάλλουσα· δι' ἣν ἐπὶ τοσοῦτον αὐξηθεῖσα ἢ πόλις ἀντέχει τοῦτο μὲν τροφῇ, τοῦτο δὲ ξύλοις καὶ λίθοις πρὸς τὰς οἰκοδομίας, ἃς ἀδιαλείπτως ποιοῦσιν αἱ συμπτώσεις καὶ ἐμπρήσεις καὶ μεταπράσεις, ἀδιάλειπτοι καὶ αὐταὶ οὔσαι· καὶ γὰρ αἱ μεταπράσεις ἐκούσιοί τινες συμπτώσεις εἰσὶ, καταβαλλόντων καὶ ἀνοικοδομούντων πρὸς τὰς ἐπιθυμίας ἕτερα ἔξ ἑτέρων.

When by their valour and their toil they had made the country their own property, there was obviously a concourse, so to speak, of blessings that surpassed all natural advantages; and it is because of this concourse of blessings that the city, although it has grown to such an extent, holds out in the way it does, not only in respect to food, but also in respect to timber and stones for the building of houses, which goes on unceasingly in consequence of the collapses and fires and repeated sales (these last, too, going on unceasingly); and indeed the sales are intentional collapses, as it were, since the purchasers keep tearing down the houses and building new ones, one after another, to suit their wishes. (Text and transl. Loeb Classical Library 50, Jones, 1923)

These unceasing collapses (συμπτώσεις) can be explained by the poor quality of the buildings relegated to lower class housing, but also by the lack of urban space in Rome, where buildings were torn down, possibly to reconstruct them higher, thus feeding an active market of raw and recycled materials. Demolitions thus directly or indirectly constituted business opportunities on the one hand, but also, on the other hand, constituted urban risks which could conflict with public or private interests. Solutions were therefore developed to control the risks, without impairing opportunities. But, because many dwellings were rented accommodations,

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<sup>1</sup> Property ownership has been thoroughly studied by Dubouloz 2011. See also the classic, Garnsey 1976.

<sup>2</sup> Liv. 21.62.3: mentions a 3-storey building in 218 BC. Plin. *HN* 3.67 describes how the majestic impression of the City is enhanced by the height of the buildings (*quod si quis altitudinem tectorum addat*).

tenants and subtenants also claimed a right to be protected from a peril that Strabo describes as commonplace<sup>3</sup>.

The attempts, by different authorities, to regulate the different activities of the construction market raise questions related to the need for new houses, the profitability of the construction business and the distribution of risks between different categories of economic actors, specifically between the owners and the middlemen, a class of entrepreneurs making their living out of the sublease market. Roman authorities also tried to control the risks caused by the poor construction quality. Emperors like Augustus or Nero tried, from the 1<sup>st</sup> c. AD, to restrict the poor quality of buildings by adopting measures like the limitation of the buildings' height. Legal mechanisms were also enacted, like the *cautio damni infecti*, a kind of insurance given to the neighbours in case of imminent damage from a house threatening to collapse. Between the end of the Republic and the beginning of the Empire, the construction sector and the housing market did not only represent a world of opportunities but was also subject to legal constraints that this paper proposes to explore.

Although issues related to the development of the housing market in Rome frequently appear in literary and epigraphical evidence, they cannot be properly discussed without the help of the Roman legal texts, which are instrumental in nuancing the complexities of the issues at stake for owners and entrepreneurs seeking to achieve a balance between economic opportunities and risks. The papers given at the conference "From Concept to Monument" explored in depth the economic opportunities of the construction sector in what Dominik Maschek calls the "architectural turn" of the studies in ancient economy. This paper aims not only to investigate how these opportunities could compete with each other, but also to examine how legal rules, set to limit potential conflicts, could represent significant constraints for the economic actors.

## **Controlling urban risks by limiting buildings' height**

Stories of faulty constructions and public buildings threatening to collapse are frequent in the Latin literature: a classical example is the theatre of Nicea whose walls, even before completion of the work in the early 2<sup>nd</sup> century, were "sinking and cracked from top to bottom" according to Pliny<sup>4</sup>. Archaeological studies confirm how arduous and hazardous some construction projects were, like that of the Cahors aqueduct at the beginning of the 1<sup>st</sup> century AD<sup>5</sup>. In subsequent years, the preservation of such buildings was undoubtedly a challenge, although maintenance was also crucial for soundly constructed buildings, given their exposure to environmental effects and due to natural ageing, as inscriptions plainly show<sup>6</sup>. Private

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<sup>3</sup> On the rental market and its different actors, see in the first place Frier 1980. For an archaeological approach of the subject: Pirson 1999.

<sup>4</sup> Plin. *Ep.* 10.39.2: *Ingentibus enim rimis desedit et hiat.*

<sup>5</sup> Rigal 2011.

<sup>6</sup> See various contributions on restoration and maintenance in Ronin & Möller 2019. On ageing of public buildings and roads, see Thomas & Witschel 1992 ; Davoine 2019. Our written documentation on the maintenance of private properties is more limited, although legal sources inform us of imperial decisions on mutual obligations of co-owners, for example (*Dig.* 17.2.52.10; *Cod. Iust.* 8.10.4). For a discussion on these fragments, see Dubouloz 2011 : 353-363.

buildings naturally encountered similar constructional defects. If a landowner decided not to resort to his own staff to build a house, he could choose to hire a contractor. Different types of construction contracts are accounted in the private sector between the end of the Republic and throughout the imperial period, like the *locatio conductio operis faciendi* or the *stipulatio*<sup>7</sup>. The constructor was then legally liable for the defects until the approval of the work, a procedure called *probatio* in the case of the *locatio conductio*<sup>8</sup>. After the approval, the risk of deterioration passed to the developer<sup>9</sup>.

Rapid decay of private buildings seems to have been abundantly caused by the widespread use of *opus craticium*, a building technique consisting of filling in a wooden lattice with *opus incertum*, or with a combination of straw and earth, and plastering over it. Although universally criticised by ancient authors for the serious fire risk it posed and for not being durable, this type of construction was widespread in the Empire<sup>10</sup>. It was fast and easy to build. It was cheap and allowed for some space because the lightness of the structure allowed not only to build higher, but also to project balconies and rooms above the street<sup>11</sup>. Besides the fire risk, *opus craticium* was prone to cracks and could cause buildings to collapse. It therefore created not only a possible private discomfort, but also a real public danger and a threat to the neighbouring private properties. As Strabo points out, construction of new houses was always necessary because they frequently burned down or collapsed<sup>12</sup>. To contain the damage, imperial authorities repeatedly tried to impose a norm by limiting the buildings' height, although nothing indicates how binding the standards were.

The interventions Augustus carried out to make Rome the capital worthy of his prestige fall into different categories. The embellishment of the city and the maintenance of public buildings naturally played a role in the definition of a unified urban image and in the self-celebration of the ruler<sup>13</sup>. Magnificence was, however, not the only priority and a fair number of decisions clearly also aimed at better controlling what are now called "urban risks". In this second category, we not only find the cleaning up of the Tiber to tackle the flood risks and the reorganisation of the firefighting force, but also the limitation of new buildings' height<sup>14</sup>. No

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<sup>7</sup> The *Digest's* title on the *locatio conductio* (*Dig.* 19.2) contains a high number of opinions from Servius, prominent jurist from the 1st c. BC, indicative of the issues at stake in this period of intense activity in the construction sector. See Saliou 2012.

<sup>8</sup> *Dig.* 19.2.60.3.

<sup>9</sup> The building technique, type and quantity of material used for the construction was also the responsibility of the owner, who could therefore not blame the entrepreneur for the low quality of a house if he had satisfied the terms of the contract. See Vitruvius *De arch.* 6.8.9: *Quibus autem copiarum generibus oporteat uti, non est architecti potestas, ideo quod non in omnibus locis omnia genera copiarum nascuntur, ut in proximo volumine est expositum; praeterea in domini est potestate, utrum latericio an caementicio an saxo quadrato velit aedificare* (An architect cannot control the kinds of material necessary to use, for the reason that not all kinds of material occur in all places, as was explained in the last book. Besides, the client decides whether he is to build in brick or rubble or ashlar). (Text and transl. Loeb Classical Library 280, Granger 1934)

<sup>10</sup> Vitruvius *De arch.* 2.8.20; Catullus 23.8-10; Juvenal 3.190-204; Gellius *NA* 15.1. Full review of the latest studies on *opus craticium* in Stellacci & Rato 2019.

<sup>11</sup> The vesuvian cities have preserved houses and buildings in *opus craticium*, for example the *insula III*, 13-15, in Herculaneum. See Monteix 2009 about the mistaken reconstruction of Maiuri in the 1930's.

<sup>12</sup> *Geograph.* 5.3.7

<sup>13</sup> Favro 1996.

<sup>14</sup> On the cleaning of the Tiber, Suetonius *Aug.* 30; on the vigils, Cassiodorus Dio 55.8.6-7. Teams of firemen were privately maintained, in addition to the insufficient public force, placed under the authority of a triumvirate, at the end of

such provision was taken before Augustus and most of the previous attempts to restrict the dimensions of private houses were, in fact, part of a broader movement of sumptuary laws<sup>15</sup>. Strabo tells, on the other hand, that the decision taken around 7 BC to forbid any construction on a public street to raise above seventy feet (20m) was made specifically to prevent such collapses.

**Strabo, *Geographia*, 5.3.7.** ἐπεμελήθη μὲν οὖν ὁ Σεβαστὸς Καῖσαρ τῶν τοιούτων ἐλαττωμάτων τῆς πόλεως, πρὸς μὲν τὰς ἐμπρήσεις συντάξας στρατιωτικὸν ἐκ τῶν ἀπελευθερωτῶν τὸ βοηθῆσον, πρὸς δὲ τὰς συμπτώσεις τὰ ὕψη τῶν καινῶν οἰκοδομημάτων καθελῶν, καὶ κωλύσας ἐξαίρειν ποδῶν ἐβδομήκοντα τὸ πρὸς ταῖς ὁδοῖς ταῖς δημοσίαις.

Now Augustus Caesar concerned himself about such impairments of the city, organising for protection against fires a militia composed of freedmen, whose duty it was to render assistance, and also to provide against collapses, reducing the heights of the new buildings and forbidding that any structure on the public streets should rise as high as seventy feet. (Text and transl. Loeb Classical Library 50, Jones, 1923)

This example was followed by other emperors. The reconstruction programme decided upon by Nero, after the Great Fire of 64AD, addressed the fire risk by combining the creation of open spaces to slow the spread of flames with restrictions on the buildings' height, to minimise the damage in case of a collapse.

**Tacitus, *Ann.* 15.43.** *Ceterum urbis quae domui supererant non, ut post Gallica incendia, nulla distinctione nec passim erecta, sed dimensis vicorum ordinibus et latis viarum spatiis cohibitaque aedificiorum altitudine ac patefactis areis additisque porticibus, quae frontem insularum protegerent.*

In the capital, however, the districts spared by the palace were rebuilt, not, as after the Gallic fire, indiscriminately and piecemeal, but in measured lines of streets, with broad thoroughfares, buildings of restricted height, and open spaces, while colonnades were added as a protection to the front of the tenement-blocks. (Text and transl. Loeb Classical Library 322, Jackson, 1937)

Finally, a later source, the *Epitome de Caesaribus*, indicates that Trajan decided a similar limitation, this time to sixty feet (17m). His decision is said by the *Epitome* to have been taken after a series of public disasters struck Rome and the empire (a particularly devastating surge of the Tiber, earthquakes in several provinces, a famine, epidemics and fires).

**Epit. de Caes., 13. 12.** *Eo tempore, multo perniciosius quam sub Nerva, Tiberis inundavit magna clade aedium proximarum; et terrae motus gravis per*

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the Republic. See *Dig.* 1.15.1. Three centuries after the time of Crassus, an imperial edict reminds that *insularii* have a responsibility in preventing the fire to burn down *insulae* (*Dig.* 1.15.4).

<sup>15</sup> Summing up the main arguments, see Saliou 1994 : 211.

*provincias multas, atroxque pestilentia famesque et incendia facta sunt. 13. Quibus omnibus Traianus per exquisita remedia plurimum opitulatus est, statuens ne domorum altitudo sexaginta superaret pedes ob ruinas faciles et sumptus, si quando talia contingerent, exitiosos*

At that time, more destructively by far than under Nerva, the Tiber flooded with great devastation of close-by buildings; and there occurred a serious earthquake through many provinces and a dreadful plague and famines and fires. To all these things Trajan brought relief through remedies usually excellent, decreeing that the height of houses do not exceed sixty feet on account of proneness to collapse and deadly expenses if ever things such as this should come to pass. (Text *Les Belles Lettres*, Festy, 1999; Transl. Canisius College Translated Texts, Banchich, 2018)

While the sources are well known and routinely cited in studies on the legal constraints of the construction business, they still raise important questions<sup>16</sup>. They concern the efficiency and enforcement of such pieces of imperial legislation, undoubtedly a thorny matter which would require a longer and more thorough study than the present one, but to which it is possible to bring some quick thoughts.

It must first be noted that the emperors' decisions seem very stereotypical, corresponding to the sort of responses expected of them in cases of public disasters emanating from urban living conditions. This impression is particularly patent in the last text, the *Epitome*. Besides the fact that it was written some three centuries after the events described, the author enumerates a series of calamities to which the single response was to legislate on the houses' height, a supposedly excellent remedy (*per exquisita remedia*). The reasons why Augustus and Nero decided to take public action are more precisely related, by the texts, to the recurring problems of fire and collapse. This situation was not new in the imperial period. On the contrary, these problems were very common throughout the last centuries of the Republic, although we do not know of any similar piece of regulation before Augustus. It would, however, be excessive to associate the silence of our sources with a potential lack of interest of the Republican elite in the matter<sup>17</sup>. Many examples indeed tell us that urban risks, directly impacting the living conditions of the urban population, were a real concern to those in charge of public offices in Republican times<sup>18</sup>. It is nevertheless interesting to note that we only hear of these construction laws with the advent of the imperial regime. A fundamental difference with the previous era was, indeed, that action was now expected from one single ruler. As such, the emperor had to show he was responding decisively to a critical situation and was living up to the people's expectation: imposing a rule was part of the process<sup>19</sup>.

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<sup>16</sup> Catherine Saliou discusses a last text, also referring to height's limitation: *Cod. Iust.* 8.10.12.4. It could refer to a buildings' height limitation in Constantinople, but Saliou argues that the text has been traditionally incorrectly translated and that it actually deals with the distance between houses (Saliou 1994 : 215-216).

<sup>17</sup> As expressed, for example, by Van den Bergh 2003.

<sup>18</sup> Without being too optimistic about the interest of the senatorial class into the fate of their less wealthy fellow citizens, it was at least an electoral concern. A firefighting force already existed before the creation of the vigils by Augustus in AD6: it was placed under the authority of the *triumviri nocturni* (*Dig.* 1.15.1). During his censorship, Cato had the cisterns paved and the sewers cleaned (*Liv. Per.* 39.44.4-6).

<sup>19</sup> Paul Veyne sums up the idea in one sentence: « Tout empereur doit continuer, sous peine de mort, à mériter le consensus qui l'a désigné » (Veyne 2002 : 54).

As to the actual efficiency of the measure, limiting the height of such frail structures, as we are told some *insulae* were, was obviously only common sense. If we follow Strabo and Tacitus, such regulation was valid only in Rome. On the other hand, although it remains quite imprecise, the text of the *Epitome* seems to indicate that the height limitation was applicable throughout the Empire. It is certainly a possibility: scattered fragments of the *Digest* and of the *Code of Justinian* indeed refer to construction laws that applied more broadly than in Rome alone<sup>20</sup>. It remains, however, difficult to estimate how well these decisions were really applied and enforced. Seventy or sixty feet are roughly coherent with the few elements we can gather about the elevation of an apartment building. Preserved rooms in the Casa a Graticcio (Herculaneum, Insula III, 13 – 15) are 2.95m high on the ground floor and 2.90m on the first floor<sup>21</sup>. Working areas may measure as high as 4.06m in Pompeii, where archaeologists studied a bakery whose ground-floor room was presumably joined together with the upper floor<sup>22</sup>. An interpretation of some symbols on the *Forma Urbis Romae*, although some two centuries later, proposes a maximum of 8 storeys<sup>23</sup>. An average of 3m by floor would give us a 24m high building, but it is very likely that the last floors, (intended for lower class housing) were also lower-ceilinged. It follows that the buildings of the Severan era would hypothetically match the seventy feet (20m) requirements of the Augustan legal provision. It is, however, challenging to conclude whether this height resulted from a respect of the laws of the Emperor or of the laws of physics.

To estimate the efficiency of imperial decisions is indeed an ambitious and rarely undertaken task. In addition, it is possible that the problem might actually lie more with the capacity of the Roman administration to impose these decrees on private owners and contractors. The fragments gathered by Saliou show that imperial regulation of the building practices existed and were regularly referred to by jurists and presumably in court too, but it is probably not a coincidence that these fragments appear in the body of private law texts. Indeed, they constitute a larger set of solutions to which private individuals were entitled to resort to. In fact, the private owners whose property was threatened by a collapsing house were probably more efficient than a costly public administration because they were determined to see their rights respected. To protect their assets from such peril, Roman private law developed and instituted specific mechanisms.

### ***The cautio damni infecti and the neighbours' liability***

A very prominent feature of the Roman legal system was favouring procedures of reciprocal control between private individuals over the implementation of general legislation<sup>24</sup>. Alongside imperial decisions on buildings' height, mechanisms of protection against the urban risk of collapse were thus developed by praetorian law and were undertaken by townspeople themselves. A property owner, fearing that an adjacent house might damage his own by falling

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<sup>20</sup> The texts, gathered by Catherine Saliou, refer to construction laws in general and do not specifically mention a height's limitation (*Cod. Iust.* 8.10.1; *Dig.* 39. 1. 1. 17; *Dig.* 39. 1.5.9; *Dig.* 32. 1 1. 14). Saliou 1994 : 212-216.

<sup>21</sup> Stellacci & Rato 2019: 15.

<sup>22</sup> Monteix et al. 2013.

<sup>23</sup> Pedroni 1992 ; and more recently Madeleine 2008.

<sup>24</sup> Similar views expressed in different contexts by Dubouloz 2011 : 71 ; Maganzani 2014 : 67

down, could obtain a “guarantee against anticipated injury” (a *cautio damni infecti*) from the owner of the threatening building<sup>25</sup>. As a result, he was given assurances to be indemnified for his loss in the event of a collapse<sup>26</sup>. Although this *cautio* took the shape of a type of contract called *stipulatio*, it was evidently not always a voluntary contract, but could be forced on a party by the *praetor*<sup>27</sup>.

Accidental collapses naturally constituted a great threat on private properties, because of the reconstruction costs they potentially incurred, but also because of the financial loss they could induce if deterioration forced tenants to flee<sup>28</sup>. For this reason, at least from the end of the 1<sup>st</sup> century BC, *cautiones* were not only granted to property owners, but also to the tenants of the individual apartments within a block of flats<sup>29</sup>.

It has been suggested that the *cautio damni infecti* was probably regularly (if not systematically) used in the business of selling and buying houses<sup>30</sup>. It seems likely that prospective investors preferred to acquire buildings for which a *cautio* had already been granted. Sellers had therefore more chances to make a good deal if they negotiated *cautiones* with their neighbours, especially if they suspected damage from the surrounding houses<sup>31</sup>. The importance of the *cautio damni infecti* in the contracts for the sale of immovable properties can be traced back to sometime between the 1<sup>st</sup> and the 3<sup>rd</sup> century AD. In his comment on the work of Plautius (2<sup>nd</sup> half of the 1<sup>st</sup> century AD), the jurist Paul (beginning of the 3<sup>rd</sup> century AD) considered that the *cautio* was essential to the sale contract, whether or not a threat was suspected from the adjacent building.

**Fig. 19.1.36. Paulus libro septimo ad Plautium.** *Venditor domus antequam eam tradat, damni infecti stipulationem interponere debet, quia, antequam vacuam possessionem tradat, custodiam et diligentiam praestare debet et pars est custodiae diligentiaeque hanc interponere stipulationem: et ideo si id neglexerit, tenebitur emptori.*

It is the seller of a house who, before its delivery, should obtain the stipulation on threatened damage (*stipulatio damni infecti*); he has a duty to exercise safekeeping and care before delivering vacant possession, and obtaining this

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<sup>25</sup> The mechanism is detailed in the *Digest*'s title 39.2 *De damno infecto et de suggrundis et proiectionibus* (Anticipated injury and house-eaves and projections). Burekhard 1875 ; MacCormack 1971

<sup>26</sup> Jurists, however, remind that the compensation must be proportionate to the loss and remain moderate, as Ulpian puts it in a fragment where he, incidentally, condemns the “immoderate luxury” (*immoderata luxuria*) of some houses adorned with pictures and carved stucco: *Dig.* 39.2.40 *pr.*, Ulp. *Ad Sab.* 43.

<sup>27</sup> On the different *stipulationes praetoriae*, see Buckland 1921 : 721-722.

<sup>28</sup> Tenants were indeed justified in fleeing and were not liable for any outstanding rent if there was a “justified fear of collapse” (*iusto metu ruinae*), as Cassius (first half 1<sup>st</sup> c. AD) puts it (*Dig.* 39.2.28, Ulp. *Ad Ed.* 81). The fear could concern the building they were living in, or even a neighbouring one. This is a case of justified abandonment, studied by Frier 1985 : 92-105.

<sup>29</sup> *Dig.* 39.2.13.5, Ulp. *Ed.* 53: *Vicinis plane inquilinisque eorum et inquilinorum uxoribus cavendum esse ait Labeo, item his qui cum his morentur* (Labeo says that a *cautio* must obviously be given to neighbors, their tenants, and their tenants' wives as well as to those who reside with them). All texts from the *Digest*: Mommsen et al. 1886. Translation: Watson 1998.

<sup>30</sup> MacCormack 1971.

<sup>31</sup> Several texts in *Dig.* 39.2.40 detail how negotiations on the estimated amount of financial compensation can be complicated by the intervention of different parties, each possibly claiming a different portion of the final amount, depending on their exposure to the risk.



stipulation is a part of safekeeping and care. Therefore, if he neglected this, he will be liable to the buyer.

It is notable in this text that the ability to secure a *cautio* is seen, by the jurist, as part of the due care that an owner had to exercise to keep a property safe<sup>32</sup>. Does it mean that every house in Roman cities, and in Rome in the first place, was threatening to collapse on the adjacent ones? That is not what we learn from the legal texts. As a matter of fact, owners did not have to suspect a threat to seek a *cautio* (at least from the time of Paulus until the 6<sup>th</sup> century), as long as they swore that they were not trying to slander anybody<sup>33</sup>. Neither do our sources show that a *cautio* was a mandatory term of the sale contract. Nevertheless, in the absence of an insurance system, it is likely that a mechanism like the *cautio damni infecti* was routinely applied by private owners to protect their property against an unforeseeable but undoubtedly common urban risk. This practice is confirmed by a literary mention. In his famous speech published in 70 BC, Cicero tells that a clause on the *damnum infectum* was inserted by Verres in a fraudulent construction contract, to keep up appearances and make it look genuinely lawful<sup>34</sup>.

Theoretically, owners freely enjoyed their own property and could dispose of it, obviously by selling it, but even by destroying it or letting it fall into ruin. It should consequently have been perfectly lawful for building owners to neglect their property to the point that it no longer served its original purpose. The *cautio damni infecti* therefore constituted a serious restriction upon property right<sup>35</sup>. The aim of this restriction was however not only to achieve peaceful neighbourly relations, but also to control an urban risk that potentially weighed heavily on the public interest and on everyone's property as well. That is the reason why the *cautio damni infecti* was not a remedial but a precautionary measure, an aspect clearly illustrated by the fact that it applied to future damage only and that it could possibly be subject to an emergency procedure.

***Dig. 39.2.2. Gaius libro 28 ad Edictum provinciale. Damnum infectum est damnum nondum factum, quod futurum veremur.***

Anticipated injury is injury that has not yet occurred but which we fear may occur in the future.

***Dig. 39.2.1 Ulpianus libro primo ad Edictum. Cum res damni infecti celeritatem desiderat et periculosa dilatio praetori videtur, si ex hac causa sibi iurisdictionem reservaret, magistratibus municipalibus delegandum hoc recte putavit.***

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<sup>32</sup> Also see *Dig. 39.2.18.8, Paul Ad Ed. 48*. Although from the same author, the two texts differ slightly on the issue of the liability of the vendor. On both texts and the debate upon their authenticity, see MacCormack 1971 : 301-309.

<sup>33</sup> *Dig. 39.2.7 pr.*

<sup>34</sup> *Cic. Ver. 2.1.56 (146): At ut videatur tamen res agi et non eripi pupillo* (However, to give it the appearance of a business arrangement and not a robbery of that boy [i.e. the underage son of the late contractor]). (Text and transl. Loeb Classical Library 221, Greenwood, 1928)

<sup>35</sup> See the categorization of legal mechanisms by Paul Frédéric Girard and by David Johnston (Girard 1929 : 278 ; Johnston 1999 : 71-76)

Since anticipated injury is a matter that requires speedy handling and the praetor views as dangerous the delay that would arise if he reserved jurisdiction in such a case to himself, he rightly thought that the matter should be delegated to municipal magistrates.

*Damnum infectum* is not an isolated example in the Roman legal system of a legal action granted before any harm was actually done. The *Digest's* next title, 39.3 "Water and the action to ward off rainwater" (*De aqua et aquae pluviae arcendae*), details the lawsuit farmers could bring against neighbours altering rainwater runoff, thus creating a flood risk. This action, as in the case of the risk of collapse, explicitly depended on an anticipated damage, not on an actual one (for which other actions existed)<sup>36</sup>.

In the absence of documents recording the activity of Roman judicial courts, what can we know about the actual use of such a legal mechanism? It is possible that a very early version of the *actio damni infecti* existed in the XII Tables, since it is well established that the original remedy was a *legis actio*, before it was superseded by the praetorian mechanism, sometime during the 2<sup>nd</sup> or the 1<sup>st</sup> century BC<sup>37</sup>. The first indications of its geographical dissemination come, on the other hand, from the body of private law itself. The title on the *damnum infectum*, in the *Digest*, indeed contains an unusually high number of fragments from the Provincial Edict, cited by Gaius. In fact, we know from the same Gaius that there was a whole chapter of the Provincial Edict specifically dedicated to the *cautio*<sup>38</sup>. It is probably from that source that the chapter 20 on *formulae* for *damnum infectum* in the *Lex (Rubria) de Gallia Cisalpina* derives, a Roman statute issued in 49 or 48 BC, dealing with local jurisdictions in the context of the enfranchisement of Cisalpine Gaul by Caesar<sup>39</sup>.

A further provision ensured that the *cautio damni infecti* was efficiently enforced. If the owner of the threatening building refused either to make some repairs or to give the *cautio*, in spite of the praetor's request, the magistrate would concede to the plaintiff a *missio in possessionem damni infecti causa*, which could end with the aggrieved person being granted actual possession of the dilapidated house.

**Dig. 39.2.4, Ulpianus libro primo ad Edictum. (...) 1. Si intra diem a praetore constituendum non caveatur, in possessionem eius rei mittendus est. "Eius rei" sic accipe, sive tota res sit sive pars sit rei. 2. An tamen is, qui non admittit, etiam pignoribus a magistratibus coerceatur? Non puto, sed in factum actione**

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<sup>36</sup> Dig. 39.3.1, Ulp. *Ad Ed. 53. pr. Si cui aqua pluvia damnum dabit, actione aquae pluviae arcendae avertetur aqua (...). 1. Haec autem actio locum habet in damno nondum facto, opere tamen iam facto, hoc est de eo opere, ex quo damnum timetur (...)* (If rainwater is going to cause one injury, it can be averted by means of an action to ward off rainwater. [...] 1. This action is appropriate where no injury has yet been caused, but work of some sort has been carried out, that is, work from which injury is apprehended [...]).

<sup>37</sup> Kaser & Knütel 2008 : 125. Gaius (*Inst.* 4.31) explains that the praetorian solution is easier and more efficient (*commodius ius et plenius*) than the old civil procedure. It is also referred to by Cicero, in the first half of the 1<sup>st</sup> century AD, as a common procedure in the construction business (Cic. *Verr.* 2.1.66 (146); Cic. *Top.* 4.22). More on that topic in Nörr 1982.

<sup>38</sup> Example in Dig. 39.2.8, *Gaius ad Edictum praetoris urbani, titulo de damno infecto* (Urban Praetor's Edict, Chapter on Anticipated Injury).

<sup>39</sup> *CIL* 11.1146. On the jurisdictional aspects concerning the competent magistrate to grant a *cautio* in this specific context, see Rainer 2005 : 260, who shows that the *Lex* is derived from the *Edict of the peregrine praetor*.

*tenebitur: nam et si a praetore missus non admittatur, eadem actione utendum est. (...) 4. Si forte duretur non caveri, ut possidere liceat (quod causa cognita fieri solet) non duumviros, sed praetorem vel praesidem permissuros: item ut ex causa decedatur de possessione.*

(...) 1. If a *cautio* is not given within the period laid down by the praetor, the plaintiff must be granted *missio in possessionem* of the property in question. "The property in question" is understood to mean either the whole property or a part thereof. 2. Can a party who does not admit the plaintiff be constrained by the magistrates even by means of pledges? I think not; but he will be liable to an action *in factum*, since that is the action that we must employ in the event of the plaintiff not being admitted despite a grant of *missio in possessionem* from the praetor. (...) 4. If failure to give a *cautio* should persist, permission to take possession (which normally comes after the case has been investigated) will be given not by the *duumviri* but by the praetor or governor; similarly, when possession is to be abandoned on cause shown.

The magistrate could not compel a rebellious neighbour to give the *cautio* (*An tamen is, qui non admittit, etiam pignoribus a magistratibus coerceatur? Non puto*). The praetor could, however, issue a decree *in possessionem ire*, which allowed the plaintiff (to whom the *cautio* was refused) to temporarily take possession of the land but without ejecting the owner. This first step did not confer actual *possessio* of the adjacent building, but a second step could be taken and the owner of the threatening building was then exposed to an *actio in factum* (*in factum actione tenebitur*), based on that from which his liability was derived: his refusal to give the *cautio*. In a last resort, a second decree would be issued by a magistrate with *imperium* (*non duumviros, sed praetorem vel praesidem*), giving the actual right of *possessio* to the plaintiff over the adjacent property, or at least over a part of it (*sive tota res sit sive pars sit rei*)<sup>40</sup>. The threat of a *missio in possessionem* was undoubtedly a great incentive for property owners to grant their neighbours the *cautio* they were asking for<sup>41</sup>.

There were other legal solutions for private individuals to protect their property against urban risks. The *nuntiatio operis novi*, for example, was useful to someone who had concerns about the works undertaken by a neighbour on the adjacent land<sup>42</sup>. He was then allowed to serve a notice on the builder to cease work. It was, like the *cautio damni infecti*, a limitation to property rights, but also, interestingly, a mechanism used in case damage was feared<sup>43</sup>. This is, of course, not a coincidence as legal principles bear some similarities with the risk management approach: notably, both the legal system and the control of risks are based on the anticipation that damage (or a conflict leading to a damage) will occur, although it is not possible to predict exactly where, when, in which conditions or in which magnitude. That is why Roman private law arguably played a key role in the procedures of risk control, alongside other sets of solutions, either technical or political. It is, indeed, worth reminding that political decisions made by the emperors and given legal force are not separated from the risk prevention system we can observe in the private law. Rather, they are very much embedded within it. One of the

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<sup>40</sup> On this procedure, see Buckland 1921 : 721.

<sup>41</sup> On the difficulties of implementing such a decree when either one of the buildings is held in co-ownership, see Dubouloz 2011 : 256-263.

<sup>42</sup> *Dig.* 39.1 "Notice of New Work".

<sup>43</sup> Buckland 1921 : 722 ; Johnston 1999 : 74 ; Kaser & Knütel 2008 : 125.

conditions for serving a *nuntiatio operis novi* was indeed an incompatibility with building regulations established by *senatus consulta* and imperial *constitutiones*<sup>44</sup>. Although the praetorian law contains many rules designed to regulate the construction business, as we just saw, emperors were probably prompted to act in some cases because, if legal solutions were available to private individuals, they could choose to act or not, depending on their own interests. In case they did not, public interest could be jeopardised<sup>45</sup>.

## House demolition, between opportunities and constraints

Accidental collapses were not the only cause for urban buildings to fall down. Strabo's description points out that houses in Rome were continually torn down by their owners<sup>46</sup>. The geographer explains that such a practice was made possible by the admirable wealth in natural resources that were transferred to the city from its surrounding territory. The depiction of such an abundance of commodities is, however, partly misleading. Although commodities were available, entrepreneurs were not unconcerned by the cost of building materials, as the development of an active salvaging sector plainly shows. Similarly, stating that demolitions happened to suit the wishes (πρὸς τὰς ἐπιθυμίας) of the owners only partly reflects the reality: literary and legal sources show that such enterprises were often part of a larger commercial project to increase an owner's profits on the housing market. Opportunities nonetheless had to be weighed against the costs incurred by demolition plans.

A letter from Cicero to his close friend Atticus reveals that the poor condition of his possessions gave him but little cause for concern, because he was actually seeing it as an opportunity to improve his investment, presumably on the rental market.

**Cic. Att. 363 (14.9).** Scr. in Puteolano xv Kal. Mai. an. 44. <Cicero Attico Sal.> §1. *De re publica multa cognovi ex tuis litteris, quas quidem multiugis accepi uno tempore a Vestori liberto. Ad ea autem quae requiris brevi respondebo. Primum vehementer me Cluviana delectant. Sed quod quaeris quid arcessierim Chrysippum, tabernae mihi duae corruerunt reliquaeque rimas agunt; itaque non solum inquilini sed mures etiam migraverunt. Hanc ceteri calamitatem vocant, ego ne incommodum quidem. O Socrate et Socratici viri! Numquam vobis gratiam referam. Di immortales, quam mihi ista pro nihilo! Sed tamen ea ratio aedificandi initur, consiliario quidem et auctore Vestorio, ut hoc damnum quaestuosum sit. (...)§3. quod quaeris iamne ad cen<ten>a Cluvianum, adventare videtur; sed primo anno lxxx detersimus.*

Puteoli, 17 April 44. Cicero to Atticus. 1. I have learned a variety of political news from your letters, of which I received several in a batch from Vestorius'

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<sup>44</sup> Dig. 39.1.1.16-17, Ulp. *Ad Ed.* 52; Dig. 39.1.5.9, Ulp. *Ad Ed.* 52.

<sup>45</sup> This can be observed when Augustus decided to clear the Tiber from all the rubble and debris that contributing to a flood risk (Suet. *Aug.* 30). Although the management of rivers and riverbeds is the object of four titles of the Digest (Dig. 43.12; Dig. 43.13; Dig. 43.14; Dig. 43.15) and many provisions are set out to prevent the obstruction of rivers, the praetor had no authority to act on his own in this matter. If no member of the riverside communities was ready to bring a legal action against a fellow resident, none of these solutions was implemented. That is probably one of the reasons why Augustus had to act.

<sup>46</sup> Strabo *Geograph.* 5.3.7: καταβαλλόντων καὶ ἀνοικοδομούντων πρὸς τὰς ἐπιθυμίας ἕτερα ἐξ ἐτέρων.

freedman. Let me briefly answer your enquiries. First, I am quite delighted with the Cluvius property. But you ask me why I have sent for Chrysippus: two of my shops have collapsed and the others are showing cracks, so that even the mice have moved elsewhere, to say nothing of the tenants. Other people call this a disaster, I don't call it even a nuisance. Ah Socrates, Socratics, I can never repay you! Heavens above, how utterly trivial such things appear to me! However, there is a building scheme under way, Vestorius advising and instigating, which should turn this loss into a source of profit. (...) 3. You ask whether the Cluvian property comes to 100,000 a year yet. It looks as though it is going to, but in the first year I have cleared 80,000. (Text and transl. Loeb Classical Library 491, Shackleton Bailey, 1999)

Cluvius died in 45 and Cicero inherited from him, amongst other properties, some shops (*tabernae*) in Puteoli. At that period, Cicero was spending most of his time either in Arpinum or in Tusculum, and Vestorius, another businessman of Puteoli, had dealt with the details of the inheritance<sup>47</sup>. The shops were obviously neglected to the point that two of them collapsed (*tabernae mihi duae corruerunt*) and the rest was not far from suffering the same fate: obviously a case of “justified abandonment” since the tenants had fled<sup>48</sup>. Cicero was taking the whole matter so light-heartedly, however, because he saw in it a good opportunity to improve his position on the rental market. A construction project (*ratio aedificandi*) was on its way. Instrumental to that plan was the same Vestorius who was already involved in many different business transactions<sup>49</sup>. What is even more interesting for us is Cicero's insistence, in his next letter, that the collapse had not lowered the value of the estate.

**Cic. Att. 365 (14.11)** Scr. in Puteolano(?) XI Kal. Mai. an. 44. §2. *Cicero Attico Sal. de Cluviano, quoniam in re mea me ipsum diligentia vincis, res ad centena perducitur. Ruina rem non fecit deteriolem, haud scio an iam fructuosiolem.*  
Puteoli (?), 21 April 44. Cicero to Atticus. 2. As regards the Cluvius property, since your care for my interests exceeds my own, it's getting up to the 100,000 mark. The collapse of the buildings has not lowered the returns, indeed I rather think it may actually have increased them. (Text and transl. Loeb Classical Library 491, Shackleton Bailey, 1999)

How exactly could the collapse of his buildings, and probably the demolition of the others, whose walls were full of cracks, help Cicero improve his profits? It is likely that the “building scheme” mentioned in the previous letter was intended to replace the original *tabernae* by larger buildings, allowing to lease to more tenants, maybe at a higher price, thus increasing the benefits from HS 80.000 to HS 100.000 a year<sup>50</sup>. This practice is reminiscent of

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<sup>47</sup> Cicero's share in Cluvius' inheritance additionally comprised the *horti Cluviani*, also situated in Puteoli. On the business relationship between Cluvius, Vestorius and Cicero, see Andreau 1983.

<sup>48</sup> See note 27.

<sup>49</sup> Vestorius is also known for his realisations in the dying industry (Vitr. *De arch.* 7.11.1; Plin. *HN* 33.57.163) and was a successful financier and trader. More on this personality in Verboven 2012 : 918-919 ; 930.

<sup>50</sup> D'Arms 1981 : 49. On the profit surprisingly expected after a demolition, see Juvenal's and Martial's mockeries (Juv. 3. 220-223; Mart. *Epigrams* 3. 52).

Crassus, as reported by Plutarch<sup>51</sup>. Observing the damage inflicted by the frequent fires and collapses to buildings, he would purchase burnt houses and the adjacent ones at a trifling price and would then rebuild them<sup>52</sup>. Such a scheme probably required appropriate connections to the construction/demolition industry (indeed, Cicero explains that he had already called on the architect Chrysippus) and to have adequate access to commodities<sup>53</sup>. The costs could be appreciably offset through recycling and/or salvaging, either by sourcing second-hand materials, by reinvesting elements of the demolished building into a new project on the same site, or by reselling valuable pieces, bricks, stone and even demolition debris.

Salvaging and recycling trade was indeed a prominent business in the construction sector, especially in the context of exceptional urban growth in which Rome and Roman cities develop from the 2<sup>nd</sup> century BC onwards<sup>54</sup>. The activity was evidently well structured since dismantling requires specific equipment (scaffolding, lifting machines, rope and pulleys) as well as skilled labour. Materials had to be sorted according to what could be salvaged or just used as fill to level sites. In some cases, they were stored for subsequent use. All these operations required competence, capital and network and the evidence clearly points towards a “much more developed recycling economy than the casual reclamation of material following the demolition projects”<sup>55</sup>. Documentation reveals not only that entrepreneurs could specialise in this line of business, as a painted sign for a shop in Pompeii shows<sup>56</sup>, but also that the profession itself was well established, as the mention of a *collegium subrutorum*, in Rome, between 79 and 81, indicates<sup>57</sup>.

From imperial projects and redevelopment of urban areas, to specialized entrepreneurs acting at a local or regional level, or simply patrons refurbishing their respective houses, numerous and varied supply channels were exploited. The first reason was that second-hand materials had an economic value. It is of course evident in the case of skilfully carved capitals or marble decoration, but stones, bricks, wood, or metal elements also seem to have been systematically reclaimed and reused<sup>58</sup>. Indeed, second-hand materials were needed and, in some cases, probably much sought after. The study of marble-clad bars in Vesuvian cities remarkably demonstrates that the salvaging of marble was instrumental in bringing an elite fashion and

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<sup>51</sup> Plut. *Vit. Crass.* 2.3–4.

<sup>52</sup> Bruce Frier’s analysis points out that Crassus’ story, if we believe it, seems to be a very isolated example, from which much has been extrapolated, often without any real ground (Frier 1980 : 32-34). Furthermore, it is not known if Crassus intended to resell the houses acquired at a very low price, which would make him a real speculator, or if he simply intended to reconstruct and lease them.

<sup>53</sup> According to Plutarch (*Vit. Crass.* 2.3–4), Crassus had a small army of 500 slaves, architects and masons, at his command.

<sup>54</sup> Recycling materials has always been common practice in construction. For a theoretical approach of recycling and case studies in different periods, see Brysbaert 2011 ; Kinney 2006. Concerning the Roman period, recycling and salvaging have long been associated with Late Antiquity, which is now widely questioned. For a new evaluation throughout the Roman period, see a comprehensive synthesis in Barker 2018.

<sup>55</sup> Barker 2018 : 69.

<sup>56</sup> The late-Republican sign in *Insula* III.7, advertises for second-hand roof tiles (*CIL* 4. 7124). For more references, see Barker 2018 : 60, n. 73.

<sup>57</sup> *CIL* 4. 940. As noted by Mommsen, *subruere* can mean “demolish a house”, but also “cut down a tree”. Simon J. Barker follows the first meaning to deduct the existence of a category of entrepreneurs specialised in demolition (Barker 2011 : 128; *contra* Davoine 2015 : 192).

<sup>58</sup> Barker 2018 : 79.

taste for exotic stone to lower classes of the Roman society<sup>59</sup>. More critically though, Roman construction techniques depended on recycled materials: much-needed lime was naturally obtained by burning limestone or marble, and the famous *opus caementicium* necessitated an aggregate composed of reused stones, broken tiles or brick rubble, thus making wide use of demolition debris<sup>60</sup>.

This picture of a flourishing salvaging market should not, however, overshadow the probably frequent occasions when building owners were reluctant to deal with rubble. If it could acquire a certain value, in some cases, because recycled materials of that nature were needed nearby, evidence shows that debris mostly represented a hindrance<sup>61</sup>. Famously, the Ostian marshes were used to get rid of it after Rome's Great Fire of 64<sup>62</sup>. This was a very exceptional event, which required exceptional measures, but day-to-day solutions had to be found too. It was therefore suggested that the boom in *opus caementicium*, in Rome, might partly be explained by the solution it offered to dispose of rubble<sup>63</sup>.

Of course, in the collapse of a building, valuable materials were mingled together with worthless debris. Landlords could be reluctant to pay for the cost of carefully sorting the crushed materials, and be tempted to retrieve what was valuable and leave the rest on the site, irrespective of all the damage it was causing to public and private interests. To prevent that sort of situation from happening, jurists developed a "take it or leave it" solution.

**39.2.7, Ulpianus libro 53 ad edictum. 2. Unde quaeritur, si ante, quam caveretur, aedes deciderunt neque dominus rudera velit egerere eaque derelinquat, an sit aliqua adversus eum actio. Et Iulianus consultus, si prius, quam damni infecti stipulatio interponeretur, aedes vitiosae corruissent, quid facere deberet is, in cuius aedes rudera decidissent, ut damnum sarciretur, respondit, si dominus aedium, quae ruerunt, vellet tollere, non aliter permittendum, quam ut omnia, id est et quae inutilia essent, auferret, nec solum de futuro, sed et de praeterito damno cavere eum debere: quod si dominus aedium, quae deciderunt, nihil facit, interdictum reddendum ei, in cuius aedes rudera decidissent, per quod vicinus compelletur aut tollere aut totas aedes pro derelicto habere.**

2. Therefore, there arises the question whether, if a house falls down before a cautio is given and the owner does not wish to remove the rubble, but abandons it, there is any action that can be brought against him. The case in which a ruinous house collapsed before a stipulation against anticipated injury had been introduced was put to Julian, and he was asked what the person onto whose house the rubble had fallen ought to do to secure reparation. He replied that if the owner

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<sup>59</sup> Much of the marble used in the bars at Pompeii and Herculaneum was second-hand. Some might have come from left-overs from the production of flooring or revetment, but most of it seems to have been second-hand, generated by refurbishment of demolition projects of either public building or private houses (Fant et al. 2013).

<sup>60</sup> Vitruvius reminds that the strongest walls were made of old roofing tiles because they were weather-tested Vitruv. *Arch.* 2.8.19.

<sup>61</sup> Jurists advocate against the demolition of a building illegally erected on a public ground for fear of the amount of debris it can generate (*Dig.* 43.8.2.17; *Dig.* 43.8.7). On debris, rubble and ruins in general, see Davoine 2015. On the issue of managing demolition material for the continuation of construction in urban contexts, see Barker 2018 : 51.

<sup>62</sup> Tac. *Ann.* 15.43.

<sup>63</sup> DeLaine 2001 : 241-246 ; Barker 2018 : 48.

of the house that had collapsed wished to take away the rubble, this should be permitted only if he took away everything, that is, including the useless material, and that he should give a *cautio* about not only future but also past injury; but that if the owner of the house which had fallen down did nothing, an interdict should be granted to the person onto whose house the rubble had fallen by means of which his neighbor would be compelled either to remove the rubble or to regard the whole house as abandoned.

The owners of a collapsed building who wanted to avoid the costs of clearing the site could do so by abandoning their entire property, valuable and worthless materials all jumbled up together<sup>64</sup>. In the case presented here to 2<sup>nd</sup> century jurist Julian and considered by Ulpian a century later, it can constitute a compensation for the wronged neighbour who could look for valuables in the debris pile since it was considered a *res derelicta*<sup>65</sup>. Alternatively, if the original owner wanted to recover the valuables, he had to clear the site entirely, as the pile in its entirety belonged to him<sup>66</sup>.

Legal solutions demonstrate that some owners were reluctant to sort the debris, either because it did not contain anything valuable, or because a sudden collapse made the salvaging of valuable pieces complicated and therefore time and money consuming<sup>67</sup>. Incidentally, they also address the issue of landlords, throughout Rome and the Empire, who were wealthy enough not only to abandon their building materials, but also to renounce, at least temporarily, the enjoyment of their land that could be cluttered up for a long period. In the meantime, piles of debris generated by the collapse were clearly hampering the traffic and creating a risk for adjacent properties, especially if only parts of the building had collapsed and the rest was threatening to do the same.

Finally, developers were acting and making their decisions within a normative framework which, albeit not as extensive as today's, could have represented a constraint. The dossier contains a series of much-discussed *senatus-consulta*, rescripts and municipal charters, amongst which the most significant are the *SC Hosidianum*, from AD47, and *Volusianum*, from AD56<sup>68</sup>. Inspired by emperor Claudius, the *Hosidianum* forbids the purchase of a house with the intention of dismantling it and making a profit by selling the building materials. The

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<sup>64</sup> On this text and its interpretation, see Davoine 2015 : 347-349.

<sup>65</sup> Around Julian's period, a similar solution is produced by Gaius (*Ad ed. Prov. 1, Dig. 39.2.6*) who reports that it is commonly accepted, although maybe not unanimously. Here it must be emphasized that the rubble does not become automatically a *res derelicta* that anyone can freely appropriate, but needs to be legally abandoned, which implies the will (*animus*) of the original owner to abandon it, obviously to avoid the cost of clearing it. It seems, however, that the owner's will can be implicit, like a prolonged silence (*longo silentio*). That is what we can gather from Ulpian, *Ad ed. 53 (Dig. 39.2.15.21)*.

<sup>66</sup> Further costs could accrue since the owner of the collapsed building, who had decided to retain (and therefore remove) the rubble, could also be compelled to rehabilitate the adjacent property damaged by the fall of building materials to its prior state. There is, however, no certainty that such an obligation existed. It depends entirely on whether the interdict *de ruderibus tollendi* was "restitutory" or "prohibitory", something that our sources remain silent about. For a synthesis of the different arguments, see De Castro-Camero 2017 : 39-41.

<sup>67</sup> S. J. Barker provides some figures for the overcosts of recycling (and site clearing): Barker 2018 : 84

<sup>68</sup> The *senatus-consulta Hosidianum* and *Volusianum* are both published in *CIL* 10.1401. Alongside them, must be cited the municipal charters of Tarentum (89-62 BC – *CIL* 1.590), of Urso (Caesarian time, published by Crawford 1996 : 393-454), Malaca (Flavian time, published by Spitzl 1984) and Irni (Flavian time, published by González & Crawford 1986), and a rescript of Severus Alexander from 222 (*Cod. Iust.* 8.10.2), which are all conveniently gathered and discussed in two recent articles: Marano & Barker 2017 ; Davoine 2018.



*Volusianus* complements the latter and contains a derogating provision in favour of the owner of a villa near Modena, where the disruption of the local market deprived the estate of commercial outlets. While the effects of the texts are quite clear, their purpose has been much debated. It has been thought for a long time that they were aiming at combating speculation, and especially the activity of *equites* and freedmen, against whom senators would have stood for traditional values and the preservation of the urban landscape<sup>69</sup>. Although a commitment to protect the aesthetic aspects of the city (explicitly claimed by the senators) cannot be ruled out, a more convincing explanation, based on Roman inheritance and property law, has been proposed since<sup>70</sup>. The objective of the *senatus-consultum* was in fact to keep together the different assets of a same estate. Dismantlement of a house's building materials for commercial purposes was therefore forbidden, but owners retained the right to remove the different elements of the property as long as they kept them within the same patrimony, possibly for subsequent reuse. Such a piece of legislation could, in effect, not prevent owners from demolishing a house, but it clearly constituted a constraint for entrepreneurs whose business depended, even partly, on the materials trade.

### **The problem with the rental market...**

The examples discussed so far only involve a limited number of actors: landlords and their neighbours. Potentially, the urban community at large was affected too, in the sense that ruins and piles of rubble could constitute a nuisance and a risk. Accidental collapses and deliberate demolitions brought further complications when buildings were occupied by tenants. Yet, amongst the studies on collapses, the evidence of the *locatio conductio* has so far failed to receive the consideration it deserves, despite the potential implications and far-reaching economic consequences a demolition could entail when the property was leased.

*Locatio conductio* was a very flexible category of contract, covering various types of lease and hire, and was widely used for the rental of immovable assets<sup>71</sup>. Within the body of legal documentation, two texts, in particular, draw our attention towards the effects of a demolition on the lease contract. The first one is taken from the *Digest* of Alfenus Varus, a 1<sup>st</sup> century BC jurist, as epitomized by Paulus at the end of the 2<sup>nd</sup> century; the second one from Africanus, who was also active in the second part of the 2<sup>nd</sup> century. Both comment on the solution of Servius regarding the breach of lease contract caused by the unnecessary demolition of an *insula*<sup>72</sup>.

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<sup>69</sup> Phillips 1973 ; Garnsey 1976, in the first place. More references in Davoine 2018 : 269-270.

<sup>70</sup> Thomas 1998, followed par Dubouloz 2011 : 66-79 et Davoine 2018.

<sup>71</sup> A prominent feature of the Roman law of obligations, *locatio conductio* is the object of multiple studies, amongst which see Mayer-Maly 1956 ; Fiori 1999 ; Du Plessis 2012.

<sup>72</sup> Mommsen's version of the text does not indicate that the solutions in *Dig.* 19.2.30 are from Servius (Mommsen et al. 1886 : 289) I, however, follow the assumption made by Bruce Frier in his translation of Book 19, edited by Alan Watson, that Servius was the source used by Alfenus. There are good arguments for accepting it, firstly because Alfenus was Servius' pupil, and secondly because the text of *Dig.* 19.2.35. *pr.*, which is very similar, explicitly mentions Servius as the author of the argumentation (see next note). Also see Frier 1978 : 4 ; Kaser 1957 : 158 .

**Dig. 19.2.30, *Alfenus libro tertio a Paulo epitomarum. pr.*** *Qui insulam triginta conduxerat, singula caenacula ita conduxit, ut quadraginta ex omnibus colligerentur: dominus insulae, quia aedificia vitium facere diceret, demolierat eam: quaesitum est, quanti lis aestimari deberet, si is qui totam conduxerat ex conducto ageret. Respondit, si vitiatum aedificium necessario demolitus esset, pro portione, quanti dominus praediorum locasset, quod eius temporis habitatores habitare non potuissent, rationem duci et tanti litem aestimari: sin autem non fuisset necesse demoliri, sed quia melius aedificare vellet, id fecisset, quanti conductoris interesset, habitatores ne migrarent, tanti condemnari oportere.*

pr. A man had hired an apartment building for thirty and then leased out the apartments so as to collect forty from all of them; the building's owner had demolished it because he says the structure was defective. If the lessee of the entire building sues on hire, what value should be given to his claim? He [Servius] responded that if he had to demolish a damaged structure, assessment should be made proportionate to the amount for which the property's owner leased it, because the occupants could not dwell in it during this period; but if demolition was not required and he did this merely because he wished to build better, then he must be condemned to pay the amount of the lessee's interest in the occupants not moving out.

**Dig. 19.2.35, *Africanus libro octavo quaestionum. pr.*** *Et haec distinctio convenit illi, quae a Servio introducta et ab omnibus fere probata est, ut, si aversione insulam locatam dominus reficiendo, ne ea conductor frui possit, effecerit, animadvertatur, necessario necne id opus demolitus est.*

pr. The distinction here corresponds to one introduced by Servius and generally approved, namely that if an owner rents out an apartment house as an entirety and then through his rebuilding he makes the lessee's enjoyment impossible, the point to be examined is whether or not the demolition of the structure was required.

Servius Sulpicius Rufus, friend of Cicero and consul in 51 BC, was also an orator and an authoritative jurist. As such, his opinions are consistently followed in later legal works. Although differences are clearly noticeable in the wording, both texts seem to originate from the same source<sup>73</sup>. They address legal issues on the breach of a sublease contract, and incidentally point toward historical questions concerning the timing of the demolition business in a redevelopment project. To better understand the texts, we must first say a word about the payment of the rent.

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<sup>73</sup> The first text, *Dig. 19.2.30. pr.*, is more detailed and arguably closer to the original from Servius. The second text, *Dig. 19.2.35. pr.* looks like an abridged version of the same answer by Servius, used for its efficiency in an analogical reasoning, starting in *Dig. 19.2.33*, on the responsibility of *locatores* when tenants are deprived of the enjoyment of a leased farm. On the other hand, for arguments against the temptation to “polarize our sources on the apparently most famous character”, see Mantovani 2018 : 87-88

Our sources generally draw a big distinction between cheapest, short-term, tenancies, paid daily, and richer, long-term tenancies (*cenacula*), paid yearly. In this last case, the rent was due at the end of the lease, fixedly set on 1 July<sup>74</sup>. This organisation, well known by literary and epigraphical sources, structured the commercial relationships between owners (and their *procuratores*) and tenants. Alternatively, entrepreneurs specialised in providing accommodation could act as middlemen between owners and tenants, as our first text, *Dig.* 19.2.30 *pr.*, clearly refers to. Contrary to regular lessees, middlemen renting a whole house to sublet it to individual tenants would nonetheless pay the year in advance<sup>75</sup>.

As explained by Alfenus in the first text, this business was expected to generate a comfortable profit, although it involved economic risks too. It is said that a middleman hired a tenement house for 30 (thousand sesterces paid in advance) leased it for 40, and expected to collect the profit at the end of the term<sup>76</sup>. The problem arose when the owner demolished the house at some point during the lease term. By doing so, he naturally drove the occupants out of the building, which prevented the middleman from collecting the rents for the remaining time of the term. The middleman was entitled to sue the owner for that loss, but it still had to be decided what he was owed. Was it the 30 that he invested to lease the place, or the 40 that he expected from the tenants that would have allowed him to make his 33.3 percent profit?

Servius based his answer to that question on the necessity of the owner to demolish the house, or not. Let us hypothesize that the demolition happened after six months. The middleman had already paid the lump sum of 30, but had only cashed 20, *i.e.* half of the 40 he expected. If the demolition was justified by the poor condition of the building (*si vitiatum aedificium necessario demolitus esset*), the owner had to refund the middleman only a prorated portion of the prepaid rent<sup>77</sup>. In other terms, he only had to compensate for the invested sum (30): the middleman had only cashed 20 after six months, the owner consequently had to refund 10. The middleman therefore had to renounce his profit but did not lose any money. If, on the other hand, the demolition was not justified but was decided to increase the owner's profit by redeveloping the house, he had to fully compensate for the profit the middleman was expecting<sup>78</sup>. He was therefore compelled to pay 20, which, added to the 20 already collected by the middleman, matched the benefit he meant to make in the first place (40). The second text, *Dig.* 19.2.35 *pr.*, confirms the first extract: the owner of an *insula* leased it (apparently to a middleman) but then decided to demolish it so that the lessee lost his investment. In a trial, the

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<sup>74</sup> The practice of annual lease starting on the calends of July seems to be a widespread reality in Roman Italy (Petron. *Sat.* 38; *CIL* 4. 138 in Pompeii). Delayed-payment lease might have formed analogously with farming rent contracts, where delayed payment was economically rational. The choice of the 1<sup>st</sup> July would therefore be somehow related to the timing of agricultural practices. We know, however, of leases starting on another date, like the five-year contract offered in the estate of Julia Felix, in Pompeii, starting on the 15<sup>th</sup> August (*CIL* 4. 1136). Different leases and payment terms, sometimes monthly, might be more common in Roman Egypt. More details and bibliography in Frier 1977 : 29-35 ; Frier 1980 : 34-38.

<sup>75</sup> Literary, legal and epigraphical sources are extensively cited and discussed in Frier 1980 : 34-39 Cicero's testimony is particularly enlightening on that account as we learn about his worries in June when his middlemen didn't pay their year in advance, whereas on 8<sup>th</sup> July the payment is secured (Cic. *Ad Att.* 15.17 [letter 394]; 15. 20 [letter 397]; 16.1 [letter 409]).

<sup>76</sup> This profit is roughly consistent with other examples given in the legal sources (cf. *Dig.* 19.2.7).

<sup>77</sup> See Kaser 1957 : 157-158.

<sup>78</sup> In this case, a judge had to weigh the claimant's (*i.e.* the middleman's) loss against his material situation, had the house not been demolished. See also *Dig.* 48.8.13 *pr.* and Honsell et al. 1987 : 325.

point that had to be considered was whether the demolition was necessary or not. In all likelihood, the final solution regarding the payment of a compensation to the lessee was the same as in *Dig. 19.2.30 pr.*

Middlemen played a crucial role in various sectors of Roman economy since this practice allowed a distribution of risks between different categories of entrepreneurs and investors<sup>79</sup>. In the housing business, building owners would thus try to limit the risks associated with leasing (like incomplete occupancy or tenant insolvency), by resorting to middlemen who would pay a lump sum in advance and run the risks themselves, in return for a profit<sup>80</sup>. They were often freedmen, either working for their patron or independently<sup>81</sup>. They constituted an important category of businesspersons, much capable to protect their interests. Servius' legal solution likely originated in an actual consultation, where the jurist was acting as a legal counsellor for the benefit of middlemen, who sought his advice because their interests had been prejudiced in a similar case<sup>82</sup>.

That said, our two extracts show that the practice of managing their property through middlemen, despite all the advantages it provided to control commercial risks, also limited owners' freedom to demolish, redevelop or repurpose their buildings because others had a commercial interest in them. Middlemen who had invested a significant amount of money in the rental business were obviously determined to protect their interests and were protected by legal rights, at some point. By demolishing the house, or part of it, before the end of the lease the owner would be seriously exposed to legal proceedings, with their inevitable corollary of costly troubles. It is, of course, something that would not happen if the owner leased the property directly, without bringing a third party into play. In the case of an untimely demolition, tenants were justified to leave the house<sup>83</sup>. Intermediaries and middlemen were not systematically controlled by owners, and it was probably a good reason to choose to operate through a slave *procurator*, like in the case of the *insula* Arriana Polliana, in Pompeii<sup>84</sup>.

Finally, it is crucial to consider a point of chronology before we discuss the wider implications of the legal solutions. The fact that we know the rule by a citation from Servius does not automatically mean that it was newly established at the time when he wrote it, in the first half of the 1<sup>st</sup> century BC, or that he established the rule himself. He could very possibly have only relayed an opinion that was already common during the previous century. But then,

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<sup>79</sup> In addition to making good economic sense, this practice also provided good social and legal insulation. For examples in the prostitution business and for more bibliography on middlemen in general, see McGinn 2004 : 34-36.

<sup>80</sup> Bruce Frier convincingly argues that "management of urban properties through middlemen was extremely common among the Roman property owners", and details the advantages it brought in Frier 1978. The payment of a lump sum (*aversio*) is not specific to the rental business : see for example Jakab 2005, in the wine trade.

<sup>81</sup> Peter Garnsey has amply demonstrated that freedmen were able to pursue an independent and successful economic activity (Garnsey 1981).

<sup>82</sup> If later jurists build upon existing cases that have sometimes been discussed for centuries, it is not the case of a 1<sup>st</sup> century BC lawyer like Servius who was undoubtedly engaged in an activity of counselling. On the client-counsellor relationship, see Mantovani 2001 To that end, it is worth noting that the rule established in *Dig. 19.2.30 pr.* clearly protects the middlemen's interests, which appears coherent with other elements of Servius' reflexion, for example when he opposed a conservative tradition, supported by Q. Mucius Scaevola, about the formation of *societates*, and was thus instrumental in establishing new rules advantageous to freedmen (Gai. *Inst.* 3.149). More details on this in Garnsey 1981 : 365-366.

<sup>83</sup> *Dig.* 19.2.27.1. Frier 1980 : 94-95.

<sup>84</sup> *CIL* 4.138.

it means that owners of the 2<sup>nd</sup> and 1<sup>st</sup> centuries BC were really running the risk to be sued by their middlemen when they demolished their property before the end of the lease. On the other hand, it is possible that the rule was established by Servius. In this case, it is perfectly possible that landlords took advantage of the lack of legal protection for the third parties, all through the 2<sup>nd</sup> century, while the construction sector was already flourishing. The opposition between the different actors of this business would then have culminated in legal action (on the part of the middlemen) leading Servius to settle the dispute. In both cases, the reasons why owners would breach a lease agreement in this fashion remains to be examined.

## Competing timelines and business strategies

When addressing Roman law from a historical perspective, we must accept to progress in a world of speculation. Legal solutions were indeed developed in case an argument broke out, even though jurists could not predict when, where, and in which precise context. Besides that, there are only a few, exceptional indications that a specific legal solution was enforced in a trial. There is consequently little chance for historians to pair these solutions with documented events. Yet, the texts of the Roman law raise many historical issues, and we must remain sensitive to the fact that Roman jurists did not invent cases out of fantasy. On the contrary, they worked out of real situations. We must therefore bear in mind that, even if it is not possible to verify when – and *if* – they resorted to litigation, people like Cicero and his middlemen always had the possibility to do so. In all likelihood, they did as often as not. That will, at least, be my assumption when trying to understand why an owner would risk a lawsuit and demolish his property before the end of the lease agreement, as reported in *Dig. 19.2.30 pr.* and *Dig. 19.2.35 pr.* Undoubtedly, there is no straightforward answer to the question, but it is useful to advance hypotheses to try and understand what kind of legal constraints economic actors had to face and what solutions they would work out to circumvent them.

The first reason for an owner to act in such a fashion is, of course, that a good opportunity to sell up construction materials presented itself. If a house in poor condition was due to be demolished in the near future in any case, the proximity of a construction site could have prompted the owner to make a deal, thus compelling him to dismantle the house and sell the materials right away, if he did not need them on his own site. As we have seen, getting rid of the rubble could present some real logistical difficulties and represent a substantial cost related to workforce and transport that an owner might want to avoid. Facing various risks – having his building collapse on the adjacent one, being left with un-transportable debris, or being sued for breach of lease agreement – a landlord had to choose the least disadvantageous one, which, depending on the circumstances, could be to face his middlemen and tenants. Still, there is a possibility that public action curbed this kind of trade by limiting the opportunities to sell recycled materials<sup>85</sup>, and we can identify a second reason for which property-owners were ready to breach the lease agreement. It is related to conflicting timelines between construction and agricultural sectors, on the one side, and legal rules on the other side.

Neither of our two texts specify the kind of works they address. This is perfectly understandable because legal reasoning is, of course, based on generalisation and on the

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<sup>85</sup> See above on *SC Hosidianum and Volusianum*.

synthesis of one or several cases applied to a single typical solution. Nor do we know what building techniques were considered by the jurists in these fragments. It can therefore be anything from a complete demolition and then the reconstruction of a large housing unit, to the refurbishment of a significant part thereof, either its expansion or its heightening. In any case, it would have prevented any normal occupation by the tenants<sup>86</sup>. What we do know is that the redevelopment project referred to in *Dig. 19.2.30 pr.* had an economic purpose. It is the meaning of the expression *quia melius aedificare vellet*<sup>87</sup>. To limit the loss resulting from the prolonged vacancy of his property, it is probable that the owner wanted the works to be completed at a date prior to the 1 July, so as not to miss the start of the rental year and wait several months to fill his building up with occupants, thus losing the corresponding rents. In this case, why would he not have emptied the house at the end of June, then completed demolition and reconstruction, to start afresh with new tenants on the following Ides of July?

Admittedly, many redevelopment works, especially based on existing buildings and aiming at reorganising the distribution of rooms, lasted less than twelve months, but still could prevent the quiet occupation by the tenants. At times, it was arguably a big trend to modernise an existing house<sup>88</sup>. If the works lasted more than expected, on the other hand, it was probably unfortunate, but it still does not explain why the owner would have started them in the middle of the leasing agreement. I think that the problem did not necessarily come from the twelve-month laps of time, but from the period of the year when the works had to start.

Starting in July, our property owner might have encountered some difficulties. A significant part of the workforce was, indeed, probably out in the fields at that period, busy harvesting and cropping. And this could have lasted, to some extent, up till November. In central Italy, grain was harvested from early June, to late August in higher elevations<sup>89</sup>. In the vicinity of large cities, summer was also probably a peak for vegetables<sup>90</sup>. Wine harvest generally occurred in late August to September, while the olive picking season could typically last until November<sup>91</sup>. As we know from various pieces of documentation, day labourers were commonly hired to carry out these agricultural tasks<sup>92</sup>. Schedules of demands for building projects therefore overlapped, in many ways, with other activities, making it presumably harder for our owner to find workers to carry out the demolition<sup>93</sup>. If he had been able, between July and November, to dismantle the building, new obstacles potentially stood in his way, because construction techniques also had their own timing. Notably, mortar work was recommended to

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<sup>86</sup> If occupation was not made impossible by the works, tenants had to endure them (*Alf. 2 Dig., Dig. 19.2.27*).

<sup>87</sup> I think that there is more here than aesthetic consideration (*contra* Jakab 2014 : 251 ; Kaser 1957 : 158).

<sup>88</sup> Pompeii produces many examples of such upgrades. The recently excavated and published Casa Del Granduca Michele in Pompeii (VI.5.5) is a good illustration. Originally built sometime during the 2<sup>nd</sup> century BC, it was transformed and modernised in the first decades of the following century, around the period when Pompeii became a Roman colony. New living quarters and reception rooms replaced older ones, making it impossible for the family to live in the house during the work period, although it was not the kind of grand construction project that took several years to complete (D'Auria 2020 : 48-54).

<sup>89</sup> Spurr 1986 : 66

<sup>90</sup> Thomas & Wilson 1994 : 158-162 ; Ronin 2018

<sup>91</sup> Thurmond 2016 : 137

<sup>92</sup> Cato provides, for example, a standard contract for the harvesting and sale of olives (*Agr.* 144-146), showing the importance of the required workforce. Similarly, P. Fay. 102, in 105 AD, newly edited by Azzarello 2010.

<sup>93</sup> Bernard 2018 : 114-115

occur between 1 April and 1 November, with a break for the hottest part of the summer, even if, of course, this advice was not always followed<sup>94</sup>.

For all these reasons, some owners might have wanted to start the works later than July. However, they probably wanted to fill the house with occupants and receive rental payments as long as the house was habitable, a practice that definitely clashed with the middlemen's interests. On the other hand, conscientious landlords, planning to refurbish their estate during the year, and who dutifully emptied their house at the end of June, might have found themselves in difficulty because the planned works could not be completed within a year, for technical constraints and lack of workforce. We clearly see in this example that the practice of the Roman rental year, i.e. where and when it was prevalent, was fully situated within the set of constraints developers had to face. The legal rules could, in practice, limit the window of opportunity available to an owner for the redevelopment of his property.

Similar hurry to carry out refurbishment works was not universal, though, and it must be noted that our sources reflect very different attitudes towards the demolition/reconstruction process. Contrary to what we have just seen, Cicero showed no haste in starting the redevelopment works of his *tabernae*. Writing in April 44 to his friend Atticus, he seemed to be calmly waiting for the end of the lease term to start the works, even though all (or at least some) of his tenants had fled, possibly without paying the remainder of the rent if they took advantage of the *timoris causa* clause cited by Alfenus/Servius in *Dig.* 19.2.27.1. But Cicero was not in a hurry to start the refurbishment, nor did he seem to worry about his tenants. While there are several explanations for his light-hearted attitude, we can maybe also deduce from his attitude that a legal evolution is at play here.

It has been rightly established by Bruce Frier that the property of Puteoli was leased to a middleman (or maybe several), the principal lessee, who had paid the full amount at the start of the rental year<sup>95</sup>. Had Cicero demolished the house before the end of the lease term, even if the works were necessary and justified by the poor condition of the building, according to *Dig.* 19.2.30 *pr.*, he could have been compelled to compensate for a prorated portion of the prepaid rent (HS100.000), i.e. HS8.333 for each month lost. It is not surprising that he preferred to wait. Additionally, while he refrained from demolishing the *tabernae* himself, the loss of rents related to the flight of the *inquilini* fell on the principal lessee, the middleman. There is, of course, no certainty that Cicero applied this strategy, but it is a likely possibility, and we must keep in mind that the rule referred to by Alfenus, and possibly established by his friend Servius, was already implemented at his time.

From Cicero's account, we gather that property managers were quite unprotected. Because it was fairly advantageous for owners, on the other hand, it is conceivable that Cicero's strategy was not uncommon, although middlemen were probably dissatisfied with a system where they ran such risks of losing significant amounts of money. It may have led to the establishment of a new rule, more protective of their interests. Ulpian in his *Commentary on the Edict* details the discussion on a point of civil procedure by the jurist of the Augustean

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<sup>94</sup> Frontin. *Aq.* 2.123. Of course there are reasons to believe that, if buildings were so prone to cracks and collapses, the best advice was not always scrupulously followed. For bricks laid down in February, see Volpe 2002 : 388-390, fig. 10. Further discussion and review of evidence in Lancaster 2005 : 50.

<sup>95</sup> Frier 1978

period, Fabius Mela<sup>96</sup>. In this case, an entrepreneur had paid a lump sum in advance for the renting of a house. After six months it was impossible to rent the building, either because it was burnt down or because it collapsed. In the logic of *Dig.* 19.2.30 *pr.*, like in Cicero's account, the middleman was not entitled to any compensation, even if it was in fact the owner's responsibility if the building collapsed (because of lack of maintenance, for example), as long as this owner did not demolish the house himself. It appears, through Mela's discussion, that middlemen had tried to exploit alternative ways to obtain compensation, at least for the loss of their investment. The *condictio indebiti* was an action for the recovery of sums paid but not due, for which we find traces in the *ius civile*<sup>97</sup>. For want of a better solution, it was perhaps used by middlemen to try and get a compensation from unscrupulous owners, although the *condictio* required the existence of payment made by mistake for a non-existing debt, which is different from the lump sum paid at the start of the lease term. The point of Mela's intervention is therefore to rectify the error, but incidentally he recognizes that an action on hire (*actio ex conducto*) could be legitimately brought by middlemen when the building they rented collapsed. Claims made under this new clause were henceforth similar to those made in the case of a justified demolition, under the terms of the *locatio conductio* contract: the owner would have to refund the middleman a prorated portion of the prepaid rent. To precisely date fragments of the Roman law always represents a problem, but in all likelihood this opinion of Fabius Mela is slightly posterior to Cicero's business transactions. It is even tempting to see it as a response to the lack of legal protection for middlemen.

## Conclusion

In the context of a global disaster such as the outbreak of Covid-19 and the subsequent planetary lockdown during which this paper was written, it is perhaps not useless to reflect on how urban risks were addressed in Rome. Along with epidemics and fires, collapses indeed represented a major risk to ancient cities, as they still sadly do in the most impoverished urban areas of the world. Public authorities probably tried, to a certain extent, to provide responses, for example by limiting new buildings' height. The Roman system, however, seemed to have mostly favoured procedures of reciprocal control by private individuals, like the *cautio damni infecti*. Naturally, we must wonder if this system was successful in controlling the risk, and therefore in providing favourable conditions to the development of economic activities. The answer to that question is particularly problematic since we have almost no way to measure the extent to which legal solutions were applied and enforced. It is, however, certainly not by accident if the development of Roman law from the 2<sup>nd</sup> century BC onwards coincides with the considerable economic growth that we observe at precisely the same period.

Evolutions within Roman private law primarily occurred for the protection of proprietary and economic interests. It is not surprising that Servius, for example, often refers to potential litigants in socio-economic terms (*dominus insulae, dominus praediorum,*

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<sup>96</sup> Ulp. 32 *Edict.* (*Dig.* 19.2.19.6).

<sup>97</sup> *Dig.* 12.6. Solazzi 1939 ; Fagnoli 2001.



*habitatores*)<sup>98</sup>. And because legal solutions aim at finding solutions to conflictual situations, they are indispensable in understanding how different interests, private and public, were competing within a market as active as the construction sector. In this respect, it is particularly relevant to note how important the destination of the building was (its leasing via a *locatio conductio* contract) for the whole material process of its construction, maintenance, and possible demolition. We must also remain aware that Roman legal solutions of any nature both affected and reflected economic and social life<sup>99</sup>. Like today, legal complications were likely to interfere with entrepreneurs and property owners' interests in the construction business. These complications must be considered when we try to understand the constraints associated with this particular industry: their choices were guided by technological, social, ideological, economical, but also perhaps legal reasons, to an extent that we need to assess more precisely.

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<sup>98</sup> On the contrary, later jurists like Ulpian or Pomponius are more likely to use strictly legal terms, such as *locator* and *conductor* (Cardilli 2001 : 279 ; Chamie Gandur 2013 : 27, n. 44)

<sup>99</sup> “Roman law, public or private, developed as a product of Roman society, adjusting to existing though changing circumstances while aiming at shaping the context in which the next generation would operate” (Aubert 2004 : 170).

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