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Transaction Number: 300616  
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ISSN/ISBN: 9004107819  
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Request Type: Article - AEBookChapter

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## Article Information

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PhotoJournalTitle: Education in Greek and Roman Antiquity  
PhotoJournalVolume:  
PhotoJournalIssue:  
Month:  
Year: 2001  
Pages: 317-37  
Article Author: Kaster, R. A.  
Article Title: Declamation in Rhetorical Education at Rome

## Citation Information

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Cited In: I'm the author  
Cited Title: 90-04-10781-9  
Cited Date:  
Cited Volume:  
Cited Pages:

## OCLC Information

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ILL Number:  
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Original Loan Title:  
Old Journal Title:  
Call Number: LA71 .E38 2001  
Location: Classics Collection (Clas). Firestone

## Notes

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## CONTROLLING REASON: DECLAMATION IN RHETORICAL EDUCATION AT ROME\*

Robert A. Kaster

To begin, let us consider three strange, sad, and lurid tales of crime and punishment.

In the first, a wealthy young man committed a rape. In accordance with the law, the young woman he raped was in compensation allowed to choose either his death or marriage to him without a dowry. Before she made her choice, he sent a delegation of his relatives to her, to ask her to choose marriage: when their entreaties had been heard, she was speechless, and wept. Hearing her reaction, the young man stabbed himself. While he lingered on death's threshold, the young woman announced that she chose marriage. After he died, both his new widow and his relatives claimed his estate.

Story two. One of two brothers committed a rape. Given the choice between the rapist's death and marriage to him without a dowry, the young woman chose his death. In accordance with the law, execution of the sentence was postponed for thirty days. In the interval, the rapist's brother performed heroically in battle and, in accordance with the law, was allowed two rewards of his own choosing. For the first reward he requested that his brother's life be spared, and his request was granted. For his second reward he requested the death of the woman who had been raped. His request was opposed by his brother.

According to our final story, a woman who had been raped was brought before a magistrate and given the opportunity, in accordance with the law, to choose the death of the man who she said had raped her or marriage to him without dowry. She chose marriage; he, however, denied that he had committed the rape. The

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\* An earlier version of this essay was presented as the Arthur F. Stocker Lecture at the University of Virginia in April 1995, under the title "Rape and Roman Rhetoric," and subsequently at the University of Chicago and the University of California at Berkeley: I am grateful to the audiences on all these occasions for their engaged responses. My thanks also to Margaret Imber and Yun Lee Too for constructive comments on the present version.

matter was taken to court, where he was convicted. After his conviction, he dropped his objection to marrying her. She, for her part, wished to make her choice anew.

These stories are not taken from the police blotter, nor do they summarize the goings on of one or another modern soap opera. The stories are instead versions of three themes used in the schools of Roman rhetoric throughout the imperial period.<sup>1</sup> They are the raw materials of school declamation, the exercise in formal argumentation and verbal agility that every well-bred male of the empire came to know intimately. Together with similar stories of furious tyrants, poisoning stepmothers, adulterous wives, and disinherited sons, this material formed the anvil on which the oratorical skills of the elite were largely forged and their sensibilities significantly shaped. It is especially the role of such stories in the formation of sensibilities—the perception of equity and outrage, of the admirable and the loathsome—that we will consider in this chapter.

First, however, it is necessary to survey briefly the background and character of the exercise itself.<sup>2</sup> The practice of declamation at Rome dates at least from the early first century BC, when formal rhetorical instruction in Latin was institutionalized in the city. The first Roman rhetorical textbook, the anonymous *Rhetorica ad Herennium* (80s BC), assumes the existence of such exercises (e.g., 1. 19–25, 2. 17–20, 3. 2, 4. 68), and Cicero on several occasions recalls engaging in them, alone or in the company of friends, developing themes in both Greek and Latin for exercise, for enjoyment, and even as a solace in retirement.<sup>3</sup> By the triumviral period the practice was so common a pastime of the educated elite that Octavian—an accomplished but by no means extraordinary orator—is said to have indulged in it daily, not suspending his habit even during the war of Mutina (Suetonius *De grammaticis et rhetoribus* 25. 3). And when it emerges fully into view through the elder Seneca's recollections of

<sup>1</sup> Respectively, Quintilian *Declamationes minores* 247, Calpurnius Flaccus 25, and Seneca *Controversiae* 7. 8 = Quintilian *Declamationes minores* 309.

<sup>2</sup> The confines of this chapter can afford no more than a quick sketch; for more extensive discussion see esp. Bornecque (1902 [1967]), Bonner (1949), Kennedy (1972) 312–37, Bonner (1977) 277–327, Sussman (1978), Winterbottom (1980), Fairweather (1981), Dingel (1988), Bloomer (1997a), Imber (1997). On the development of the term *declamatio* (*declamare*) to denote the practice, see Bonner (1949) 20–31.

<sup>3</sup> See, e.g., Cicero *Brutus* 310 (with Plutarch *Cicero* 4. 6), *Epistulae ad Atticum* 9. 4, 14. 12, *Epistulae ad Familiares* 9. 16. 7 (with 9. 18, 7. 33. 1), 16. 21. 5, Seneca *Controversiae* 1. 4. 7, Suetonius *De grammaticis et rhetoribus* 7. 2, 25. 3.

the Augustan Age, the cultivation of declamation has all the appearance of a cultural phenomenon both deeply rooted and widespread. It is the centerpiece of the education received by all adolescents who continued their schooling beyond the *grammaticus*' instruction in language and poetry. It is a performance occasion that can provide a highlight in the life of the social and cultural elite and as such can make (or break) the literary reputations of teachers, their students, and others. And it is a discursive form whose structures, aims, and tricks come to pervade all other literary genres. Ovid, it is no surprise to learn, was already noted as a brilliant declaimer when he was scarcely more than a boy, years before he published his first line of poetry.<sup>4</sup>

Declamations were of two main kinds, the mock-deliberative *suasoria* and the mock-forensic *controversia*: the latter exercise, which is far better documented, was to Roman rhetorical education what moot court competition is to the modern American law school.<sup>5</sup> The principles and procedures of the *controversia* were straightforward and remained constant for centuries. A theme was presented—that is, a set of facts, usually governed explicitly by one or more hypothetical laws—issuing in some form of conflict: the three stories related above are typical specimens, especially as they illustrate the tendency for the conflict to derive, say, from the application of contradictory laws or from a distinction between the letter and the spirit of a law. One could choose to argue either side of the conflict, and indeed it was one of the aims of the exercise to develop the ability to argue *both* sides—in *utramque partem dicere*—with equal fluency. Having chosen his side, the would-be declaimer had first to distinguish the issues at the heart of the conflict, a process called *divisio*: for example, is it wrong in principle to do X? if it is wrong in principle, was it wrong in this particular case? if it was wrong in this particular case, are there nonetheless extenuating circumstances? And so on.<sup>6</sup>

Once the fundamental issues were distinguished, the declaimer still had two important preparatory jobs. He had to define the appropriate

<sup>4</sup> For performance and reputation see, e.g., Seneca *Controversiae* 1. 3. 10, 2. 4. 8, 12–13, 3 pr. 12–17, 4 pr. 7, 7 pr. 8, *Suasoriae* 3. 6–7. On Ovid see esp. Seneca *Controversiae* 2. 2. 8–12.

<sup>5</sup> For the less commonly attested *suasoria*, in which the speaker pretended to counsel a historical figure faced with a momentous choice (should Hannibal cross the Alps? should Alexander invade India?), see Seneca's collection of seven (extant) themes, with Edward (1928) in addition to the studies cited in n. 2 above.

<sup>6</sup> The method of defining the "state of the question" was elaborated in *stasis*-theory, on which see esp. Hermogenes *On Issues*, trans. Heath (1995).

persona—a matter of decorum, making his self-presentation suit the nature of the case and the character of the speaker (the rapist, say, or the hero). And he had to determine the *color*—the narrative background or “spin”—that it would be most useful to give the facts stated in the theme: for though he could not alter or deviate from the facts themselves, the declaimer was allowed to interpret them in whatever way he wished or to invent a history for the facts that placed them in a light favorable to his own side. (That is, if the theme stated that a homicide had occurred, you could not produce the alleged victim alive and well; but you could try to present a scenario in which the homicide would appear justified.) With the issues defined, the *color* and persona determined, one could then proceed with the argument. Here one typically treated questions of law first—the applicability of the law to the facts, the letter of the law versus the spirit—and then moved on to questions of equity, rounding the speech off with an emotional peroration including pathetic pleas for clemency or sympathy. And all throughout one tried to punctuate the argument with *sententiae*—pointed and forceful epigrams—to catch the ear, tickle the wits, and impart a rhythm to the performance.

The pervasiveness of the performance is attested not least by the sheer number of declamations that have survived in one form or another from the Roman world, to give us a clear view of the essentials of the genre. Earliest, and in some ways most eccentric and entertaining, is the collection assembled, probably late in the 30s of the first century AD, by the elder Seneca for his three sons, to tell them something of the practitioners of the art who were active in the reign of Augustus and early in the reign of Tiberius, before the boys had reached an age to become practitioners themselves.<sup>7</sup> Purportedly the product of Seneca’s prodigious memory, the collection is not an anthology of declamations as such;<sup>8</sup> instead, it follows a scheme that is intended for, and readily accessible to, only those

<sup>7</sup> The best available editions are Winterbottom (1974) (with translation), Håkanson (1989). For discussion see esp. Bornecque (1902 [1967]), Sussman (1978), Fairweather (1981), Fairweather (1984), Bloomer (1997b) 110–53; for further bibliography Sussman (1984). All ten books of *Controversiae* were originally provided with extended prefaces, in which Seneca offered character sketches of noted declaimers and other personal comment; but the prefaces to Books 5, 6, and 8 are lost, and the preface to Book 9 is incomplete. Of the main text, Books 3–6 and 8 survive only as excerpts.

<sup>8</sup> *Controversiae* 2. 7. 1–9, quoted from Porcius Latro on a theme of adultery, is the only continuous declamation, though the MSS are defective at the end and must be supplemented from excerpts.

who are already initiates in declamation. First a theme is presented, with the relevant laws and the statement of facts; there then follows, not a sample treatment of the theme, but a catalog of the epigrams that various noted declaimers had deployed in their treatments of the theme on various occasions (cf. *Controversia* 1 pr. 4–5). Simply listed one after another and isolated from the connective tissue of argument, the *sententiae* are meant to be savored for themselves: one can compare the effect to reading, say, every twelfth line of Lucan (or any poem of Tibullus straight through). After the *sententiae* come two other, similar catalogs, of the *divisiones* and *colores*—the analyses of the issues, that is, and the spin put on the facts—again organized by speaker: Seneca tells us how the *divisio* of declaimer X differed, perhaps, from that of declaimer Y; and since Seneca liberally sprinkles these catalogs with his own opinions and recollected anecdotes, we are also sometimes told, for example, that of all the many stupid things that declaimer Z said in his long and ill-starred career, the *color* that he used in this particular case was far and away the stupidest.<sup>9</sup> The abundance and pith of Seneca's opinions and anecdotes augment the collection's fascination as a masterpiece of connoisseurship: if it is true (as Henri Marrou once suggested) that ancient rhetorical display has its closest modern counterpart in jazz—as a performance that at its best combines inventive improvisation with structural discipline and technical virtuosity<sup>10</sup>—then Seneca's collection can be approached as the work of a great jazz savant talking about the musicians he has heard and their approaches to the standards of the jazzman's repertoire. If you do not know the melody and chord changes of *These Foolish Things*, the collection will leave you no wiser; but if you already carry the tune in your head, he can reproduce for you the best riffs from Thelonious Monk's version, or tell you exactly how Teddy Wilson's left hand in the bridge differed from Art Tatum's.

The other main collections on which we depend are of a less colorful kind. Sometime, probably, in the second century a rhetorician named Calpurnius Flaccus collected and published fifty-three of his own declamations, and these in due course were excerpted for their *sententiae*: the result is a collection of themes followed by disembodied

<sup>9</sup> See, e.g., *Controversiae* 1 pr. 6–10, 2 pr. 1–3, 2. 1. 25–26, 33, 4 pr. 8–9, 7. 3. 8–9, 9. 2. 26–28, 9. 6. 10–13, *Suasoriae* 3. 6–7.

<sup>10</sup> Marrou (1956) 200.

epigrams similar to one section of Seneca's work.<sup>11</sup> Then there are the two collections of continuous declamations ascribed in the manuscripts to Quintilian, the so-called *Declamationes maiores* and *Declamationes minores*, the "Greater" and "Lesser" declamations. The nineteen *maiores*, which are commonly taken to be teachers' display-pieces, are long, full-fledged compositions, typically running to over twenty pages.<sup>12</sup> By contrast, the *minores* rarely run to as many as three or four pages and are for the most part merely sketches offered by a rhetor to his students to illustrate how a given theme should be treated: originally at least 388 in number, of which 145 survive, these pieces are particularly interesting as teaching documents, for they present us with the teacher's *sermones*—discursive comment and direct instruction on the issues to be distinguished or the persona to be adopted—alternating with the examples that put instruction into action. Unlike the *maiores*, which have no chance of actually being by Quintilian, the *minores* might well be authentic and at very least derive from the school of a rhetor who knew Quintilian's doctrine intimately.<sup>13</sup>

These collections overlap considerably, so that it is not uncommon to find the same theme presented in more than one of them. The themes that they comprise were clearly part of a standard repertoire: one could probably ask an accomplished declaimer, on the spur of the moment, to deliver the *Sepultura tyranni qui se occidit*—a paradoxical theme on the appropriate "burial of a tyrant who committed suicide" (Quintilian *Declamationes minores* 329)—as easily as one could ask a jazz musician today to play 'Round Midnight. But this same standardization—begun, to all appearances, quite soon in declamation's history—was among the qualities that made the institution vulnerable to criticism: how many times, Juvenal asks, must we listen to the schoolboys advising Hannibal, referring to one such standard theme (7. 160–67, cf. 10. 167–68). Indeed, from the time of the earliest of these collections we have a record of head-shakers and finger-pointers ready to use declamation as evidence that the world was heading for ruin at double-time. Already in Seneca—that

<sup>11</sup> The standard edition is Håkanson (1978); Sussman (1994) offers an English translation.

<sup>12</sup> The standard edition is Håkanson (1982), with English translation in Sussman (1987).

<sup>13</sup> The best available editions are Winterbottom (1984) and Shackleton Bailey (1989); on the attribution to Quintilian and the character of the doctrine, Winterbottom (1984) xi–xix, Dingel (1988).

is to say, in reminiscences dating to the Augustan age—we hear from critics who look askance at the practice of declamation and the habits of the rhetorical schools more generally, largely on the ground that these practices and habits are inadequate to the task they claim to perform: to prepare the would-be orators to be orators in fact.<sup>14</sup>

The main culprit, on this view, was declamation's divorce from daily reality, which was manifested in several ways. Most conspicuously, there were the themes themselves, the sets of facts that defined the exercise, which often turned on the behavior of outlandish characters—pirate chiefs, tyrants and their assassins, stepmothers and their poisons—or on the peccadillos of stereotypes who seem to have stepped from the stage of New Comedy: wastrel sons or irate fathers, most conspicuously.<sup>15</sup> To make matters worse—and a point to which we will return—the themes were governed by laws and legal practices that were largely fictional: for example, though no Roman son could bring his father into court and convict him of being insane, such actions for *dementia* are the stock-in-trade of the declamations.<sup>16</sup> And to top it all off (the critics said) this playing about with fictional themes and imaginary laws was set at a further remove from forensic reality by the hot-house atmosphere in which the play was conducted. Juvenal calls this the *rhetorica umbra*, the “shade of the rhetorician's school” (7. 173), which sheltered the speaker from the heat and dust of the forum's rough-and-tumble: speakers could speak their pieces uninterrupted, without concern for questions from the judges or interjections by opponents; they would be buoyed up in the performance by the appreciative clamor of a select audience, who could be counted on to applaud and murmur approval at every

<sup>14</sup> Criticisms of the “schoolmen” (*scholastici*): e.g., Seneca *Controversiae* 1. 7. 5, 2. 3. 13, 19, 3 pr. 7–12, 4 pr. 9, 7. 4. 10, 7. 5. 12, 9 pr. (*passim*), 9. 6. 10, 10 pr. 12; for later critiques see esp. Petronius *Satyricon* 1–3 and Tacitus *Dialogus de oratoribus* 28–32, with the reflections of Quintilian *Institutio oratoria* 2. 10, and Bonner (1949) 71–83.

<sup>15</sup> On declamatory tyrants, see Tabacco (1985); on step-mothers, Imber (1997) 160–64; on fathers and sons, Sussman (1995). The similarity of declamatory themes and comic plots has often been remarked but never fully probed: investigation should prove worthwhile, as should consideration of the links between declamation and the novel.

<sup>16</sup> See, e.g., Seneca *Controversiae* 2. 3, 2. 6, 10. 3, Calpurnius Flaccus 8. On the “laws” of declamation see Sprenger (1911) and esp. Lanfranchi (1938) and Bonner (1949), who attempt (instructively but often in vain) to vindicate their origin in Greek or Roman actuality; for a recent critique see Crook (1995) 163–67.



well-turned *sententia*; and in fact, the performance might prove to consist *only* of well-turned *sententiae*—the speaker might dispense entirely with argument and skip along from one epigrammatic peak to another—since nothing, finally, was at stake. As the character Messalla is made to say in Tacitus's *Dialogus de oratoribus* (*Dialogue on Orators*: 35. 4–5), summing up all the faults of the institution in contrast to the practices of the good old days: “that’s the rage nowadays—to elaborate in a great torrent of large-sounding phrases on the rewards given to tyrannicides or the choices made by women who have been raped or . . . the incestuous affairs of matrons or all the other themes that are treated day in and day out in the schools but occur rarely or never in the courts.” Little wonder (the critics gleefully noted) that several very celebrated declaimers were known to have been at a loss, and to have embarrassed themselves badly, when they ventured beyond the shelter of their *auditoria* to the open air of the forum.<sup>17</sup>

So said the ancient critics, and their judgments have faithfully been reproduced in modern accounts: the most recent general history of Latin literature, for example, duly reports that “rhetoric [sank] into pointless exercises, the *declamationes*, . . . which center on themes and subjects that are fictitious, novelistic, . . . and chosen precisely for their odd and unusual character.”<sup>18</sup> Well, yes: “odd and unusual” they often appear to be; “fictitious” and “novelistic,” so it frequently seems. But “pointless”? That is a harder judgment to make. The most extreme of the ancient critics are rebuked by the fact that the schools and their declamations *did* produce competent advocates (Quintilian and the younger Pliny, for example).<sup>19</sup> But a larger point is at issue. It seems questionable method for a modern observer to condemn as “pointless” the practice of another culture that flourished unaltered, and so presumably was thought somehow to satisfy the needs of that culture, for over 600 years. The long endurance of what may seem to us an inept practice is a sure sign that we are dealing with

<sup>17</sup> See Seneca *Controversiae* 7 pr. 6 (cf. Suetonius *De grammaticis et rhetoribus* 30. 4) on Albucius Silus; Seneca *Controversiae* 9 pr. 3 on Porcius Latro, cf. Quintilian *Institutio oratoria* 10. 5. 18.

<sup>18</sup> Conte (1994) 404; the quotation could easily be matched by ten more in a similar vein from scholarly works of the past century.

<sup>19</sup> On the practice of advocacy under the Empire see Crook (1995). Ancient and modern critics of declamation also overlook the fact that—beneath their apparently sensational veneer—the themes often bear a tolerably close family resemblance to the casuistical cases of Hellenistic philosophical debate, as we find them transmitted, for example, in Cicero *De officiis* 3. 50ff., 89ff.

one of those discontinuities between the Romans and ourselves, a point of cultural distance that reminds us that these are in important respects strangers, no matter how often they seem to inhabit the same universe of ideas. It seems the proper response, therefore, to ask: what needs did this strange practice satisfy, and how?

The answer to the question is surely woven out of several strands; in the balance of this chapter I will pick out one of those strands and attempt to tease it apart.<sup>20</sup> I start from several indisputable facts about the practice. First, it was primarily intended for, and mostly engaged in by, students of rhetoric under the guidance of their teachers: that is, young males typically between fifteen and eighteen years of age drawn from the elite of the capital or of the larger provincial towns. Second, the themes or fact-sets on which the declamations were based are indeed often outside the range of common experience, not to say bizarre, as critics of the institution have insisted. Third—and by contrast—the arguments that are developed and the sentiments that are expressed to meet these eccentric facts are themselves *utterly* conventional, containing virtually nothing that the most respectable Roman gentleman would consider untoward or contrarian. (*None* of the ancient critics, be it noted, takes the declaimers to task for the substance of their arguments, whatever other faults they find.) Taking these three facts together, I suggest a hypothesis: that it was one of the main effects of declamation to inculcate, by sheer repetition, approved values in the still impressionable minds of the next generation of the elite; that one aspect of declamation which most commended it to its culture was the reassuring ability it developed in the declaimer to respond to the most startling, novel, or extravagant circumstances by appealing to the most traditional sentiments and by marshaling the most conventionally “reasonable” arguments. On this hypothesis, declamation tended tacitly to instil the belief that convention and tradition were sufficient to meet even

<sup>20</sup> For other recent approaches to declamation along lines similar to the following, with varying emphases, see: Beard (1993), on declamation as Roman ‘mythopoeisis’; Bloomer (1997a) and (1997b) 135–42, on declamation as an instrument of identity-formation and acculturation; and Imber (1997), esp. chapters 3–4, on declamation and the dynamics of Roman patriarchy (now the best treatment of Latin declamation in its social context, forthcoming from Harvard University Press). For Greek declamation see Russell (1983), esp. 21–39 (on the fantasies, values, and prejudices cultivated in the genre), and Hawley (1995); and for still more broadly conceived discussion of sophistic display and the creation of identity, Gleason (1995).

the most unexpected needs; and this belief in turn fostered the self-confidence—not to say, complacency—and sustained the social reproduction of the conservative elite who patronized the schools of rhetoric: declamation told this elite, in effect, what it wanted to hear. On this hypothesis, too, declamation gives us a singularly transparent window upon the Roman mentality in the act of formation. The acculturation of children in the intimacy of the home is largely closed to our view; and the texts of the earlier stages of education—above all, grammar—are concerned largely with matters of rote learning. But declamation shows us at least one consequential subset of the population learning to think in their culture. By becoming steeped in all the values, beliefs, and stereotypes implied in declamatory argument, the students of declamation acquired the reflexes needed to live as respectable men.

We can develop this hypothesis a bit if we return to our three original theme-stories and ask: why rape? The question arises, first, because the topic is simply so strikingly common. Some twenty-five different declamatory themes—a quite sizeable percentage of the total number of themes known from our main sources—are based upon an occurrence of male-female rape, as we generally understand the term: aggravated sexual assault, or forced, non-consensual sexual penetration, or what in classical Roman law is termed *stuprum per vim inlatum*.<sup>21</sup> The question is given further point by the insufficiency of the most obvious answer: that a sensational subject like rape was a surefire means of riveting the attention of the participants, and especially of the adolescent males who were mainly involved. The answer cannot be sufficient because these themes, though based on the occur-

<sup>21</sup> The themes are: Seneca *Controversiae* 1. 5 (= Calpurnius Flaccus 51), 2. 3 (= Quintilian *Declamationes minores* 349), 3. 5, 4. 3, 7. 6, 7. 8 (= Quintilian *Declamationes minores* 309), 8. 6, Quintilian *Declamationes minores* 247, 251, 252 (= 370), 262, 270, 276, 280, 286, 301, 343, 368, 383, Calpurnius Flaccus 16, 25, 34, 41, 43, 46; three other themes concern male-male rape (Calpurnius Flaccus 3 = [Quintilian] *Declamationes maiores* 3, based on a historical incident; Seneca *Controversiae* 3. 8, 5. 6). *per vim stuprum inferre / per vim stuprare*: see *Digesta* 48. 5. 30. 9 (“eum autem, qui per vim stuprum intulit vel mari vel feminae, sine praefinitione huius temporis accusari posse dubium non est, cum eum publicam vim committere nulla dubitatio est”), 48. 6. 3. 4 (“praeterea punitur huius legis poena qui puerum vel feminam vel quemquam per vim stupraverit”), cf. 48. 6. 5. 2; on *stuprum* (sexual penetration of a disapproved sort, or committed in illicit circumstances) see Fantham (1991). In declamation *rapta* = “raped woman,” in our sense of the phrase, everywhere but at Calpurnius Flaccus 41 (where *rapta* = “kidnapped,” *stuprata* = “raped”). I have preferred to use the Latin word in the text, to avoid English terms—“victim,” “survivor”—which import strong affective and ideological colorings from our own culture.

rence of rape, actually show no interest whatever in rape as such. Unlike the rapes represented in the imaginative literature of Rome—in Ovid's *Metamorphoses*, for example—the act is never described or considered directly and in detail.<sup>22</sup> Like the rapes of New Comedy, the rapes of declamation always occur offstage, or rather before the curtain has even gone up.<sup>23</sup>

So to answer the question, “Why rape?,” let us start from this salient characteristic: rape in declamation is almost never treated as an attack on or by fully human subjects, persons whose subjective experience is somehow integrated with their actions so that one could say “I thought or felt this and therefore I did that.” In the case of the *raptor* (so the Latin term), the question of his motive is hardly ever addressed, and his self-conception after the act is left unexamined. Why he committed such an act, how the commission of the act grows out of or possibly alters (through remorse, say) some describable psychic state—questions of the sort that we associate with cause, effect, and individual responsibility—are usually left to one side. And even when, very exceptionally, such questions enter into discussion they are treated (we shall see) as the source of mystery and astonishment: “my life,” the *raptor* says, “had always been such that I was amazed that I did wrong”; that is, the sort of person I really was before and (by implication) really am again bears no necessary and intelligible relation to my intervening action. Similarly, the subjective experience of the *rapta* is left inaccessible, even when reference is made to it. Recall, for example, that in the first theme with which we began the rapist “sent a delegation of his relatives to the *rapta*, to ask her to choose marriage: when their entreaties had been heard, she was speechless, and wept.” Here silence and tears apparently mask the *rapta*'s strong emotion and her own reflection on her condition that will lead to action, her choice; the silence and tears thus acknowledge, exceptionally, the inner state that mediates between the act experienced and the reaction that follows. But even this is the exception

<sup>22</sup> On Ovid's rapes see for example Curran (1978), Richlin (1992), Johnson (1996).

<sup>23</sup> On rape and “seduction” in New Comedy see Fantham (1975), Anderson (1984), Packman (1993), Brown (1993), Konstan (1994), Scafuro (1997) 193–278, Lape (1998) 177–232. Despite similarities (see, e.g., n. 33 below) there is one striking distinction between the two genres: whereas rape in New Comedy invariably issues in pregnancy, with the plot then hinging on the disposition of the child, the rapes of declamation are hardly ever fertile (the exceptions are Calpurnius Flaccus 46, 51) and the problems to be resolved are otherwise constituted.

that proves the rule, for it is precisely the mask in this instance that matters: the silence and tears are all that we see, feeling and intention remain inarticulate, and it is the interpretation, or misinterpretation, of inarticulate intention that acts as the real engine of the theme.

Rape, then, does not provide a window onto an inner world of motive or felt response. If anything, the opposite: rape produces a mess that must be set straight, beyond question, but it does not play out as a very personal mess. It is rather a social mess, entailing the confusion of social status and social relations: the reputational standing of a family in the community is imperiled by the attack on its *pudicitia*; the lines of inheritance within a family become confused, potentially or in fact; even the relative standing and power of men and women, as we shall see, is at least momentarily inverted. From a purely functional point of view, of course, this kind of disruption is one of the main advantages of rape as a declamatory theme: perhaps even more variously than homicide, the act smashes at one blow many of the social surfaces that shape and constrain ordinary life. It then becomes the declaimer's job to put the surfaces back into some sort of acceptable, more or less conventional order — which is precisely the role for which the declaimer is being trained. Any young man who emerged from the school of rhetoric to practice at the bar would spend a large part of his energy in service of the belief that the most profound and wounding social rupture is amenable to reason.

What we think of as perhaps the most intimate of crimes thus becomes an occasion for the objectification of experience, for establishing distance from the mess that has occurred and for tidying it up by exercising rational control over it. The starting point and main instrument of control is what the declaimers referred to simply as the *lex raptarum*, “the law of women who have been raped.” This is the law that governs the vast majority of the rape-based themes; it states “Let the woman who has been raped choose either the death of the *raptor* or marriage to him without a dowry.”<sup>24</sup> Now the first

<sup>24</sup> The *lex raptarum*—“*Rapta raptoris aut mortem aut indotatas nuptias petat*” (vel sim.)—explicitly governs the theme, alone or in combination with another “law,” at Seneca *Controversiae* 1. 5, 3. 5, 4. 3, 7. 8, 8. 6, Quintilian *Declamationes minores* 280, 286, Calpurnius Flaccus 16, 25, 34, 41, 43, 46, 51; the *lex* is implied also at Quintilian *Declamationes minores* 247, 251, 259, 262, 270, 301, 309, 343, 368, 383. Different “laws” govern a case of rape at Quintilian *Declamationes minores* 252 (“*Raptor decem milia solvat*,” similarly 370 “*Qui ingenuam stupraverit, det decem milia*”),

thing that must be understood is that this is a fictional law, having no relation to the law actually applied in cases of rape. Under classical Roman law, a rapist was vulnerable to an *actio iniuriarum*, a civil suit in which damages could be sought; and forcible *stuprum*—rape as it is understood in the declamations—was also punishable under the criminal law governing *vis*, or public violence: here it was the violent aspect of the attack, not the sexual aspect (or even the gender of the person attacked), that made it punishable, and the punishment was death.<sup>25</sup> Nowhere in Roman law is it suggested that the woman who has been raped could choose to marry the rapist—until the sixth century, when a ruling of the emperor Justinian expressly *forbids* such a choice.<sup>26</sup>

But though the declaimers' law was not the law of the *Digests*, it none the less stands in close harmony with the declaimers' world. How it does so can be seen if we first compare the *lex raptarum* with another declamatory law that is structurally very similar. It is a law that governs acts of blinding, and runs as follows: "whosoever shall have blinded another, let him either give satisfaction in kind or serve as the guide of the person who has been blinded."<sup>27</sup> Like the *lex raptarum*, this law provides for alternative forms of compensation. One

276 ("Rapta raptoris mortem aut bona optet"), 349 ("Raptor, nisi et suum patrem exoraverit et raptae intra triginta dies, pereat," similarly Seneca *Controversiae* 2. 3).

<sup>25</sup> For the *actio iniuriarum* see Treggiari (1991) 309–11, Scafuro (1997) 223–28; for capital punishment under the *lex Julia de vi publica* (*Digesta* 48. 6) see n. 21 above, and cf. *Codex Justinianus* 9. 13. 1 (sim. 1. 3. 53).

<sup>26</sup> See *Codex Justinianus* 9. 13. 1. 2 "Nec sit facultas raptae virgini vel viduae vel cuilibet mulieri raptorem suum sibi maritum exposcere, sed cui parentes voluerint excepto raptore, eam legitimo copulent matrimonio, quoniam nullo modo nullo tempore datur a nostra serenitate licentia eis consentire, qui hostili more in nostra re publica matrimonium student sibi coniungere. oportet etenim, ut, quicumque uxorem ducere voluerit sive ingenuam sive libertinam, secundum nostras leges et antiquam consuetudinem parentes vel alios quos decet petat et cum eorum voluntate fiat legitimum coniugium" (compare, earlier, *Codex Theodosianus* 9. 24. 1, esp. §2). The ruling seems to address the suspicion (int. al.) that the alleged *raptor* and *rapta* sometimes connived in the allegation to circumvent paternal opposition to their marriage—the same suspicion exploited in several declamatory arguments alleging collusion by the principals: see Quintilian *Declamationes minores* 259, 262. 9 (cf. Seneca *Controversiae* 1. 5. 1, 2, 8, 2. 3. 1, 17, Quintilian *Declamationes minores* 349. 10) and Evans-Grubbs (1989), esp. 67–70.

<sup>27</sup> Quintilian *Declamationes minores* 297 "Qui excaecaverit aliquem, aut talionem praebeat aut excaecati dux sit." As Margaret Imber has remarked to me, this theme bears comparison with themes of rape in another respect as well: for as the latter concern the "social death" of the *rapta* (below), in this theme the blinded woman is a prostitute—i.e., a woman already socially dead. The theme thus figures some of the same issues of gender and power that we find in the themes of rape.

of the alternatives calls for the essentially reflexive punishment of *talio*: *praebeat talionem*, the law says, translated here as “satisfaction in kind”—in this case literally an eye for an eye. The other alternative calls for an effective punishment, the demand that the blinder serve as the guide of the person he blinded. The one alternative is wholly present-oriented, satisfying a basic, reflex desire for vengeance *now*, in its most direct form, harming the offender in precisely the same way that you have been harmed, without real calculation of your own advantage. The other alternative is future-oriented, making precisely the calculation of needs to come and how they will be met now that the harm has been done.

The parallel with the *lex raptarum* is clear: here as well there are two alternatives very similarly constituted, one an immediate lashing out in revenge, the other conceived with a more consequential, problem-solving intent. The similarity is not quite exact, of course, for the first alternative in the rape law is not precisely a case of *talio*. True *talio*, following a rape, might be castration or, perhaps even more exact, *stuprum per vim inlatum*—that is, forced penetration that would cause a loss of *puđicitia* and so a loss of social standing. (In fact we find reference to both castration and *stuprum* in cases of informal vengeance for adultery: Valerius Maximus 6. 1. 13, cf. Catullus 21, Martial 3. 96.) A kind of deflection or shift seems to have occurred, from true *talio*—the rapist’s castration or forcible sodomization—to his death. (Perhaps true *talio* in this instance was regarded as literally a fate worse than death, too terrible for the declaimers to contemplate even in their fictional speeches.) Yet the deflection seems eloquent in itself, yielding a certain sense in terms of the declaimers’ culture: for the literal death of the rapist corresponds to and avenges, in eye-for-eye fashion, the social death of the *rapta* that is assumed to be the consequence of rape. After all, the *rapta* is spoken of repeatedly as *vitiata*—literally, “flawed, spoiled,” that is, “damaged goods”;<sup>28</sup> her *puđicitia* has been impaired; what had been her proper identity, as a marriageable maiden who would find a suitable mate ready to take her, has been deeply disfigured, if not destroyed. The actual death of the rapist is the symbolic counterweight to this destruction of identity. Contrarily, the more calcu-

<sup>28</sup> E.g. Seneca *Controversiae* 1. 5. 4, 7. 6. 5, 10, 7. 8. 4, 6, 8. 6, 9. 1. 11, Quintilian *Declamationes minores* 259, 262. 7, 270. 16, 18, 309; cf. the language of the law, in which *stuprum* = φθορά (*Digesta* 48. 5. 6. 1).

lated, future-oriented second alternative—marriage to the rapist without dowry—gives effective compensation, providing a means for the *rapta* to continue to have a proper social existence even after the damage has been done, with the person responsible for the damage bearing the cost, like the person who inflicted blindness serving as the guide of the one who was blinded. Rape in declamation is above all assumed to be a crime against property: a taking of the virginity that, with the dowry, is normally bartered for the socially safe haven of marriage.<sup>29</sup> The law implies a neat equation in the social economy: the man's life balances the woman's virginity, and the property in the dowry is equivalent in weight and significance to both.

Such neatness appeals to and enacts the world of reason that the school of rhetoric aims to embody. At the same time, these cases of rape have a subtext that conveys an equally improving message for the student of rhetoric: not only does reason work, but the loss of reason—the loss of rational control over oneself and one's actions—has nightmarish consequences, setting the whole world topsy-turvy. For the woman who has been raped finds herself, consequently and paradoxically, empowered as she would never normally be: she is given the power of life and death over the rapist—the *potestas vitae ac necis*, as one of the declaimers puts it, using the phrase that usually defines the *patria potestas*, the power of the Roman patriarch over the members of his household.<sup>30</sup> Whatever choice she makes, the consequences are devastating for the rapist: for even if she spares his life and chooses marriage, she bestows what the declaimers characterize as a *beneficium*, a kindness that the recipient is obliged to repay.<sup>31</sup> The trouble, from the rapist's point of view, is that in this case the kindness can never be fully repaid: he is perpetually the debtor.

To illustrate the Romans' own awareness of this reversal I will conclude by examining one of the declamations whose theme was related at the outset of this chapter (*Declamationes minores* 309). You will recall the story.

<sup>29</sup> See, e.g., Quintilian *Declamationes minores* 276. 11 “. . . in gravissima iniuria, qua virginitatem perdidit, qua florem aetatis amisit, qua prima illa gratia apud maritum futura praerepta est.”

<sup>30</sup> Quintilian *Declamationes minores* 309. 12 “Potestatem tibi vitae ac necis lex dedit” (to the *rapta*); the *rapta's potestas* or *potentia* is stressed also at Seneca *Controversiae* 1. 5. 3, 7. 8. 1, 3, 9, Quintilian *Declamationes minores* 262. 7, 276. 1.

<sup>31</sup> See Seneca *Controversiae* 7. 8. 3, Quintilian *Declamationes minores* 247. 10, 251. 1, 3–5, 259. 3, 309. 17, 368. 1.



A woman who had been raped was brought before a magistrate and given the opportunity to choose the death of the man who she said had raped her or marriage to him without dowry. She chose marriage; he, however, denied that he had committed the rape. The matter was taken to court, where he was convicted. After his conviction, he dropped his objection to marrying her. She, however, wished to make her choice anew.

The declamation is spoken from the side of the rapist, who argues against the right of the woman to make a second, and presumably different, choice. The usual introductory *sermo*, or teacher's comment, includes the recommendation that "this young man's approach and delivery (*actio*) will have to be humble (*summissa*)." The sample declamation that follows would in fact sit comfortably on the lips of Uriah Heep. It begins like this:

I can in no way more appropriately aid my case, or do what is demanded by my sense of respectful behavior (*verecundia*), than by thanking this most gentle and clement girl. For though the law gave her all power over me, she in fact leapt at the chance to choose marriage, without my pleading with her, without (and here I must speak plainly) my even admitting the deed; and all this she did so readily, so quickly, that it scarce seemed plausible to me that she had suffered an injury at all. Then, having thanked her, I must make this admission: I was wrong to have hesitated. For what more desirable lot could have befallen me, even if I had not committed the rape? . . .

Still, members of the jury, I recognize that I must first give some explanation for my behavior, lest I seem to have acted cunningly and with evil intent in my denial. You know the many results of (simple) error, you know how much confusion (mere) chance creates, especially when the effects of error and chance are compounded by the darkness of night and the over-free use of unmixed wine. Otherwise, who would ever be a rapist? All unaware as I was, a solid and harmless fellow previously, I was—I cannot now rightly doubt it—deceived and led astray by all these influences: my life had always been such, my desire to protect my upright character had always been such, that I was simply amazed that I did wrong . . . But the very danger that my ignorance produced touched the girl, I believe: she had become convinced that my act was not the result of wanton lust. . . . I also thank the jurors [viz., in the previous rape trial]: they set right the damage that my defiance would have caused; (for) had I won, I would have lost the chance for marriage with this excellent girl. Let us therefore be glad and grateful.

There follows a section, omitted here, which deals with the question of *ius*—that is, whether the woman is permitted, as a matter of law,

to make a second choice. Then the concluding section, as often, takes up the question of *aequitas*, whether it is fair that she make a second choice. The speaker now addresses the *rapta*:

You want to choose twice: even once is a lot. The law gave you power of life and death: for this kind of power to go on and on is worse than regal, worse than tyrannical. The very lightning bolts strike swiftly; the condemned does not fear the executioner's axe forever. . . . Tell me—did I do you any further wrong after the fact? You forgave the fact that I had raped you, you forgave the fact that I had taken away your virginity: fair recompense for *these* acts, you thought, was marriage; do you think death is fair recompense for a proper sense of shame [*verecundia*, which caused him at first to deny the rape]? . . . If you want me to be punished by the lash of fear, I have felt fear; if you want to be begged, I am begging, and I beg you by that clemency that you have already shown, I beg you now as though I were in fact your husband; and I recognize that throughout my entire life I must do what I can to make amends.

If we look at this text as a teaching instrument, we can ask what lessons it could succeed in teaching, beyond the ability to strut and grovel at the same time—an uncommon ability, but one not unique to the culture of Roman declamation. Certainly there are implicit several assumptions about human behavior in general that the speech would tend to reinforce. For example, there is the evident belief that one who has suffered an *iniuria* does not as a rule quickly forgive the perpetrator; in fact, the speech suggests, there is a strong *disincentive* to give ready forgiveness, since that leaves one open to the suspicion that one has not really received an *iniuria* (“all this she did so readily, so quickly, that it scarce seemed plausible to me that she had suffered an injury at all”).<sup>32</sup> the virtue of *clementia*, the speech teaches, is not an expedient virtue. Similarly striking is the invocation of another virtue to give a decent face to two quite contrasting actions: it was *verecundia*—the regard for others through which one maintains their good opinion—that first moved the speaker to deny the rape, and it is *verecundia* that moves him now to thank the *rapta* for her clement choice of marriage. That *verecundia* would have been best served by choosing not to commit the rape at all is no doubt true, but this is not one of the lessons that the speech tends

<sup>32</sup> Cf. Seneca *Controversiae* 7. 8. 6 “nec quicquam magis suspectam faciebat vitatae causam quam lenitas optionis.”

to promote. Instead, it is one of the speech's central arguments that rape does not result from willed choice at all but from a confluence of impersonal, external factors: chance, darkness, wine.<sup>33</sup>

In the end, however, the mixture of self-congratulation and mealy-mouthed avoidance of responsibility that works its way through this short speech gives way to stark submission. The figure of the woman who has been raped seems to loom over the figure of the begging rapist; and it seems that he will beg forever. The asymmetry that usually characterizes the relations between males and females is here completely reversed: the male is now located on the side of eternal inadequacy.<sup>34</sup> There are surely elements of this speech that modern readers find repellent, an affront to our values; just as surely this last tableau would have inspired a shiver of distaste in any Roman male who could place himself, even hypothetically and momentarily, in such a position of utter loss of control.

Control, finally, is what the schools of rhetoric were about. Through their lessons, the young elite males who frequented the schools learned to control their own speech so that they might one day control the opinions of others, in the law courts, in their correspondence, or in conversation. The themes dealing with rape helped to further the goals of instruction by presenting useful test cases that carried with them a key assurance: whatever the mess produced by even the most monstrous acts, the calm surface of social relations, articulated above all by the exchange of property, could be restored by reasoned arguments delivered from a position of objective distance. At the same time a darker, supplementary assurance lurked beneath that calm surface, conveyed by the (misogynistically conceived) vision of the *rapta* who was given the upper hand by the rapist's crime and by the *lex raptarum*. This assurance impressed its weight subliminally upon the student's mind, through repetition in case after case: if you yourself lose control, it said, you will pay. You will pay with your property. You will pay with your dignity. And you will pay forever.

In his indispensable book on Roman declamation, Stanley Bonner pointed with disbelief and dismay at the character of the themes

<sup>33</sup> The link to the motifs of New Comedy is strongest here: see, e.g., Terence *Adelphoe* 469–71, Menander *Epitrepontes* 450–52, with Winterbottom (1984) 453 (on *Declamationes minores* 309. 4), Scafuro (1997) 246–59.

<sup>34</sup> Cf. Seneca *Controversiae* 7. 8. 4 "Neminem habere tam obsequentem maritum potes: hic iam nihil negabit."

that were the foundation of the exercise, especially themes of the sort that we have just been considering. "With regard to subject matter," he said, "it is hardly necessary to stress the bad effect upon the young pupil of this concentration on erotic and often sordid themes. . . . [T]he recurrent treatment of adultery and divorce, rape and incest, strikes a modern student as an incredible foundation for education."<sup>35</sup> I have tried to suggest a perspective from which this state of affairs might appear a bit less incredible. These 'deplorable' themes, rape included, all provided ways to think through what I have called a "social mess," of the sort that any member of the elite was from birth trained to regard with distaste. How to clean up such a mess—and, no less, how one should learn to fear it—were two valuable lessons that such themes were eminently well suited to teach.

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<sup>35</sup> Bonner (1949) 41; cf. Sussman (1994) 15, 17.

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