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Law in declamation: the *status legales* in Senecan *controversiae*[*]

1. In studies about declamation, the problem of the laws governing scholastic *controversiae* has always been one of the most debated topics;[1] among the various possible ways of approaching it, one that appears to be very promising, although hitherto not much considered, is to view the relationship between declamation and law in the light of the *status*-theory. Developed, at least in its most widespread version, by the Greek rhetorician Hermagoras of Temnos (2nd century BC), *status*-theory is well-known to be a cornerstone of the ancient rhetorical doctrine concerning *inventio*, having imposed itself as the standard procedure for the classification and treatment of the different kinds of lawsuits;[2] precisely because it aimed at offering exhaustive precepts relative to the method of argumentation, not only as regards the rhetorical aspects, but also for the legal and juridical ones, *status*-theory in fact represents the main link between rhetoric and law.[3]

The fundamental subdivision within the Hermagorean system depends upon the distinction between *status rationales* (ζητήματα λογικά) and *status legales* (ζητήματα νομικά):[4] while the former concern those cases in which the issue under discussion is the real subsistence of a given act (that is to say, whether it has actually been committed or not: *status coniecturalis* or *coniectura*), its definition (*status definitivus* or *definitio*), or its quality (*status qualitatis* or *qualitas*),[5] the latter are employed when there is a problem of interpretation of the law: thus a conflict may arise between the

[*] English translations of the quoted texts are taken, when necessary with some slight alterations, from the following editions: Winterbottom 1974a (Seneca the Elder); Russell 2001 (Quintilian, *Institutio oratoria*); Shackleton Bailey 2006 (Ps. Quintilian, *Declamationes minores*); Sussman 1994 (Calpurnius Flaccus); Hubbell 1949 (Cicero, *De inventione*); Caplan 1954 (*Rhetorica ad Herennium*); Heath 1995 (Hermogenes).

[1] For a recent survey of scholarly opinions about this topic see Langer 2007, 17-30.

[2] For a general overview on the *status*-theory see the fundamental study of Calboli Montefusco 1986; for a reconstruction of the Hermagorean system see Thiele 1893, 22-143; Matthes 1958, 107-214; Barwick 1964; 1965, 192-218, and now Woerther 2012, xiii-xxv, lv-lxxii.

[3] See Stroux 1926, 15-27 (= 1949, 23-40); Calboli Montefusco 1996; Langer 2007, 241 ("Tatsächlich ist die Statuslehre als Hilfsmittel zum einfacheren und schnelleren Auffinden von Argumenten die Schnittstelle zwischen juristischer Argumentationstechnik und rhetorischer Argumentationsmethode").

[4] I leave aside the problem whether for Hermagoras *status legales* should be considered *status* in every respect, on the same plane as the *status rationales*, or they should be distinguished from the latter and put on a hierarchically lower level, as it seemingly appears from a hint in Cicero, *De inventione* 1.17, and as Quintilian will later reaffirm more explicitly (cf. *Institutio oratoria* 3.6.86-88, with Adamietz 1966, 140; 147-149 *ad l.*; on the whole question see Thiele 1893, 78-83; Barwick 1964, 81-83; Holtsmark 1968, 364-368; Calboli 1972, 131-133; Calboli Montefusco 1979, 300; 323-325; 1983, 540-541; 1986, 199-200 and n. 7; Woerther 2012, 136-138). But Quintilian himself remarks that in teaching *status rationales* and *legales* could be equated for reasons of didactic clarity (*Inst. or.* 3.6.89), and he adopts this method in book 7 of his *Institutio oratoria*, where each of the four *status legales* is treated by itself.

[5] Hermagoras added to these three *status rationales* a fourth one, the *translatio*, which was employed when the accused advanced a procedural exception towards the action brought against him; but the position of the *translatio* in the *status*-theory was highly controversial, and it was sometimes incorporated in the *status legales* (see e.g. Fortunatianus, *Ars rhetorica* 1.11, p. 81.12-16 Calboli Montefusco, with Calboli Montefusco 1979, 326-327 *ad l.*), whereas other rhetoricians brought into question its existence as an independent *status* (see especially Quint. *Inst. or.* 3.6.66-79, with Adamietz 1966, 141-147 *ad l.*). See Calboli Montefusco 1975; 1986, 139-152.

letter and the spirit of the law (*scriptum et voluntas*); or there may be a clash between two or more different laws (or even between two provisions of a single law: *leges contrariae*); or again the text of the law may present some ambiguity (*ambiguitas*); or finally it may be that, in the absence of a specific norm for the case under discussion, the latter needs to be treated by analogy, by applying some similar laws (*ratiocinatio* or *syllogismus*).

Declamation has a very close relationship with *status*-theory, if it is true that declamatory cases were usually produced to clarify the intricacies of the doctrine, and that they were used by students in the rhetorical schools to get practice in using it.[6] I examined the traces of the *status*-theory in some *controversiae* of Seneca the Elder's declamatory collection elsewhere;[7] in this paper I will specifically focus on the use of the *status legales* in two other Senecan *controversiae*, which are based respectively on *leges contrariae* and on *ratiocinatio* and which, being parelleled by examples found in other rhetorical treatises or declamatory works, are particularly suitable to illustrate the whole topic of these *status* and their application in declamation; the present study will then contribute to shedding light on how *status*-theory, and in particular the doctrine concerning the interpretation of the law, was acknowledged and put into practice in the Roman rhetorical schools of the early imperial age.

2. The first example I will deal with is *Controversia* 1.5, a very popular case, representing the prototype of the *status* of *leges contrariae*. A common declamatory law provides that a woman who has been the victim of a rape should choose between the death penalty for her rapist or marriage to him without a dowry;[8] but what happens if someone rapes two girls on the same night, one of whom demands the death, the other marriage? This is precisely the question posed by our *controversia*:[9]

> RAPTA RAPTORIS AVT MORTEM AVT INDOTATAS NVPTIAS OPTET. Una nocte quidam duas rapuit. Altera mortem optat, altera nuptias.[10]

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[6] On the relationship between declamation and *status*-theory see Bonner 1949, 12-16; 1977, 309-321; Clark 1957, 228-250; Russell 1983, 40-73; Winterbottom 1983, 70-74; Calboli 2003, 73-77; 2007, 39, 48-50; Langer 2007, 50-54, 241-249.

[7] See Berti (forthcoming); see also Berti 2007, 115-127.

[8] On this law, often found in declamatory collections both Latin and Greek, see Lanfranchi 1938, 462-465; Bonner 1949, 89-91; Langer 2007, 65-70. The law, as it is formulated in our *controversiae*, is patently unreal; but the death penalty could be decreed for the rapist in some extreme circumstances, when the rape was accompanied by violence; on the other hand, marriage, although not envisaged by any real statute, might be a common arrangement in cases of rape; so that, as Bonner observes, "what the declaimers have done is to telescope the civil and criminal law (of either Greece or Rome), and present a highly dramatic position, seizing on the two most exciting features, and bringing them into a striking antithetical relationship."

[9] Quotations of Seneca's work are taken, unless otherwise specified, from the edition of Håkanson 1989.

[10] "A girl who has been raped may choose either marriage to her rapist without a dowry or his death. On a single night a man raped two girls. One demands his death, the other marriage."

The contrast arises here within one and the same law, for in this particular case its two parts come into conflict, being mutually exclusive. This form of *leges contrariae*, not found either in *Rhetorica ad Herennium* or in Cicero's *De inventione* (which probably means that Hermagoras did not envisage it), is discussed by Quintilian, who proposes, among others, the example of the *duae raptae* (cf. Quint. *Inst. or.* 7.7.2-3 *colliduntur … secum ipsae, ut duorum fortium, duorum tyrannicidarum, <duarum> raptarum, in quibus non potest esse alia quaestio quam temporis, utra prior sit, aut qualitatis, utra iustior sit petitio* ["Laws conflict […] internally, as when we have two war heroes, two tyrannicides or two victims of rape, in which the only question can be one of time (which request was first?) or quality (which was more just?)"]);[11] but the same example is brought again by later authors, such as the influential Greek rhetorician Hermogenes of Tarsus (2nd century AD),[12] as well as some Latin rhetoricians of a later age, like Fortunatianus, Iulius Victor and Marius Victorinus:[13] so that we can be quite sure that this complicated – and from many points of view absurd – fictional case was specially designed to exemplify the above-mentioned form of *leges contrariae*.[14]

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[11] See Dingel 1988, 138-139. Quintilian also remarks that two laws cannot be inherently conflicting, but the contrast must necessarily be fortuitous and produced by some special circumstances (cf. Quint. *Inst. or.* 7.7.2 *omnibus autem manifestum est numquam esse legem legi contrariam iure ipso, quia, si diversum ius esset, alterum altero abrogaretur, sed eas casu collidi et eventu* ["it is clear to everyone that one law can never be contrary to another in juristic principles, because if there were distinct principles one law would be cancelled out by the other: collisions between laws are thus due to chance and the way things turn out"]).

[12] See Hermogenes, *De statibus*, p. 40.20-41.12 Rabe εἰ μέντοι περὶ δύο ῥητὰ ἢ καὶ πλείονα ἢ καὶ ἓν εἰς δύο διαιρούμενον ἡ ζήτησις εἴη ἀντινομία γίνεται· ἔστι γὰρ ἀντινομία δύο ἢ καὶ πλειόνων ῥητῶν ἢ καὶ ἑνὸς διαιρουμένου μὴ φύσει ἐναντίων κατὰ περίστασιν δὲ μάχη. […] τοῦ δὲ κατὰ διαίρεσιν ῥητοῦ ποιοῦντος ἀντινομίαν παράδειγμα τόδε· ἡ βιασθεῖσα ἢ γάμον ἢ θάνατον αἱρείσθω τοῦ βιασαμένου· δύο τις κατὰ ταὐτὸν ἐβιάσατο κόρας, καὶ ἢ μὲν γάμον αὐτοῦ, ἢ δὲ θάνατον αἱρεῖται ["If the enquiry is concerned with two or more verbal instruments, or one divided into two sections, the issue is a conflict of law. A conflict of law arises when two or more verbal instruments, or one divided into two parts, which are not inherently contradictory, come into conflict because of special circumstances. […] An example of conflict of laws arising from the division of one instrument: a victim of rape may choose either marriage or the death of the rapist; a man rapes two girls at the same time; one chooses to marry him, the other chooses his death"]. See Heath 1995, 77, and Patillon 2009, 108-109 *ad l.*

[13] Cf. Fortun. *Ars rhet.* 1.25, p. 100.5-7 Calb. Mont.; Iulius Victor, *Ars rhetorica*, p. 17.5-10 Giomini-Celentano; Marius Victorinus, *Explanationes in Ciceronis rhetoricam* 2.49, p. 297.35-298.1 Halm; Calboli Montefusco 1986, 169-171.

[14] A similar situation occurs in Calpurnius Flaccus' *Declamatio* 51, where the double rape is however only the premise of a more complex case (*Quidam duas rapuit. Productae ad magistratus altera nuptias, altera mortem petit. Magistratus humaniorem sententiam secuti sunt. Post factas nuptias illa †quod virgo perpessa est† quem conceperat, peperit. Exposuit. Raptor suscepit, qui tunc erat maritus alterius, et alere coepit. Reus est uxori malae tractationis* ["A certain man raped two women. When brought before the magistrates, one woman demands marriage, the other his death. The magistrates supported the more merciful course of action. After the wedding took place, the other woman, because she has submitted to a man, gave birth to the child she had conceived. She then exposed it. The rapist, who by then was the husband of the other woman, took up and acknowledged the child, and then began to raise it. He is accused by his wife of maltreatment"]). It is interesting to note that in this case the theme itself states that the judges decided for the milder penalty; in our *controversia* too such an outcome is recommended by some declaimers (see Pompeius Silo's *sententia* referred to in Sen. *Contr.* 1.5.3 *altera ex puellis raptorem mori vult, altera servari; reum alter iudex damnat, alter absolvit: inter pares sententias mitior vincat* ["one of the girls wants the rapist to die, the other wants him saved; one judge condemns the defendant, the other acquits him. The votes are equal: let the gentler prevail"]); see Sussman 1994, 234.

As for the way to treat such a case, Quintilian remarks that it essentially implies two kind of issues, one about time (*utra prior sit*), the other about equity (*utra iustior sit petitio*). This is a part of the more general topic regulating the comparison between laws in *leges contrariae*, which the same Quintilian fully sets forth shortly afterwards (Quint. *Inst. or.* 7.7.7-8):

> Item aut confessum ex utraque parte ius est aut dubium. Si confessum est, haec fere quaeruntur: utra lex potentior, ad deos pertineat an ad homines, rem publicam an privatos, de honore an de poena, de magnis rebus an de parvis, permittat an vetet an imperet. Solet tractari et utra sit antiquior; sed velut potentissimum utra minus perdat, ut in desertore et viro forti, quod illo non occiso lex tota tollatur, occiso sit reliqua viro forti alia optio.[15] Plurimum tamen est in hoc, utrum fieri sit melius atque aequius; de quo nihil praecipi nisi proposita materia potest.[16]

We can take Quintilian's exposition as a term of comparison to analyse the argumentative framework of our *controversia*, and weigh up how far it conforms to the instructions offered by rhetorical handbooks.[17] For this purpose, we have to take into account the second of the three sections in which, as can be seen also by the title of the work (*Oratorum et rhetorum sententiae, divisiones, colores*), Seneca divides and organizes his materials, that is to say the one devoted to *divisiones*: the term *divisio* meaning the 'skeleton' of the *controversia*, the point-by-point exposition of the argument's plan, inclusive of all the questions to be discussed. The *divisio* was, so it seems, usually presented by the declaimer in a kind of preamble, before the proper declamation, for explanatory and didactic purposes; and from these preliminary remarks the examples of *divisio* reported by Seneca are presumably taken.[18] In *Controversia* 1.5 particularly ample space is devoted

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[15] Quintilian is here hinting at another declamatory example of *leges contrariae*, whose theme is fully quoted by Ps. Quintilian, *Declamationes minores* 315 (*VIR FORTIS DESERTOREM SVA MANV OCCIDAT. Eodem proelio quo pater fortiter fecit, eiusdem filius deseruit. Petit praemii nomine ut eum non ipse occidat* ["Let a war hero kill a deserter with his own hand. In the same battle at which a father became a hero, his son deserted. He asks as a reward that he not kill him himself"]).

[16] "Again, the legal point is either admitted by both parties or in doubt. If it is admitted, the following questions generally arise: Which law is superior? Does it concern gods or men, public life or private citizens, honours or punishments, important matters or trivial? Does it permit, forbid or command? Another commonly raised point is which law is the older: but the most potent question, one might say, is which law will lose less: for example, in the case of the deserter and the war hero, if the deserter is not put to death the whole law is subverted, whereas if he is, the war hero still has other possible choices. However, it is of overriding importance in this to consider which is the better and fairer outcome; and no suggestion can be made about this without setting out an actual theme."

[17] Similar, but more detailed, are the precepts about *leges contrariae* offered by Cicero's *De inventione* (2.145-147), where ten points are listed; much more concise is instead the treatment of this *status* in the *Rhetorica ad Herennium* (2.15); see also the instructions given by Ps.Quint. *Decl. min.* 274.1; 10; 315.8; 324.2. In later rhetoricians almost the same points are to be found, with few variations, as parts of the *comparatio legum*, one of the *loci* or κεφάλαια of *leges contrariae* (cf. Hermog. *De stat.*, p. 87.2-19 Rabe; Fortun. *Ars rhet.* 2.10, p. 117.3-7 Calb. Mont.; Iul. Vict. *Ars rhet.*, p. 30.7-14 Giom.-Celent.; Mar. Victorin. *Explan. in Cic. rhet.* 2.49, p. 298.12-299.9 Halm); see Stroux 1926, 26 (= 1949, 38-39); Martin 1974, 48-50; Calboli Montefusco 1986, 176-178. On the application of these criteria to declamatory cases of *leges contrariae* see Lanfranchi 1938, 53-65, who however focuses his attention almost exclusively on Ps. Quintilian's *Declamationes minores*, and does not deal at all with our *controversia*; see also Dingel 1988, 139-147.

[18] See Berti 2007, 81-82, and in general on *divisiones* Bonner 1949, 56-57; Fairweather 1981, 152-166.

to the *divisio*, in view of the complexity of the case – whose primary interest lies in its juridical intricacies, challenging declaimers' subtlety and acumen –, and of the different views about the way to treat it (cf. Sen. *Contr.* 1.5.4 *in hac controversia de prima quaestione nulli cum altero convenit* ["in this *controversia* there was no agreement on the first question"]); the presentation of bare *quaestiones* is then followed by ample excerpts, which illustrate in practice how they were developed, and offer a very good example, quite exceptional in Seneca's work, of a continuous *argumentatio*.[19] Let us begin by considering the *divisio* of Porcius Latro, the most renowned among the declaimers of Seneca's time, who is, as usual, the first to be quoted. The first two *quaestiones* raised by Latro, who is supporting the option of the death penalty, are directed at demonstrating that this option must have priority over the other one (Sen. *Contr.* 1.5.4-5):

> Latro primam fecit quaestionem: non posse raptorem, qui ab rapta mori iussus esset, servari. Si legatus, inquit, exire debet, peribit; si militare debet, peribit; si lege †ducere†[20] debet, peribit; si raptam ducere debet, aeque peribit. Si te ante rapuisset et nuptias optasses, interposito deinde tempore, antequam nuberes, hanc vitiasset, negares illum debere mori rapta iubente? Atqui nil interest, nisi quod dignior est raptor morte, cuius inter duos raptus ne una quidem nox interest. Si rapta nupsisses, deinde post tertium diem rapuisset aliam, negares illum mori debere? Atqui quid interest, nisi quod honestius tunc maritum defenderes quam nunc raptorem defendis? Alteram fecit: an rapta, quae nuptias optat, nihil amplius raptori praestare possit quam ne sua lege pereat, contra alienam legem nullum ius habeat. Optasti nuptias: non occidetur tamquam raptor tuus; at idem eadem nocte qua te rapuit <si> stationem deseruit, fuste ferietur; si sacrilegium fecit, occidetur, licet tu dicas: 'quid ergo? ego non nubam?' Tu raptori praestas ut illum ipsa non occidas; non potes praestare ne quis occidat. Quomodo sacrilegus, quamvis a te servatus, periret, sic alterius puellae raptor, licet a te servatus, peribit. Si rapuisset te, deinde in adulterio deprehensus adservaretur in tormentum diutius pereundi, tu interim educta nuptias optasses – datur enim optio et in absentem –, vetares illum occidi a marito? Quid interest qua lege pereat, nisi quod modestius alienam legem interpellares quam tuam?[21]

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[19] On the *divisio* of this *controversia* see also Berti 2007, 85-90.

[20] The text is here corrupt and Håkanson chooses to place the transmitted *ducere* between *cruces*; among emendation proposals I point out *lege* <*ius*> *dicere* by Müller and [*lege*] <*ius*> *dicere* by Winterbottom (see also Winterbottom 1974b, 27).

[21] "Latro's first question was: A rapist who is ordered by his victim to die cannot be saved. 'If he has to go out on an embassy, he will die. If he has to serve as a soldier, he will die. If he has to administer the law, he will die. If he has to marry a girl he raped, he will die just the same. If he raped you before and you had chosen marriage, then, in the interval before the wedding, had wronged this girl, would you say he ought not to die if the girl he raped demanded it? Yet there is no difference between the two cases – except that a seducer deserves to die the more when there is not even a single night to separate his two rapes. If you had married him after being raped, then two days later he had raped another, would you say he ought not to die? Yet what is the difference? – except that it would then be more honourable for you to defend your husband than it is for you to defend your rapist now.' The second point he made was: Can a victim of rape who chooses marriage grant her rapist anything else but immunity under the law as far as she is concerned, having no power to thwart the law as it affects another? 'You chose marriage; he will not die for seducing

All this section of Latro's argumentation can be seen as a development of the first issue Quintilian claims needs to be treated in *leges contariae*, that is *utra lex potentior*. Latro begins by arguing that a *raptor*, for whom a *rapta* demanded death penalty, can in no case be saved, whatever he has to do, even to marry another *rapta*; the declaimer operates here with a juridical fiction: if the two rapes had been committed at different times, even though the first victim had chosen marriage or even had already married her rapist, at the time when the other victim had demanded death, the sentence should necessarily have been executed; and it makes no difference, and it is in fact an aggravating circumstance, that the two rapes have occurred on the same night (in this way Latro touches also upon the question of time, which Quintilian indicates as one of the two only kinds of issues to be discussed in case of a conflict within a single law; but the way it is treated here, is rather different from that suggested by Quintilian, who means that the first *petitio* in order of time must have priority; here the situation is in a way overturned, since Latro asserts the priority of the option of the death regardless of the time when it has been exercised, even if later cronologically). Latro's reasoning is then completed by the subsequent *quaestio*, in which it is argued that the first victim, by choosing marriage, can only save the rapist as far as she is concerned, but her choice has no effect against the choice of the other girl; similarly, if the rapist had been condemned for another crime, such as sacrilege or adultery, he should anyway have been put to death; and it makes no difference whether the death sentence comes from the same or from another law.

So far Latro has shown that the option of the death penalty is in any case prevailing, that is to say – to use Quntilian's words – *potentior*;[22] with the next question, coming closer to the heart of the matter, he goes on to demonstrate that this is actually the only possible option, since only with the rapist's death will both victims get their revenge (Sen. *Contr*. 1.5.6):

> Tertiam fecit: cum quod utraque optat fieri non possit, an ea eligenda sit optio qua ultio ad utramque perveniat. Ait quae mortem optat: 'mea optio et te vindicat, tua me non vindicat; et hoc

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you. If, on the same night that he raped you, he deserted his post, he will be beaten to death; if he committed a sacrilege, he will be axed. You may say: 'Well? Am I not to marry?' What you are granting your rapist is that it is not you who are the cause of his death; what you cannot grant him is that he should not be killed. If he had committed sacrilege he would die however much you granted him his life: so will he as the rapist of a second girl, even though you grant him his life. If he had raped you, then been caught in adultery and reserved to be tortured by having to wait longer for death, and you meanwhile had been summoned to court and had chosen marriage (for the choice is available even when the man is not present), would you be able to prevent him being killed by the husband? What difference does it make which law he perishes by? – except that you would be acting more modestly in trying to hold up his death under a law not concerning you than under one concerning you'."

[22] This also corresponds with one of Cicero's criteria for *leges contrariae*, according to which that law must normally prevail which provides the harsher penalty (cf. Cic. *De inv.* 2, 145 *deinde, in utra lege, si non obtemperatum sit, poena adiciatur aut in utra maior poena statuatur; nam maxime conservanda est ea quae diligentissime sancta est* ["then, in which law a penalty is prescribed for noncompliance, or which law has the greater penalty, for that law has the highest claim to be upheld, in which the penalties are more carefully prescribed"]).

> tibi mea optio praestat, quod †et† mihi occiso raptore invidiam.'[23] Illa respondet: 'optio tua me non vindicat: vindictam tu meam putas non fieri quod volo, fieri quod nolo? Etiam contumeliosum mihi erit te dignam videri, in cuius honorem <occidatur, me indignam, in cuius honorem> servetur. Isto modo et mea te vindicat: nempe lex duas poenas scripsit vitiatori; alteram passurus est. Non eris inulta, nam raptor non erit impunitus: habebit poenam, indotatam uxorem.' Respondet eodem modo: morietur <utrique, tibi servabitur>, sed non mihi.[24]

This argument, which Latro presents together with the possible objections of the opposing party, and again with the reply of the first speaker,[25] is corresponding in principle to another point listed by Quintilian, and in fact defined by him as *potentissimum* (cf. *Inst. or.* 7.7.8 *velut potentissimum utra minus perdat*, quoted above), and mentioned also in Cicero's treatment of *leges contrariae* as the last question to be discussed (cf. Cic. *De inv.* 2.147 *postremo facere, si causa facultatem dabit, ut nostra ratione utraque lex conservari videatur, adversariorum ratione altera sit necessario neglegenda* ["finally, if the circumstances of the case permit, we should make it clear that on our principles both laws are upheld, and on the opponents' one must be disregarded"]), even if the situation is a bit different here, only one law being involved; but the correspondence is even closer with Hermogenes, who indicates exactly this same point as the most distinctive 'head' (κεφάλαιον) of ἀντινομία (Greek name of *leges contrariae*), and illustrates it by the example of our *controversia* (Hermog. *De stat.*, p. 87.9-19 Rabe):

> ἐπὶ τούτοις ἐστὶ καὶ τὸ ἴδιον μᾶλλον ἀντινομίας κεφάλαιον, πότερον τὸ περιέχον καὶ πότερον τὸ περιεχόμενον, οἷον ποτέρου γενομένου οὐδέτερος ἀναιρεθήσεται τῶν νόμων. κἀνταῦθα μὲν χαλεπῶς φαίνεται ἡ φύσις τοῦ κεφαλαίου, ἐπὶ δὲ τοῦ ζητήματος τοῦδε σαφέστερον ἔσται· δύο τις κατὰ ταὐτὸν ἐβιάσατο κόρας, καὶ ἡ μὲν γάμον, ἡ δὲ θάνατον αἱρεῖται τοῦ βιασαμένου· ἡ γὰρ ἀξιοῦσα αὐτὸν τεθνάναι ἐρεῖ

[23] The text of this corrupt sentence was restored by C. F. W. Müller in the following way: *nec hoc tibi mea optio praestat quod mihi: ex occiso raptore invidiam*; Müller's restoration is accepted by Winterbottom.

[24] "His third question was: Since it is impossible for the choice of both to be carried out, should the choice which gives both revenge be preferred? The girl who chooses death says: 'My choice gets revenge for you too, but yours does not get it for me; nor will my choice give you what it gives me, unpopularity as a result of the death of the rapist.' The other replies: 'Your choice does not avenge me. Do you think revenge for me consists in what I want not happening, and what I do not want taking place? In fact, it will be an insult to me that you are thought to deserve the death of a man for your sake, while I am not thought to deserve his reprieve for mine. Now looked at like this, my choice avenges you also. Look, the law prescribed two punishments for the rapist. He will suffer one of the two. You will not go unavenged, for the rapist will not go unpunished: he will have his penalty, a wife without a dowry.' The first girl replies as before: 'If he dies, he will die for both of us; if he is reprieved, he will be reprieved for you, but not for me'."

[25] Whereas I would be quite sure that the two previous excerpts from Latro's argumentation belonged to the proper declamation, as for this third excerpt the same is hardly true, and I am inclined to believe that it rather comes from the preliminary speech, in which the declaimer presented his *divisio* (see above, p. 000, and Berti 2007, 88, n. 1).

ὅτι ἀμφοτέραις δώσει δίκην εἰ τεθναίη, εἰ δὲ δὴ γήμῃ τὴν ἑτέραν, θάτερον μέρος ἄκυρον ἔσται τοῦ νόμου.[26]

As it is easy to see, the substance of the argument is the same: that option must be preferred which includes the other, that is to say the one which can satisfy both victims, in order to avoid that the law should be left unapplied for one of the two parties. This is therefore a good example of the way in which some argumentative procedures, which originated, as far as we can see, in the rhetorical schools and in declamatory praxis, were subsequently taken up and theorized by later rhetorical doctrine.

Before going on with our analysis of Latro's *divisio*, we have to consider how the same point was developed by the other declaimer Arellius Fuscus, to whose *divisio* Seneca refers immediately afterwards (Sen. *Contr.* 1.5.7):

Fuscus Arellius primam quaestionem hanc fecit: <an> qui duas rapuit perire utique debeat. Lex, inquit, quae dicit: rapta raptoris aut mortem optet aut nuptias, de eis loquitur qui singulas rapuerunt: non putavit quemquam futurum, qui una nocte raperet duas. Non quaero quid optetis; quod severissime optare potestis occupo: necesse est raptorem mori. Quare? Utrique raptae ultio debet contingere: utramque non potest ducere, utrique mori potest. Una pars legis ad hunc raptorem pertinet, in qua mors est. Putate enim utramque nuptias optasse: quid futurum est? In raptoris matrimonium ambitus erit. Putate illum plures rapuisse quam duas: quid fiet? una nubet? Nuptiae ad unam perhibebunt, mors ad omnes. Qui duas rapuit, utique debet mori. Quare? Dicam. Quod <quaeque> vult eligat: aut <mortem aut> nuptias optabunt, aut altera mortem altera nuptias; si nuptias <utraque, aut altera mortem altera nuptias> optaverint, non poterit fieri quod utraque volet. Uno modo poterit fieri quod utraque volet: si utraque mortem optaverit. Ergo fiat quo uno duae vindicari possunt.[27]

[26] "In addition to these there is also the head which is more distinctive to conflict of law, which is inclusive and which is included, i.e. which outcome will abrogate neither of the laws. The nature of this head is hard to discern in the present case; it will be clearer in the light of this question: A man raped two girls at the same time; one chooses marriage, the other the rapist's death. The one who demands his death will say that he will pay a penalty to both if he dies, but if he marries the other woman half of the law will be nullified." See Heath 1995, 148-149 and Patillon 2009, 75 *ad l.*

[27] "Arellius Fuscus made this his first question: Ought someone who has raped two girls to die in any case? 'The law that says a raped girl may choose her rapist's death or marriage to him is talking about rapists of one girl. It did not imagine that there would be anyone who would seduce two girls on one night. I do not enquire what your choice is; I seize on the harshest choice open to you: the rapist must die. Why? Both girls must have their revenge. He cannot marry both, but he can die for both. Only one part of the law applies to this rapist, where it says 'death'. Suppose both have chosen marriage. What is to happen? Competition for marriage to a seducer. Suppose he had seduced more girls than two. What will happen? Will one marry him? Marriage will affect one girl; death all. The seducer of two girls should certainly die. Why? I will tell you. Let each choose what she wants. Either they will both choose either death or marriage, or one will choose death, one marriage. If both choose marriage, or one marriage and one death, it will be impossible for the wishes of both to be carried out. Only if both choose death will the wishes of both be able to be implemented. Let us therefore follow the only route by which both can be avenged'."

At first sight this is only a slight variation on Latro's argument, in which it is argued with a still more cogent logic that the death penalty for the rapist is the only possible option, being the only one that avenges both victims; but on second thoughts things are otherwise. Fuscus explicitly maintains that the law about the raped girl's choice concerns only cases of rape of a single girl, for the lawgiver had not foreseen that anyone could rape two on the same night; in regard to the present situation there is therefore a legislative gap, which needs to be filled by analogy: and reason leads to the conclusion that in such a case the penalty to be inflicted is necessarily death. Although the conclusions are the same, Fuscus's approach is then substantially different from Latro's, since he seems to treat the *controversia*, at least in this part of his argumentation, primarily as a case not of *leges contrariae*, but of *ratiocinatio*.[28] The subsuming of a given *controversia* under a certain *status* was in fact in no way something fixed and predetermined, but every declaimer was free to employ the *status* he thought to be the most suitable for the treatment of the actual case; and in particular the *status legales* were easily interchangeable with each other.[29]

But let us return to Latro's *divisio*, to analyse its final part, where, in complete accordance with Quintilian's indications (cf. the above quoted passages of *Inst. or.* 7.7.3 *utra iustior sit petitio*, and 8 *plurimum tamen est in hoc, utrum fieri sit melius atque aequius*), he asks which of the two options is worthier to be carried out (Sen. *Contr.* 1.5.6):

> Quartam fecit quaestionem: si non potest utriusque rata esse optio, utra, quae <vale>at, dignior sit. Ultimam non quaestionem, sed tractationem <fecit: neminem> non raptorem impunitum futurum, si haec via impunitatis monstraretur, ut, qui plures rapuisset, tutior esset; neminem non inventurum aliquam humilem, quae se in optionem commodaret.[30]

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[28] Fuscus's premises to his reasoning, when he remarks that such a situation could not be foreseen by the lawgiver, can be compared with Cicero's advice about *loci communes* to be employed in *ratiocinatio* (cf. Cic. *De inv.* 2.152 *loci communes: a ratiocinatione, oportere coniectura ex eo, quod scriptum sit, ad id, quod non sit scriptum, pervenire; et neminem posse omnes res per scripturam amplecti, sed eum commodissime scribere qui curet ut quaedam ex quibusdam intellegantur* ["Common topics: in favour of reasoning by analogy, that it is proper to proceed by inference from what is written to what is not written; and that no one can include every case in one statute but that he makes the most suitable law who takes care that some things may be understood from certain others"]); but see also the analogous remarks made by Ps.Quint. *Decl. min.* 331.3-4 *nulla tanta providentia potuit esse eorum qui leges componebant, ut species criminum complecterentur.* […] *Fecerunt ergo ut rerum genera complecterentur et spectarent ipsam aequitatem* ["those who drafted the laws could not have the foresight to cover the varieties of offenses. […] They therefore decided to embrace categories of things and pay attention to actual equity"], and 350.5 *nulla tanta esse potuit prudentia maiorum (quamquam fuit summa), ut ad omne genus nequitiae occurrat. Ideoque per universum et per genera singula conscripta sunt iura* ["the wisdom of our ancestors (though it was of the highest order) could not be so great as to meet every kind of wickedness, and for that reason laws were written comprehensively through the several categories"], both cases of *ratiocinatio* (see Lanfranchi 1938, 46-52; Winterbottom 1984, 509-510, 555-556 *ad ll.*); and furthermore 310.3; 315.12. It is worth noting that a similar idea already occurred in Aristotle's *Rhetoric* (cf. Aristoteles, *Rhetorica*, 1.13, 1374a 27-1374b 2); see Stroux 1926, 27 (= 1949, 40); Nörr 1974, 33.

[29] See e.g. the discussion in Quint. *Inst. or.* 7.10.1-3.

[30] "He made the fourth question: If the choice of both cannot stand, which is the worthier to prevail? The last he made a development rather than a question: Every rapist would go unpunished if this route to safety were signalled – the more girls raped, the safer the rapist. Everyone would find some low-class girl who would lend herself to make a choice."

With these last two questions, Latro moves from *ius*, the discussion of the proper law, to *aequitas*, more general considerations of equity, as is also revealed by the word *tractatio*, which Seneca uses as a technical term to define a *quaestio aequitatis*.[31] The subdivision between *quaestiones iuris* and *quaestiones aequitatis*, where the former concern the legal and juridical side of the case, the latter consider the act of the accused from an ethical point of view, is well-known to be one of the most distinctive features of Senecan *controversiae*.[32] Although this bipartition is especially typical of cases belonging to *status qualitatis*, it may be transferred also to other *status*, even *status legales*:[33] *aequitas* serves here as a compensatory criterion, which must complement and counterbalance merely juridical arguments.[34] In this case too, as usual in our *controversiae*, Latro introduces the discussion of *aequitas* as the last point of his *divisio*:[35] sense of equity demands that whoever has committed two rapes on the same night should be sentenced to death, not to create a dangerous precedent that, through such a paradoxical expedient, grants impunity to every future rapist.

Not only Latro, but Fuscus too ends his *divisio* with an analogous *tractatio aequitatis*[36] (Sen. *Contr.* 1.5.8):

> Hic tractavit: ne exemplum quidem utile esse non utique perire eum qui duas rapuerit; nam hunc morem perniciosissimum civitati introduci, ut aliquis propter hoc non pereat, quia perire saepius

[31] See Fairweather 1981, 157.
[32] See Bonner 1949, 57; Sussman 1978, 39-41; Fairweather 1981, 155-158.
[33] See Berti (forthcoming).
[34] See Quint. *Inst. or.* 12.3.6 *ius … dubium aequitatis regula examinandum est* ["doubtful points of law need to be examined by the standard of equity"]; see Nörr 1974, 36-40; Calboli Montefusco 1996, 222-223. On the application of *aequitas* in declamation see also Cornu Thénard 2007, esp. 390-408, who however postulates, in my opinion groundlessly, a difference between the declaimers and Quintilian in the understanding of this concept.
[35] Quintilian too suggests reserving arguments founded on *aequitas*, in view of their greater persuasive force, for the end of the argumentation (cf. Quint. *Inst. or.* 7.1.63 *plerumque autem in fine causarum de aequitate tractabitur, quia nihil libentius iudices audiunt* ["discussion of equity will commonly come at the end of a cause, for there is nothing that judges like hearing better"]). See Dingel 1988, 65.
[36] See also Cestius Pius' *divisio*, to which Seneca briefly refers at the end of the section (cf. Sen. *Contr.* 1.5.8 *Cestius hanc partem controversiae sic divisit: utra puella dignior sit quae valeat; utra optione raptor dignior sit* ["Cestius divided this part of the *controversia* thus: which girl deserve to prevail? Which choice does the rapist deserve?"]). Cestius added also a *quaestio coniecturalis*, in which he advanced the suspicion that the second victim could have connived with the rapist; to which Latro objected that such an argument, founded only on a vague suspicion, could not count as a *quaestio*, and it could at most be developed as a *color* (cf. Sen. *Contr.* 1.5.8-9 *Cestius et coniecturalem quaestionem temptavit: an haec cum raptore colluserit et in hoc rapta sit, ut huic opponeretur. Latro aiebat non quidquid spargi posset suspiciose, id etiam vindicandum: colorem hunc esse, non quaestionem; eam quaestionem esse quae impleri argumentis possit. Cestius aiebat et hanc posse impleri argumentis* ["Cestius also had a try at the conjectural question: Did one girl connive with her seducer and was seduced just in order that she could be pitted against the other? Latro used to say that there was no need to claim everything that could be scattered about to arouse suspicion: this was a colour, not a question, a question being something that could be filled out with arguments. Cestius' view was that this too could be filled out with arguments"]). See Fairweather 1981, 158-159.

> meruit. Reliquam partem controversiae Fuscus in haec divisit: utra optio honestior sit, utra iustior, utra utilior.[37]

Fuscus particularly insists, also by means of a typical declamatory *sententia* (*…ut aliquis propter hoc non pereat, quia perire saepius meruit*), on the negative consequences that, if the rapist were saved from death, such an example would have for the whole *civitas*. The criterion of public interest, to which the declaimer appeals here, is not unusual in cases of *leges contrariae*, and it is also called into question in some of Ps. Quintilian's *Declamationes minores*;[38] but more interesting is what Seneca says about the last part of Fuscus's *divisio*, where all the arguments relative to *aequitas* are summed up in the triple question *utra optio honestior sit, utra iustior, utra utilior*. The categories of *honestum*, *utile*, *iustum* immediately remind us of deliberative oratory and of its declamatory counterpart, the *suasoria*: in rhetorical treatises they are in fact often mentioned as *partes suadendi*, the major points to be treated in this oratorical genre (even though, in fact, *iustum* is mostly included in *honestum*, and *necessarium* is added to *honestum* and *utile* as a third point: see the discussion in Quint. *Inst. or.* 3.8.22-26);[39] and on the other hand, as Quintilian remarks, these points are often developed in a comparative manner, to the point that almost every *suasoria* consists of a comparison (cf. Quint. *Inst. or.* 3.8.33-34 *nec tantum inutilibus comparantur utilia, sed inter se quoque ipsa, ut si ex duobus eligamus, in altero, quid sit magis, in altero, quid sit minus.* […] *Ita fere omnis suasoria nihil est aliud quam comparatio* ["Expedient proposals are not always compared with inexpedient, but sometimes expedient with expedient and inexpedient with inexpedient, so that, given a choice between two, we consider, in the one case, which is the greater, and, in the other, which is the less. […] Thus almost every advisory speech is nothing more than a comparison"]). But in this case, rather than at the proper *suasoria*, we have perhaps to look at another kind of rhetorical exercise, belonging to the number of *progymnasmata*, the preliminary exercises practised by students at the school of the *grammaticus*: I mean the praise of law (*legum laus*), indicated by Quintilian (*Inst. or.* 2.4.33) as the most advanced and demanding among *progymnasmata*, akin to the deliberative genre and to the *suasoria*, and whose topic is stated by the same author in the following way (Quint. *Inst. or.* 2.4.37-39):

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[37] "Here his treatment was that it wasn't a good precedent, either, that a man need not necessarily die after seducing two girls. That someone should not die just because he deserves to die more than once is a most pernicious custom to introduce into a state. The rest of the *controversia* Fuscus divided thus: Which choice is more honourable, which more just, which more expedient?"

[38] See e.g. Ps.Quint. *Decl. min.* 274.1 *hic omnia fere cetera paria sunt; utra utilior et magis necessaria civitati sit quaerendum est* ["in this case pretty well everything else is equal: the question should be which is more useful and necessary to the community"]; 315.14 *mea lex utilior est rei publicae* ["my law is more useful to the state"]. For further examples, concerning *controversiae* falling under another of the *status legales*, see Ps.Quint. *Decl. min.* 253.3; 264.8.

[39] See Adamietz 1966,180-183.

> maxime vero commune est quaerere an [*scil.* lex] sit honesta, an utilis. Nec ignoro plures fieri a plerisque partes, sed nos iustum, pium, religiosum ceteraque his similia honesto complectimur. Iusti tamen species non simpliciter excuti solent. Aut enim de re ipsa quaeritur, ut dignane poena vel praemio sit, aut de modo praemii poenaeve, qui tam maior quam minor culpari potest. Utilitas quoque interim natura discernitur, interim tempore.[40]

It seems that in this almost deliberative section of his argumentation, Fuscus has followed the rules of *laus legum*, using them in a comparative manner in order to establish the comparison between the two options. This is not really surprising, in view of the clear affinity of that exercise with the *status* of *leges contrariae*, in which the praise of law can also play a role;[41] on the other hand the concepts of *honestum* and *utile* are to be found in Cicero's treatment of *leges contrariae* (cf. Cic. *De inv.* 2.145 *primum igitur leges oportet contendere considerando utra lex ad maiores, hoc est ad utiliores, ad honestiores ac magis necessarias res pertineat* ["in the first place, then, one should compare the laws by considering which one deals with the most important matters, that is, the most expedient, honourable or necessary"]; also 2.147 *locos autem communes et quos ipsa causa det videre oportebit, et ex utilitatis et ex honestatis amplissimis partibus sumere, demonstrantem per amplificationem ad utram potius legem accedere oporteat* ["it will be well to consider the common topics offered by the case itself and to borrow some from the most general topics of expediency and honour, pointing out in passages of amplification to which law adherence should be given"]),[42] which perhaps demonstrates that a connection between this *status* and the topic of the praise of law had already been established in the rhetorical doctrine. However things stand, it appears that in this point too Fuscus does not wander from the procedures prescribed in rhetorical handbooks.

Controversia 1.5 provides the best opportunity to appreciate the argumentative rigour as well as the juridical acumen of such declaimers as Latro and Fuscus, qualities often underestimated by scholars. But it is clear that their method of reasoning is wholly founded on *status*-theory, which

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[40] "The most generally applicable questions are whether it is right and whether it is expedient. I know many people make more subdivisions; but I include justice, piety, religion and the like under 'right'. Justice however usually receives quite a complex treatment. Questions are raised either about the action itself with which the law is concerned – for example, does it deserve punishment or reward? –, or about the level of reward or punishment, which can be criticized as either too high or too low. Expediency too is sometimes determined by the nature of the matter, sometimes by the occasion"; see Nörr 1974, 34-36; Lana 1979; Querzoli 2003, 42-45; Reinhardt-Winterbottom 2006, 112-118. A similar topic is also stated by other authors of *progymnasmata*, such as Aelius Theon (p. 129.7-10 Spengel), Hermogenes (p. 27.1-10 Rabe) and Aphthonius (p. 47.11-16 Rabe); all of them more or less explicitly link this exercise to the deliberative genre (see Patillon 1997, xci-xciii).

[41] See e.g. *Rhet. ad Her.* 2.15 *cum haec erunt considerata, statim nostrae legis expositione, recitatione, conlaudatione utemur* ["after these considerations, we shall at once pass to the exposition, reading and praise of the law favourable to us"]. For the use of the *laus legis* in declamation see Quint. *Inst. or.* 7.1.43; Ps.Quint. *Decl. min.* 308.3; 320.3.

[42] See also Fortun. *Ars rhet.* 2.10, p. 117.5-6 Calb. Mont. *quaerimus … utra sit honestior, iustior, magis necessaria* ["we ask which of the two laws is more honourable, more just, more necessary"]; Mar. Victorin. *Explan. Cic. rhet.* 2.49, p. 298.12-13 Halm *erit ergo tractatus talis, utra utilior lex sit, utra honestior, utra magis necessaria* ["such will then be the treatment, which of the two laws is more expedient, which more honourable, which more necessary"]; p. 299.8-9 Halm.

supplies them with all the instruments to deal with such a tangled case, involving a difficult problem of conflicting laws, with the greatest of ease. A second example, concerning another of the *status legales*, will confirm this conclusion.

3. The *status* of *ratiocinatio*, also called *syllogismus*, applies, as stated above, to those cases which are not envisaged by the current law or for which in any case a specific rule is lacking, and which need consequently to be treated by analogy, with the aid of syllogistic reasoning. In discussing this *status*, Quintilian distinguishes two principal typologies, the first concerning cases for which there is a partially pertinent norm, and it is possible to infer what is uncertain from what is certain, the second concerning instead cases for which a law is totally lacking, and it is therefore necessary to resort to another analogous law. As for the first typology, which more closely interests us here, Quintilian offers a further subdivision, according to the different relationship that the situation under consideration has with the law of reference (Quint. *Inst. or.* 7.8.3-4):

> Ergo hic status ducit ex eo quod scriptum est id quod incertum est: quod quoniam ratione colligitur, ratiocinativus dicitur. In has autem fere species venit: an quod semel ius est, idem et saepius: 'incesti damnata et praecipitata de saxo vixit: repetitur.' An quod in uno, <et> in pluribus: 'qui duos uno tempore tyrannos occidit, duo praemia petit.' An quod ante, et postea: 'raptor profugit, rapta nupsit; reverso illo petit optionem.' An quod in toto, idem in parte: 'aratrum accipere pignori non licet; vomerem accepit.' An quod in parte, idem in toto: 'lanas evehere Tarento non licet: oves evexit.'[43]

As can be seen, each of these forms of *ratiocinatio* is illustrated through a declamatory example, so that the suspicion can arise that this subdivision, not found before Quintilian,[44] has once again originated in the rhetorical schools; all the more so because the example produced for the first type corresponds exactly with Seneca's *Controversia* 1.3 (*INCESTA SAXO DEICIATVR. Incesti damnata, antequam deiceretur de saxo, invocavit Vestam. Deiecta vixit. Repetitur ad poenam* ["An unchaste woman shall be thrown from the rock. A woman condemned for unchastity appealed to Vesta

[43] "This issue, then, deduces something which is uncertain from the letter of the law. As it is a matter of rational inference, it is called the 'ratiocinative issue'. The species into which it is divided are roughly speaking as follows: if a right is given once, does it apply on more occasions? 'A priestess convicted of incest and thrown from the rock survived; she is sought to be thrown down again.' If a provision applies to one event, does it apply to several? 'A man who has killed two tyrants at one time, claims two rewards.' Does what applied before an event also apply afterwards? 'A rapist fled the country, his victim married; he has returned, and she now demands her choice.' Does what applies to the whole apply to a part? 'It is forbidden to accept a plough as a pledge; he has accepted the ploughshare.' Does what applies to the part apply to the whole? 'It is forbidden to export wool from Tarentum; he has exported sheep'." See Vonglis 1968, 133-137; Martin 1974, 51-52; Calboli Montefusco 1986, 190-195; Dingel 1988, 148-153.

[44] Among later rhetoricians, Quintilian's classification is taken up only by Iul. Vict. *Ars rhet.*, p. 18.16-23 Giom.-Celent.

before being thrown from the rock. She was thrown down, and survived. She is sought to pay the penalty again"]). But in this *controversia* the space devoted to *divisio* is greatly reduced (and what is more, the related portion of the text is rather badly transmitted, which makes it difficult to understand completely), so that it is impossible to follow the lines of argument made by the declaimers. There is however in Seneca's collection another example falling under the same species of *ratiocinatio*: this is *Controversia* 7.8, based once again on the *lex raptarum*:

> RAPTA RAPTORIS AVT MORTEM AVT INDOTATAS NVPTIAS OPTET. Rapta producta nuptias optavit. Qui dicebatur raptor negavit se rapuisse. Iudicio victus vult ducere; illa optionem petit.[45]

This *controversia* is particularly interesting also because it gives us the opportunity of a comparison with one of Ps. Quintilian's *Declamationes minores*, number 309, which proposes a practically identical case (*Educta ad magistratum, adulescentis a quo esse vitiata dicebatur nuptias optavit. Ille negavit se rapuisse. Iudicio contendit. Victus est. Non recusat ducere. Illa optare vult* ["A girl brought before the magistrates opted for marriage with the young man who was said to have violated her. He denied the rape. He fought it out in court. He lost. He does not refuse to marry. She wants to opt"]).[46] The raped girl has in this case chosen marriage, but the alleged rapist applies to the judges, denying that he had committed the rape; he is found guilty, and at this point the girl demands to repeat her choice: the problem is precisely whether she has the right to choose a second time, and eventually to change her option, after already choosing marriage (*an quod semel ius est, idem et saepius*). Once again it is Latro and Fuscus who are granted the largest space in the section of *divisio*; let us consider first Latro's argument (Sen. *Contr.* 7.8.7):

> Latro tres fecit quaestiones: an illa <optio> iusta fuerit. 'Non fuit' inquit 'iusta; non enim constabat te raptorem esse.' Nihil refert, inquit, an negaverit; erat enim raptor, etiamsi negabat, et ita iusta fuit optio. An, si iniusta optio fuit, revocari possit. Optio, inquit, semel puellae datur; immutabilis est, simul emissa est. Iudex quam tulit de reo tabellam revocare non potest; quaesitor non mutabit pronuntiationem suam. Nihil tam civile, tam utile est quam brevem potestatem esse, quae magna est. Si volet et alteram optionem suam revocare et deinde tertiam, numquam constabit quid futurum sit, cum illa quod optaverit possit sequenti semper optione rescindere.

[45] "A girl who has been raped may choose either marriage to her rapist without a dowry or his death. A girl who had been raped was brought to court and asked for marriage. The alleged rapist said he was not responsible. The judgement has gone against him. He is ready to marry her, but she wants to have her choice over again."
[46] Parallels between the two *controversiae* are pointed out by Winterbottom 1984, 452-455.

> Tertiam fecit quaestionem: an, si potest revocari aliquando optio, nunc debeat. Hic defensio adulescentis, qui negavit se vitiasse.[47]

Latro, who takes up the defence of the alleged rapist, begins his *divisio* by asking whether the girl's choice has been made in accordance with the law (*an illa optio iusta fuerit*); to the possible objection that the rapist had not yet been convicted of his crime, the declaimer replies that he was the rapist anyway, so that there is no reason to call into question the legitimacy of the choice (and consequently to give the girl the chance to repeat it). In the frame of Latro's defensive strategy, this is of course the strongest argument, for, if he succeeds in demonstrating this point, he need go no further with his plea;[48] only secondly he comes to the question, specific to *ratiocinatio*, whether, supposing that the first option has not been legally valid, it can be taken back and repeated (*an, si iniusta optio fuit, revocari possit*); and his answer is again firmly negative, not only because it is advisable that whoever holds a great power should make use of it only for a short time (an argument that anticipates the treatment of equity),[49] but also because if the victim is given the possibility of choosing more than once, so as to revoke every time her previous option, it will never be sure what is her definitive choice. Latro's *divisio* has several points in common with the argumentation of Ps. Quintilian, who likewise is defending the rapist (Ps.Quint. *Decl. min.* 309.7):

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[47] "Latro put three questions: Was the choice legal? 'No, he said, for it was not yet established that you were the rapist.' 'It makes no difference whether he denied it. He was the rapist, even if he denied it, and so the choice was legal.' If the choice was illegal, can it be taken back? 'The girl is given one choice; it is immutable as soon as it is uttered. A judge cannot take back a vote he casts on an accused; an investigating magistrate will not change his sentence. Nothing is so in accord with civilised practice and expediency than that great power should be brief. If she wants to take her second choice back as well and then her third, it will never be agreed what is to happen, since she can always annul her choice by a subsequent choice.' His third question was: If a choice can sometimes be taken back, should it be now? Here came a defence of the young man, who denied that he had violated the girl."

[48] This argument can perhaps be traced back to the *status* of *translatio*, in so far as Latro, mantaining that the first option has been legal, denies any legitimacy to the girl's new action: this kind of issue, in which an exception is taken to the time or the way of the action brought by the prosecutor, precisely falls under *translatio* (cf. e.g. Cic. *De inv.* 1.10 *at cum causa ex eo pendet, quia non aut is agere videtur quem oportet, aut non cum eo quicum oportet, aut non apud quos, quo tempore, qua lege, quo crimine, qua poena oportet, translativa dicitur constitutio* ["when the case depends on the circumstance that it appears that the right person does not bring the suit, or that he brings it against the wrong person, or before the wrong tribunal, or at a wrong time, under the wrong statute, or the wrong charge, or with a wrong penalty, the issue is called translative"]). The affinity between *translatio* and *ratiocinatio* may also be deduced from the fact that one of the species of *ratiocinatio* listed by Quintilian, *an quod ante et postea*, is included by some later rhetoricians within the *translatio* (see e.g. Fortun. *Ars rhet.* 1.23, p. 97.21-98.2 Calb. Mont.); see Dingel 1988, 150.

[49] The same idea is expressed by Albucius Silus in a *sententia* referred to in Sen. *Contr.* 7.8.1 *non oportet tibi amplius quam semel licere optare. Omnis nimia potentia saluberrime in brevitatem constringitur. Qui potest condemnare, possit semel; qui potest occidere, possit semel, aut, si qua iteratio recipi potest, in paenitentiam mortis recipienda est* ["you shouldn't have the right to choose more than once. All excessive power will be best restricted to a short time. One who can condemn, should have the power only once; one who can kill, should have the power only once; or, if any repetition can be allowed, it should be allowed for the purpose of having second thoughts on the choice of death"]; see also Ps.Quint. *Decl. min.* 309.12 *bis optare vis quod etiam semel multum est. Potestatem tibi vitae ac necis lex dedit; ultra regnum omne, ultra tyrannidem omnem est hoc diu licere* ["you want to opt twice, when even once is much. The law gave you power of life and death; that this licence should last long is beyond all monarchy, beyond all tyranny"].

> Ius esse raptae optandi adversus raptorem, hoc iam non negamus, sed illud quoque aeque conveniat necesse est, bis adversus eundem raptorem optandi non esse ius. Et si hoc in confesso fuerit, illud quoque teneamus, optasse iam puellam.[50]

Compared with Latro, the anonymous declaimer anticipates the question about the girl's right to opt a second time, but he takes it for granted that such a possibility is excluded by the law (*bis adversus eundem raptorem optandi non esse ius*);[51] he consequently focuses on demonstrating that the girl's previous option has been perfectly legal (a point which, as in the case of Latro, is raised to the rank of the chief question), with arguments very close to those employed in our *controversia*.[52] Such analogies in the treatment of the *controversia* do not necessarily imply a direct knowledge of Seneca's work by Ps. Quintilian;[53] but they are at least revealing of the persistence of some argumentative procedures and outlines in the Roman rhetorical schools through the imperial age.

Unlike Latro and Ps. Quintilian, Fuscus supports the girl's request (even though, as Latro too did, he also introduces in his *divisio* some objections of the opposing party); this calls of course for some variations in the argumentative strategy, and in fact, as Seneca himself remarks, Fuscus operates a reversal in the order of the questions (Sen. *Contr.* 7.8.8):

> Fuscus et ordinem mutavit quaestionum et numerum auxit; fecit enim primam quaestionem: an rapta non possit amplius optare quam semel. Potest, inquit: lex enim non adicit quotiens optet, sed ex quibus: 'aut hoc' inquit, 'aut illud'; non adicit 'ne amplius quam semel.' Contra ait: lex te iubet alterutrum optare; tu hodie si mortem optabis, facies quod numquam factum est: utrumque optaveris. Etiamsi non licet, inquit, amplius quam semel [et mortem optabis et nuptias], ego nondum optavi; optio est enim quae legitime fit. Illa non est facta legitime. Si praetor defuisset, numquid optionem vocares? [si rapta defuit] sed raptor <de>fuit: non est ista optio, sermo est. An proximo iudicio confirmata sit optio. Raptor ait: agebatur apud iudices utrum deberet rata esse optio <an> non; iudicata est rata esse debere: rata sit. Non, inquit puella; quaesitum est enim an

[50] "That a rape victim has the right of option against the rapist I don't now deny, but this too must equally be agreed, that there is no right of option twice against the same rapist; and if that is admitted, let it also be granted us that the girl had already opted."
[51] It is possible that the declaimer is here referring to the well-know rule *Bis de eadem re ne sit actio* ["There shall not be an action twice on the same matter"]; see Dingel 1988, 129, who however is in my opinion wrong in classing this *controversia* under the *status qualitatis*.
[52] See Ps.Quint. *Decl. min.* 309.9 *negat optionis expletum esse ius, quod ante optaverit quam certum esset rapuisse eum contra quem optabat. Ego autem in legem nullam animadverto differentiam, et hoc unum exceptum, ut rapta raptoris mortem optet. Viderimus an in controversiam res adducta sit postea; interim certum est hunc fuisse raptorem. Ergo cum et tu rapta esses, et hic raptor esset, et lex raptae optare permitteret, et tu optaveris, non video quare non finitum ius sit* ["She denies that the right of option has been met in full because she opted before it was certain that the object of her option had committed rape. But I perceive no difference in the law. The law provides only that the rape victim opt for the rapist's death. We will see later whether the matter was brought into dispute afterwards; meanwhile it is certain that he was the rapist. Therefore since you had been raped, and he was the rapist, and the law allows the victim an option, and you opted, I don't see why there is any more to be said about the law"].
[53] See also Dingel 1988, 25-32.

> ego in raptorem ius haberem; iudicatum est habere me: uti debeo. Non possum ante legem habere quam raptorem. Novissimam quaestionem fecit aequitatis: an rata debeat esse optio.[54]

Fuscus's first *quaestio* offers a perfect example of the use of *ratiocinatio*, showing moreover its closeness to the other *status* of *scriptum et voluntas*.[55] He bases himself on a one-sided – and not devoid of captiousness – interpretation of the letter of the law, in order to demonstrate that it is allowed to go beyond the law itself (that is, in the specific case, that the girl has the right to opt more than once); all this literally corresponds with Quintilian's doctrine about *syllogismus* (Quint. *Inst. or.* 7.8.1):

> Syllogismus habet aliquid simile scripto et voluntati, quia semper pars in eo altera scripto nititur; sed hoc interest, quod illic dicitur contra scriptum, hic supra scriptum; illic qui verba defendit hoc agit, ut fiat utique quod scriptum est, hic ne aliud quam scriptum est.[56]

Fuscus's ability consists in turning to his own advantage an argument that, as Quintilian too explains, should normally favour the opposing party, the one relying on the letter of the law, that is the observation that a special provision concerning the present situation is lacking in the law;[57] but our declaimer argues that precisely the absence of an explicit prohibition to opt *amplius quam semel*, can be understood as a tacit authorization to do so.

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[54] "Fuscus changed the order of questions and increased their number. His first was: Can a raped girl choose more than once? 'She can; the law does not add how often she is to choose, but merely says what she is to choose from. It says 'either this or that,' it does not go on to say 'not more than once'.' The opposite view is: 'The law orders you to choose one or the other; if you choose death today, you will do something unprecedented: you will have chosen both.' 'Even if it is not permissible to choose more than once, I haven't yet chosen: a choice is a choice when it is made legally; this choice was not. If the praetor had been absent, would you call it a choice? In fact, there was no rapist. That is no choice, it is mere words.' Was the choice ratified by the previous trial? The rapist says: 'The judges had to say whether the choice was to stand or not. It was decided it should: let it so stand.' 'No,' says the girl, 'for what was at stake was whether I had a right over the rapist. It was judged that I have. I must use it. I cannot appeal to the law before I have a rapist.' Fuscus' last question was one of equity: Should the choice stand?"

[55] See Vonglis 1968, 140-149; Calboli Montefusco 1986, 188-189.

[56] "Syllogism has some similarity to letter and spirit, because in it one side always relies on the letter; but the difference is that in letter and spirit we argue against the letter, in this issue we go beyond it. In the former, again, the pleader who is defending the letter aims at ensuring that in any case this is put into effect, whereas in syllogism his object is to prevent anything other than the letter being put into effect."

[57] See the concrete examples, related to the declamatory cases previously quoted, brought by Quint. *Inst. or.* 7.8.5-6 *in his syllogismus et scripto nititur: nam satis cautum esse dicit. 'Postulo ut praecipitetur incesta: lex est,' et 'rapta optionem petit,' et 'in ove lanae sunt,' similiter alia. Sed quia responderi potest: 'non est scriptum ut bis praecipitetur damnata, ut quandoque rapta optet, ut tyrannicida duo praemia accipiat; nihil de vomere cautum, nihil de ovibus,' ex eo quod manifestum est colligitur quod dubium est* ["in these cases the syllogism relies also on the letter of the law; for the prosecutor says that the provisions are adequate. 'I demand that the unchaste priestess shall be thrown from the rock, this is the law'; 'the victim claims her choice'; 'wool is on a sheep,' and so on. But, as the other side can reply 'it is not stated that the condemned woman should be thrown down twice,' or 'that a victim of rape should exercise her choice at any time,' or 'that a tyrannicide should receive two rewards,' or again that 'nothing is said about a ploughshare,' or 'about sheep,' it follows that an inference is being made from a certain fact to an uncertain one"].

After proving this point, Fuscus goes on with his reasoning, in a specular way compared to Latro, by arguing that, even supposing that the victim has no right to opt more than once, she has not yet opted, for her previous option, in the absence of a certain culprit, had no juridical validity; this is a straight answer to the first question made by Latro (and by Ps. Quintilian). With the next *quaestio* Fuscus adds a new argument and answers the other objection that the girl's choice had been ratified by the past trial; his reply is that in the trial it was only decided whether she had a right over her rapist, and now it is time for her to make use of it.[58]

Both Fuscus and Latro end their *divisio* with the discussion of *aequitas* (*an rata debeat esse optio*); this is of course in keeping with the procedure usually followed in Senecan *controversiae*, but once again it also corresponds with the advice given by Quintilian, who indicates the treatment of equity as the strongest argument in cases of *ratiocinatio* (cf. *Inst. or.* 7.8.7 *sed de aequo tractatus potentissimi* ["but the most effective treatments are based on equity"]).[59] As for this part of Fuscus's and Latro's argumentations, Seneca restricts himself to a brief hint; but we can get an idea of the way such a *quaestio* could be developed from the *divisio* of two other declaimers, Passienus and Varius Geminus, to whom the author refers immediately afterwards (Sen. *Contr.* 7.8.9):

> Passienus hanc ultimam partem sic dividebat: an, si adulescens malo adversus puellam animo infitiatus est raptum, ut nuptias effugeret, dignus sit qui iterum fortunam subeat optionis recusatae; deinde, an malo animo fecerit. Varius Geminus ultimae quaestioni vel parti, in qua quid debeat fieri quaeritur, duo haec adiciebat, quae <apte> per se quaeri putabat: an, si puella pro certo adulescentis mortem optatura est, non debeat illi permitti optio tam crudeliter usurae sua potestate; deinde, an mortem optatura sit. Quid est, inquit, quare velis optare, nisi quod nuptias non vis? <An vis?>[60] Hoc non tantum patimur, sed rogamus.[61]

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[58] The opposite view is upheld in favour of the rapist by Ps.Quint. *Decl. min.* 309.10 *'at postea tu negasti esse raptorem'. Ideo victus sum. Feci, si vis, improbe (differo enim istius rei defensionem), feci temere: quid tamen aliud quaeri potuit in illo iudicio quam hoc, an tu merito optasses? Probasti raptorem fuisse me, hoc est probasti te recte optasse. Volui rescindere optionem tuam: non contigit* ["'But you denied afterwards that you were the rapist.' So I lost. I acted improperly if you like (I defer my defence on that score), I acted rashly; but what could be asked at that trial, except whether your option had been deserved? You established that I had been the rapist, that is, that you had opted correctly. I wanted to rescind your option. I did not succeed"].

[59] See already Cic. *De inv.* 2.151 *deinde aequitas rei demonstranda est* ["finally, the equity of the matter shall be pointed out"]. The subdivision between *ius* and *aequitas* is clearly marked also in Ps. Quintilian's declamation: see the *sermo* (the part of the declamation containing teacher's suggestions and comments) in Ps.Quint. *Decl. min.* 309.11 *haec circa ius, illa circa aequitatem* ["so much as to law, now as to equity"].

[60] This supplement, proposed by E. Thomas and accepted by Winterbottom, but not by Håkanson, seems however necessary for the sense.

[61] "Passienus divided this last part like this: If the young man acted with bad intentions towards the girl in denying the rape, in order to escape marriage, does he deserve to undergo a second time the chances of a choice he has refused once? Then: were his intentions bad? Varius Geminus, to the last question or part, where the question is what ought to be done, added these two, which he thought bore asking in itself: If the girl is definitely going to choose the young man's death, should a choice be allowed to someone who proposed to use her power so cruelly? Then: Does she propose to choose death? 'Why should you want to choose unless because you do not want marriage? Or do you? We not only put up with that, we ask it'."

The substance of the argument is the same in both declaimers – does the rapist deserve to undergo a second time the girl's option? – but each of them develops it in a different way, according to whether he sides with the girl or with the rapist: whereas Passienus raises the question whether the rapist, in denying the rape, acted with bad intentions towards his victim, and he therefore deserves that she should repeat her option, Varius Geminus focuses on the girl's intentions, by asking whether she is going to demand the rapist's death, and whether it is just to grant her such a cruel option.[62] In both cases the treatment of equity is then complemented by a *quaestio coniecturalis* concerning the intention, or *animus*, of the two characters (respectively *an malo animo fecerit* and *an mortem optatura sit*): this corresponds with a procedure well attested in Senecan *controversiae*, where a *coniectura de animo* is often introduced at the end of the *divisio*, as a complement of the *tractatio aequitatis*.[63]

The analysis of *Controversia* 7.8 gives further evidence of the declaimers' in-depth knowledge of the *status*-theory, and specifically of the *status legales*, as well as of their ability in applying it in an actual, although fictional, case. More interestingly, from this point of view there is no substantial discernible difference with Ps. Quintilian's *Declamationes minores*, which are usually pointed out as an example of forensic-oriented 'school declamations' and set against Seneca's epideictic 'show declamations' which, aiming only at entertaining the public, would reveal a virtual indifference to the intricacies of the argumentation and to all rhetorical rules;[64] but in the light of our inquiry, this judgement needs to be at least partly revised.

4. Examples of *controversiae* entirely founded on one of the *status legales* are comparatively rare in Seneca's collection; but by virtue of the distinction between *quaestiones iuris* and *aequitatis*, the legal issues come into play with a subsidiary function also in other *controversiae*.[65] The preliminary treatment of the *pars iuris*, the juridical side of the case, often implies the discussion of a set of

[62] The same question is posed by Ps.Quint. *Decl. min.* 309.17 *quam autem causam habes renovandae optionis, si optatura nuptias es?* ["what reason do you have for renewing the option, if you are going to opt for marriage?"].
[63] See e.g. Sen. *Contr*. 2.2.5, and for further examples Berti 2007, 117 and n. 2; see also Lanfranchi 1938, 118-134, and Dingel 1988, 161-162 (on Ps. Quintilian). On *animus* as a part of the *coniectura* see Quint. *Inst. or*. 7.2.1; 11.
[64] For this distinction see e.g. Dingel 1988, 1-5; Hömke 2007, esp. 104; 116-123. For a more balanced judgement see Winterbottom 1982, 63-64 ("On the contrary, it is clear from the sections that Seneca devotes under each topic to *divisio* that the declaimers were very much concerned with the structure of their argumentation. The tiresome thing is that nowhere are we given a complete declamation from which we could see how much this division dictated the overall pattern – how far, for instance, it was obscured or swamped by more meretricious elements"); 1984, xi.
[65] The doctrine envisaged in fact the possibility of using more than one *status* in a single lawsuit: as Quintilian explains, if the main *status*, the one containing the fundamental issue to be debated, remained always one, in the course of the argumentation other preliminary or subsidiary *quaestiones* could be introduced, each with its own *status* (see Quint. *Inst. or*. 3.6.6-8; 91-95; 3.11.7-8, with Adamietz 1966, 115-117, 150-151, 209-213); in later authors these secondary *status* will be called *incidentes* (see Calboli Montefusco 1983; 1986, 51-59). *Status legales* were often used precisely in the role of *status incidentes* (see Calboli Montefusco 1983, 540-542; 1986, 56-58).

questions concerning the interpretation of the law, and therefore calls for the use of the *status legales*, first of all *scriptum et voluntas*, the most important among them, which in a way contains all the others. Also in such cases the declaimers prove to be skilful in applying and exploiting to their own advantage the whole topic of these *status*: to limit ourselves to a single example, in *Controversia* 9.4 we find Latro giving one of the most lucid and significant, although perhaps not much known, definitions of *scriptum et voluntas* (Sen. *Contr.* 9.4.9):

> in lege, inquit, nihil excipitur, sed multa, quamvis non excipiantur, intelleguntur, et scriptum legis angustum, interpretatio diffusa est.[66]

On the other hand, the significance of this latter *status* as a crucial contact point between rhetoric and jurisprudence is clearly stated by Quintilian in a very interesting passage, in which he stresses the key role of the question of letter and the spirit of the law both in school declamations and in juridical controversies (Quint. *Inst. or.* 7.6.1):

> Scripti et voluntatis frequentissima inter consultos quaestio est, et pars magna controversi iuris hinc pendet. Quo minus id accidere in scholis mirum est; ibi etiam ex industria fingitur.[67]

In a well-known paper first published in 1926, Johannes Stroux observed that "in these four *status* or *quaestiones* [i.e. *status legales*] there is a full-scale rhetorical theory of the interpretation of the law."[68] Stroux was especially interested in tracing the influence of the rhetorical doctrine on Roman jurisprudence, and from this point of view one cannot concur fully with all his conclusions (and as a matter of fact they have on a number of occasions been challenged and brought into question); but in stressing the importance of the *status*-theory – and in particular of the *status legales* – for the formation and development in the rhetorical sphere of a theory of the law's interpretation he was surely right. The doctrine of the *status legales* was intended to provide a definite theoretical framework in which to insert the treatment of every conceivable legal and juridical question, supplying its users with as complete a system of rules as possible and with a rigorous argumentative method; these rules included the establishment of equity as a major principle, complementary to the discussion of positive law, which represents one of the most important contributions of the

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[66] "There is no exception, he said, mentioned in the law, but many exceptions are understood, even if not explicitly stated; and the letter of the law is restricted, its interpretation spreads wide." For further details see Berti (forthcoming).
[67] "The question of letter and spirit is very common among lawyers, and a great part of legal controversy depends upon it. We should not be surprised therefore that it occurs in the schools, where it is also deliberately invented." See Stroux 1926, 44 (= 1949, 63); Bonner 1949, 48; Vonglis 1968, 16; Calboli 2003, 77.
[68] Stroux 1926, 18-19 (= 1949, 28): "In diesen vier *status* or *questiones* […] liegt eine vollständige rhetorische Theorie der Gesetzauslegung vor."

rhetorical doctrine to legal practice.[69] The whole system was of course praxis-oriented and primarily conceived for application in the law-courts: but school declamations provided the necessary training, by which future orators learnt to manage those rhetorical tools that they would later have to put into practice in real lawsuits.[70]

What differentiates declamatory exercises from the latter is the legislation they are founded on. In fact, already ancient critics of declamation used to notice the obvious unreality of many declamatory laws, at the same time criticizing the declaimers' juridical ignorance;[71] and despite several attempts by modern scholars to trace them back to some real law codes, either Greek or Roman,[72] it remains unquestionable that they are for the most part fictional laws, devised for use in the schools.[73] At first sight, this hardly agrees with declamation's didactic function: how can an exercise consisting of fictional cases treated according to fictional laws serve as a training for the courtroom? Thus it is not surprising that this is the chief argument used by both ancient and modern critics to discredit declamation and schools of rhetoric. But the purpose of rhetorical teaching was to form orators, not jurists; and it aimed at inculcating a general method of reasoning, not (or not only) to give specific rules for any particular case. The use in declamation of fictional laws becomes more understandable if one reflects that *status*-theory can apply just as much to them as to real laws: in either case the method of the juridical argumentation, centred on the topic of the *status legales*, does not change; the only thing that matters is that the proposed cases have a 'juridical plausibility', which makes them suitable to be treated by this method. In this respect we can subscribe to the words of a profound connoisseur of declamation such as Michael Winterbottom (1982, 65):

> You learned your law at a law school or in the practice of the courts. You learned to argue at the declamation school. And the two were kept apart for a very good reason. The use of fictional laws encouraged flexibility and ingenuity of argument. If the laws had been real one would have had to step more carefully. And one might have got used to asserting things about the law that turned out to be false when one appeared in the courts.[74]

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[69] See again Stroux 1926, esp. 28-46 (= 1949, 41-66), and furthermore Parks 1945, 78-85; Bonner 1949, 45-48; Winterbottom 1982, 66-68; 1984, xviii-xix; Cornu Thénard 2007.
[70] See Winterbottom 1982, 66; 1983, 71-72.
[71] We can e.g. recall the story of the comic persecution brought by the orator Cassius Severus against the declaimer Cestius Pius, told by Sen. *Contr.* 3 *praefatio* 17 (on which see Berti 2007, 141-142).
[72] Major contributions on this topic include Bornecque 1902, 59-74; Sprenger 1911; Lanfranchi 1938; Bonner 1949, 84-132 (a fundamental work); Paoli 1953; Calboli 2007, 40-48, and last Langer 2007, esp. 63-190 (who however adds nothing new to previous studies).
[73] For this conclusion see e.g. Winterbottom 1983, 72; Dingel 1988, 4-5; Crook 1993; Lentano 2005, 560-568 (= 2009, 48-57).
[74] See also Winterbottom 1984, xviii.

This is, I think, the best way to set up the problem of the relationship between declamation and law, by recognizing the decisive linking role of the *status*-theory. Declamation was a tool of which one could make good or bad use, as Quintilian remarks;[75] but its didactic value never failed, and in Seneca's time too it kept its central position in rhetorical teaching, as the most effective instrument to cultivate the oratorical as well as the juridical competence of the Roman students.

[75] See Quint. *Inst. or*. 2.10.1-3.

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