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Declamatory fictions and the *crimen maiestatis* — Seneca, *Controuersiae* 9.2*

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Abstract

This paper examines what Seneca, *Controuersiae* 9.2 can contribute to understanding of the *maiestas* laws under Augustus and Tiberius. In this period, two distinct judicial spaces are known to have hosted cases tried under these laws: the traditional Republican standing court and the new senatorial court, which supplanted its predecessor at the latest from the years immediately following the accession of Tiberius. Yet in the same period a third judicial space acquired new prominence: the schoolrooms of the declaimers, in which teachers of rhetoric, their pupils and sundry adult performers gathered to participate in the fictional trial for *maiestas laesa* of L. Quinctius Flamininus. Moving between these spaces and considering the interrelationship of the different statutes that they employed, this paper shows how the superficially escapist practice of trying Flamininus could also offer a vehicle for reflection on the drastic legal and political changes taking place in the world outside. Building on close analysis of the contribution of Votienus Montanus, the paper seeks to reconstruct key provisions of the hypothetical late Augustan *lex Iulia maiestatis*. It finally details how many of those quoted in the exercise risked or actually underwent prosecution for *maiestas* or themselves launched such prosecutions.

Keywords: Seneca the Elder; declamation; *maiestas*; Roman law; Augustus; Tiberius

1 Introduction

The wave of treason trials set in motion under the *lex Iulia maiestatis* is among the ugliest features of the reign of Tiberius.¹ Following a precedent established in the final years of the emperor Augustus, ambitious prosecutors (*delatores*) drew an ever-wider range of offences into the category of the diminution of the *maiestas* of the Roman people.² As the

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¹ For older accounts of the *maiestas* trials, see Seager 1972: 151–62; Levick 1999: 180–200. Knowledge of the issue has been greatly enhanced by the publication of the *Senatus Consultum de Cn. Pisone patre*, for which see the *editio princeps* of Eck *et al.* 1996 and the recent edition of Cooley 2023.

² For Augustan precedent, see below, Section VI on the trial of Cassius Severus. For Augustan legislation against defamatory speech, see also Cass. Dio 56.27.1; Suet., *Aug.* 55. For analysis of Cic., *Fam.* 3.11.2 and cogent arguments

emperor and his family became identified with the people as a whole, evidence of treasonous behaviour was found in drunken jokes, horoscopes cast, statues put on sale or placed in insufficiently elevated positions.³ Where before those charged with *maiestas minuta* had always been men of rank and were tried in the permanent standing court (*quaestio perpetua*) specially tasked with investigation of such offences, now the dragnet took in defendants high and low and the senate emerged as the primary venue for hearing such cases.⁴

Much that I have outlined so far will be familiar to those who have studied the history of the early imperial period. Perhaps less so will be the revelation that in the same years the standing court and the senate were not the only places in which trials for *maiestas* were being held at Rome. The same was also true of the courtrooms of the declamatory schools. Here teachers, pupils and visiting adults would practise the type of exercise known as the *controuersia*, in which a briefly stated scenario or ‘theme’ complicated the application of an equally concise statute or statutes. One such statute reads ‘Let there be an action for harm to *maiestas*’ (*maiestatis laesae sit actio*). In *Controuersiae* 9.2 Seneca the Elder illustrates how different performers across the age of Augustus and Tiberius applied this statute to an imaginary trial inspired by a scandal dating back what was for them between 150 and over 200 years and which had in its own time been sanctioned in a quite different manner. In 192 B.C., in the course of a drunken dinner, the consul L. Quinctius Flamininus, who was campaigning in Gaul, authorised an execution for the sole purpose of entertaining his prostitute lover.⁵ Eight years later, the censors M. Porcius Cato and L. Valerius Flaccus responded to this misdeed by expelling Flamininus from the senate. The primary source for this episode is the historian Livy, who draws his version from the speech of Cato defending his decision, and who criticises for its inaccuracies the account of the annalistic historian Valerius Antias, who changes the status of the victim, the gender of the prostitute and the weapon employed in the execution.⁶ Livy’s scorn notwithstanding, this latter version had no little influence in antiquity and leaves its mark on the theme addressed by the speakers in *Controuersiae* 9.2.⁷

against the view that the early imperial targeting of offensive words was anticipated by the *lex Cornelia maiestatis*, see Bauman 1967: 247–50; Shackleton Bailey 1977: 378–9.

³ Sen., *Ben.* 3.26.1; Tac., *Ann.* 1.73.2, 1.74.3, 2.50.1–3, 3.22.1, 3.49, 3.70.1; Suet., *Tib.* 58.

⁴ When in A.D. 15 the praetor Pompeius Macer inquired of Tiberius whether trials for *maiestas* should be resumed (Tac., *Ann.* 1.72.3; Suet., *Tib.* 58), it is possible that he referred specifically to the *quaestio perpetua* over which it was his role to preside. For this court effectively replaced by the senatorial court in this period, see Talbert 1984: 460–6. For the distinctly ancillary role of the *quaestio* in the period, see SSCP II. 121–122. For the status of the defendants, see below, Section VI.

⁵ An oddity of *Controuersiae* 9.2 is that, while both Cato and Valerius date the episode to the consulship of Flamininus (Livy 39.42.11 and 43.4), the theme refers to him as *proconsul* and the speakers call him either *proconsul* or *praetor*. There is no evidence for Flamininus serving as a *proconsul* and Livy 36.1.8 indicates that in 191 B.C. he was chosen to serve as legate to M’. Acilius Glabrio in the war against Antiochus III. Pauly, *RE* XXIV.1.1045 speculates that he remained active in this role until the end of the war in 188 B.C. Even further from the historical record is the attribution of the episode to his praetorship (Livy 31.49.12, 32.1.2 refers to his unrelated service as *praetor urbanus* for 199 B.C., while Livy 32.16.2 and 28.11, 33.17.2, 34.50.11 and Brennan 2000: i.208–11 point to Flamininus’ 198–194 B.C. service as *propraetor* in Greece). The interchangeability within the exercise of the terms *proconsul* and *praetor* (most radically seen in the contribution of Triarius at §20) may reflect the practice first attested for Spain in 198 B.C. (Plut., *Aem.* 4.1; Brennan 2000: i.163) for praetors to be sent out to provinces with proconsular *imperium*. Cass. Dio 53.13.3–14.1 identifies this as a feature of practice after the Augustan settlement of 27 B.C., but both Syme 1958b: 1 and Millar 1964: 95 argue that this was not a phenomenon of the age of Augustus. The judicial associations of the term *praetor* may also explain its particular prominence in this exercise.

⁶ M. Porcius Cato Maior, fr. 69 Malc. = 54 Cugusi = Livy 39.42.5–12 and fr. 70 Malc. = 56 Cugusi = Livy 39.43.5; Valerius Antias, fr. 55 *FRHist.* = Livy 39.43.1–4. Note that M. Porcius Cato Maior, fr. 71 Malc. = 55 Cugusi = Isid., *diff. verb.* 5 also refers to Flamininus’ lover by the name Philippus.

⁷ Cic., *Sen.* 42 puts in the mouth of Cato details such as the victim’s status as a condemned criminal and the employment of an axe, which derive from the version of Valerius Antias. Cicero’s authority is apparent in the

This paper sets out to explore the activities of this other courtroom and to bring it into relation with those trials for *maiestas* simultaneously being held in the world outside. Though *Controuersiae* 9.2 has largely been neglected by historians of the *crimen maiestatis*, it has much to bring to analysis of the problem of *maiestas* in the period. Of primary importance is the way that specific contributions engage with what a trial for *maiestas* should properly be about and to whom the law should be applied. In this way, Seneca casts important light on how people were thinking about *maiestas* as a legal category throughout the period of its most persistent and problematic application. Yet, as part of a work composed in the dying days of the Tiberian regime and published in the first years of Caligula, *Controuersiae* 9.2 permits readers to relate what it records of the different speakers involved in the trial of Flamininus to what they know of the same individuals' activities in those other courtrooms where the cases heard were all too real. For many of the individuals whose words Seneca reproduces themselves launched actual prosecutions for *maiestas*, found themselves amongst the indicted and the condemned, or flirted with disaster through misdemeanours that could easily have resulted in their standing trial for the same offence. Some of the evidence for this Seneca himself presents elsewhere in the *Controuersiae* as he develops a fundamental concern of the work as a whole: the changing culture of forensic and political speech during the author's long lifetime. Other evidence is to be found in writers such as Tacitus, Suetonius and Dio. Seneca may not himself deploy it here, but his very reticence makes it all the more resonant for those who know.

My account begins at the turn of the second and first centuries B.C., when the first *maiestas* laws were passed and the rhetorical schools began to generate pseudo-historical scenarios that challenged pupils to think about *maiestas* as a legal category (Sections II–III).⁸ The simultaneity of these developments matters and it must be the case that at least some participants in Republican *maiestas* trials had first honed their arguments in the imagined judicial space of the schools. This is demonstrably the case in the triumviral and early imperial period covered by the *Controuersiae*. The later stages of my analysis therefore pay close attention both to the legal arguments made in *Controuersiae* 9.2 and to those who made them; here a matter of particular importance is the developing character of the schools as they began to admit adult performers, often men of power and public standing (Sections IV–VII). In calling fresh attention to a neglected exercise, this article invites scholars of declamation to think historically and historians to pay closer attention to what declamation can offer.

II *Maiestas* and the *maiestas* laws

In order to grasp the conceptual shift underpinning the trials at issue in this paper, it is necessary first to offer some introduction to the legal category of *maiestas* and to document prior legislation penalising its diminution. As will become clear, in referring to 'treason trials', the introduction to this paper adopts no more than a convenient shorthand. *Maiestas* itself is a more complex legal category and one that simultaneously begs and resists definition.

versions of the episode given at Val. Max. 2.9.3; Plut., *Cat. Mai.* 17.1–4, *Flam.* 18.2–5. The theme of *Controuersiae* 9.2 reproduces these details and also follows Valerius Antias in making the prostitute a woman. For evidence of likely variation in the theme in different iterations of this case, see e.g. Sen., *Controv.* 9.2.24, where Latro's description of the victim as an ally of the Roman people better fits the Boian deserter of Livy.

⁸ For evidence that schools of rhetoric developed in much the same period as the *maiestas* laws, see Suet., *Gram. et rhet.* 25.1–2 and 26.1 with Kaster 1995 *ad loc.* Of particular importance is the account of the censors' 92 B.C. expression of disapproval of Latin-medium rhetorical teachers operating at Rome (for the failure of which see also Cic., *De or.* 3.93–94). I have not found evidence for the declamatory treatment of *maiestas* helping shape actual Roman law but recommend the account of Lendon 2022: 107–47 of how this can have happened in other categories.

That *maiestas* begs definition is evident from one persistent tendency among Republican rhetorical writers. Setting out concepts first theorised by the second-century Greek rhetorician Hermagoras, they use the term *constitutio* to refer to the contest between speakers to determine what is at the heart of a case.⁹ In the case of the *constitutio definitiva*, they describe what arises when the orator seeks to convince the jury that their verdict must turn on what he presents as the proper understanding of a given term, and, with remarkable consistency they illustrate it by reference to prosecutions under the *maiestas* laws.¹⁰ This was also a matter of oratorical practice.¹¹

That *maiestas* simultaneously resists precise definition is the common complaint of almost every modern scholar of the Republican and imperial *maiestas* laws.¹² Though the different *leges maiestatis* appear to have identified specific acts that should be brought under the heading of *maiestas minuta*, they simultaneously failed to offer a fixed definition of what the central concept should be taken both to mean and, by extension, not to mean. Roman draftsmen typically aimed at the most comprehensive possible statement of to whom and to what a given law was to be applied;¹³ but, in the case of the *maiestas* laws, this was very different from defining what *maiestas* itself was. Where some illumination can be found, as so often elsewhere, is in the accounts of the term found in Roman associative etymologies. These consistently connect the term with notions of size; some refer simply to the state of being ‘great’ (*magnus*) while others emphasise the comparative adjective ‘greater’ (*maior*).¹⁴ The notion that *maiestas* is a state of superiority underpins the accounts given by Cicero and the Neronian jurist Proculus of the clause found in treaties obliging the people first of Gades, then of Aetolia, benevolently to preserve the *maiestas* of the Roman people,¹⁵ and it is central to the most convincing reconstructions of the concept in the Republican period.¹⁶ *Maiestas*, in other words, has a strongly relational aspect and penalises those who fail to defer to that which is greater than them and thereby diminish its essence.

All haziness of definition notwithstanding, *maiestas* began to be applied within the criminal law in the last century of the Roman Republic, and various statutes sought to penalise the conduct of those Roman citizens whose actions were held specifically to have diminished the *maiestas* of the Roman people. The first of these was the *lex Appuleia maiestatis* of 103 or perhaps 100 B.C.¹⁷ There followed the *lex Varia* of 91–90 B.C., the *lex Cornelia maiestatis* of 81 B.C. and finally the *lex Iulia maiestatis* or *leges Iuliae maiestatis*, which scholars variously date to the reigns of Julius Caesar and of Augustus.¹⁸ Though reference to the *maiestas populi Romani* appears to be a constant feature of all these laws, there is good evidence to suggest

⁹ On this topic, see Calboli Montefusco 1986.

¹⁰ *Rhet. Her.* 1.21, 2.17, cf. 4.35; Cic., *Inv.* 2.52–56, 2.72–76, esp. 74, *Part. or.* 104–105.

¹¹ Cic., *De or.* 2.107, 109, *Part. or.* 104–105; Asc., 61C; Zetzel forthcoming.

¹² Mommsen 1899: 539, 542–3; Drexler 1956: 195–201; Gundel 1963: 285–8; Bauman 1967: 2.

¹³ Schulz 1946: 96; Bauman 1967: 54. For a parody of this way of drafting laws, see the contract drawn up for Diabolus by the parasite at Plaut., *Asin.* 746–809.

¹⁴ Maltby 1991 s.v. *maiestas* cites the following: Paul. Fest., 136L: *maiestas a magnitudine dicta*; Prisc., II.128.21 GLK: *maior maiestas*; Isid., *Etym.* 10.238: *dictus ... reus maiestatis, quia maius est laedere patriam quam ciuem unum*; ibid. s.v. *Maius* adds Macrobi., *Sat.* 1.12.17: *sunt qui hunc mensem ad nostros fastos a Tusculanis transisse commemorant, apud quos nunc quoque uocatur deus Maius, qui est Iuppiter, a magnitudine scilicet ac maiestate dictus*.

¹⁵ Cic., *Balb.* 35–36, cf. Livy, 38.11.2; Proculus at *Digest* 49.15.7.1; Gundel 1963: 289–97.

¹⁶ Dumézil 1952: 7–20; Gundel 1963: 289–97, 301, 314–17, 320; Bauman 1967: 1–2, 4–5, 8–12, 212–13, 235–6; Ferrary 1983: 562–3; Thomas 1991: 331–41.

¹⁷ For arguments against the standard assumption that the *lex Appuleia maiestatis* should be dated to 103 B.C. and the first tribunate of L. Appuleius Saturninus, see Ferrary 1983: 565–7. Thomas 1991 accepts his case, but Ferrary 2009: 233–5 is more open to 103 B.C., if not for the reasons proposed by his critics.

¹⁸ The one explicitly attested piece of *maiestas* legislation from either reign is the provision recorded at Cic., *Phil.* 1.23 establishing *aquae et ignis interdictio* as the standard penalty for those convicted by the *quaestio maiestatis*. For the view that all subsequent references to the *lex Iulia maiestatis* are to this statute passed by Julius Caesar, see

that understandings of the term could vary significantly.¹⁹ The most plausible interpretations of the *lex Appuleia* indicate that its author, the radical tribune L. Appuleius Saturninus, sought to defend the rights of the Roman people, as opposed to the senate, to pass legislation in the *comitia*.²⁰ By contrast, the *lex Varia* and the *lex Cornelia* understood the *populus Romanus* as referring to the state as a whole and penalised those whose actions either encouraged the rebellion of Rome's former allies in the Social War of 91–88 B.C. (the *lex Varia*),²¹ or who abused the *imperium* vested in them by the Roman people by such actions as engaging in campaigns outside the borders of their appointed province without authorisation from the senate or failing to hand over command to their successor at the termination of their *imperium* (the *lex Cornelia*).²² There is no consensus whether each new *maiestas* law restricted itself to a specific category of diminution of the *maiestas* of the Roman people and left all previous legislation active or instead consolidated the applications of the law and superseded all prior statutes.²³ In the case of the *lex Varia*, the substantive innovation was the specific targeting of those who incited the allies to rebel. If, however, it incorporated the protections previously offered by the *lex Appuleia* or simply left them unrepealed, Varius will have been liable for the violence that attended its passing and thus exposed to the conviction 'under his own law' that he subsequently endured.²⁴ Having used his constitutional reforms substantially to neuter the powers of the tribunate, Sulla may perhaps have been unconcerned actually to repeal the *lex Appuleia*, but it is just as likely that the *lex Cornelia maiestatis* replaced all prior *maiestas* legislation, consolidating much and adding new provisions on provincial government.²⁵ It is not known which piece of legislation first established a standing court (*quaestio perpetua*) to try *maiestas* cases;²⁶ but there can be no doubt that Sulla acted to install an entirely senatorial jury.²⁷ That the *lex Iulia maiestatis* carried over provisions from the *lex Cornelia* is indicated by the amount of material, particularly on the proper governance of provinces and employment of military command, cited by the jurists writing at *Digest* 48.4 under the heading of the *lex Iulia maiestatis* but which Republican sources indicate as having been distinctive features of the *lex Cornelia*.²⁸ The fact that the *lex Iulia* is the sole *maiestas* law mentioned anywhere in the *Digest* is strong

Allison and Cloud 1962. For the date and provisions both of Caesar's *lex Iulia maiestatis* and of what he takes to be a separate law of the same name passed by Augustus, see also Bauman 1967: 155–68, 266–92.

¹⁹ Republican Latin writers overwhelmingly speak of *maiestas populi Romani*. For the very rare use of *maiestas ciuitatis* and *maiestas rei publicae* in Republican Latin, see *Rhet. Her.* 2.17, 4.35; *Cic., Verr.* 2.5.50; Gundel 1963: 302.

²⁰ Ferrary 1983.

²¹ Asc., 22C dates the *lex Varia* to after the outbreak of the Social War and states that it provided for investigation of those through whose resources or counsel the allies had taken up arms against the Roman people. For evidence that this could result in a prosecution for *maiestas*, see Asc., 79C quoting Cicero. For discussion, see Gruen 1965; Seager 1967; Bauman 1967: 59–68; and particularly Badian 1969.

²² *Cic., Pis.* 50; Bauman 1967: 75–6.

²³ Bauman 1967 argues that each law identified new categories of diminution of *maiestas* while leaving previous legislation intact. For arguments against this position, see Sherwin-White 1969: 289–90; Cloud 1994: 520.

²⁴ *Cic., Brut.* 305: *sua lege damnatus*. I find attractive the suggestion of Gruen 1965: 69 that Varius earned prosecution through the violence with which his supporters saw off the veto of his fellow tribunes (*Val. Max.*, 8.6.4; *App., B Civ.* 1.37). The objection of Badian 1969: 450, that such conduct would have rendered the Varian law a *lex uitiosa* and therefore invalid, gives reason for the abandonment of prosecutions under it after the conviction of Varius rather than before. Sex. Titius in 98 B.C. and C. Norbanus c. 95 B.C. were prosecuted under the *lex Appuleia* for conduct very similar to that attributed by Valerius Maximus and Appian to Varius and his supporters. For more, see Appendix.

²⁵ For the character of Sulla's laws, see Keaveney 2005: 146–50.

²⁶ *Cic., De or.* 2.199 and *Val. Max.* 8.5.2 indicate that the c. 95 B.C. trial of Norbanus was before a *publica quaestio* composed of *equites*.

²⁷ Jones 1972: 56; Keaveney 2005: 146.

²⁸ Cloud 1963; Thomas 1991: 367–71.

evidence for its broad scope and *de facto* if not *de iure* supersession of all that had come before.²⁹

The multitude of separate statutes and yet signal dearth of detailed information about their provisions make the Republican and early imperial *maiestas* laws particularly challenging to study. The pioneering work of Richard Bauman addresses this problem through meticulous analysis of each of the cases tried under them and aims to identify the range of offences that each law sought to target.³⁰ It is beyond the scope of this article to engage in detail with Bauman's account of these trials and we must look to the forthcoming monograph of Lily van Diepen for such a reassessment. The Appendix to this article does, however, summarise the available evidence for those who stood trial under the Republican *maiestas* laws and there will be reason to revert to this later on.

III Trying *maiestas* in the declamation schools

As the *maiestas* laws and the cases tried under them proliferated in the world outside, the schools of rhetoric were developing imaginary scenarios to which they could apply their own statutes. In doing so, they typically recast events known from the historical record and did so in such a way as to maximise their capacity to generate arguments for both sides of the case.

I shall begin with the trial of Flamininus because this is central to my argument as a whole, even if it is not the earliest instance of the phenomenon. As noted earlier, the censors of 184 B.C. took action taken against Flamininus and one of them, M. Porcius Cato, published a speech justifying his expulsion from the senate. Bauman speculates that the censors intervened only after Flamininus had been convicted on a charge of *maiestas* in the *comitia tributa*, but there is no evidence to support this view.³¹ As will be demonstrated below, the scandalous events of 192 B.C., particularly as narrated by Valerius Antias, are singularly well suited to declaimers experimenting with their own version of the *maiestas* laws. That, however, in no way demonstrates that they were originally tried under any such statute.

What *Controversiae* 9.2 does with history corresponds to the established practice of the rhetorical schools of the early first century B.C. Consider the case of Cicero, *De Inventione* 2.52–56 and the trial for *maiestas* of the father of C. Flaminius, tribune of the plebs for 232 B.C. The father's alleged offence is that he intervened to draw his son away from the temple where the latter was addressing the people and gathering support for his proposed agrarian law.³² Bauman and others are inclined to regard this as authentic case law, but various considerations indicate that it is a fiction.³³ It is a matter of record that the son as tribune overcame senatorial opposition to pass legislation redistributing land in Picenum taken

²⁹ For what is potentially new in the *lex Julia maiestatis*, see below, Section VI. Cloud 1963: 217 notes the use of *laeserit* by Marcianus at *Digest* 48.4.3 and Papinianus at *Digest* 48.4.8 and connects this to the language of *Controversiae* 9.2 and Val. Max. 6.3.3 as potentially reflecting the language of the Julian law. Likewise, Bauman 1967: 228–9 points to Tac., *Ann.* 3.24.3 *gravi nomine laesarum religionum ac uiolatae maiestatis appellando*. A pedantic draftsman could easily have supplemented the traditional phrasing with *qui maiestatem publicam minuerit siue laeserit siue uiolauerit*.

³⁰ Bauman 1967; 1974.

³¹ Bauman 1967: 31–32.

³² For the date of Flaminius' tribunate, see Broughton 1951: i.225.

³³ Bauman 1967: 31; Develin 1976; Hilder 2016: 176 treat Cic., *Inv.* 2.52 as authentic evidence. Sherwin-White 1969: 289 (anticipated in part by Kübler 1928: 545–6) argues that, in this case and others, an author living at a time when the *crimen maiestatis* is an active category describes in the terms with which he is familiar a trial held under different statutes. This is a valid observation but understates the degree of fictionality. See further Thomas 1991: 376; Ferrary 2009: 238–9.

from the defeated Gauls.³⁴ It is, however, only in the *De inuentione* and in the indiscriminating and derivative Valerius Maximus 5.4.5 that any mention is made of the intervention of the father. That the episode is invented is strongly indicated by the fact that the law was passed. What indicates that this is a specifically declamatory fiction is the type of dispute that it serves to generate.³⁵ For first it sets the pupils in the schools the task of outlining arguments for either side in a clash between two forms of *potestas*: the *tribunicia potestas* of the son and the *patria potestas* of the father.³⁶ Second, the fact that the father holds no public office and the son is a tribune forms the basis for argument over whether it is possible for a *priuatus* to commit the offence of *maiestas minuta*.³⁷ These are exactly the types of argument that declamation relishes. At the most, Cicero is describing claims that could be raised should any such clash occur in reality. He goes on to state that the first task of counsel for either side is to offer a definition of the diminution of *maiestas* that is 'brief and clear and in accord with what people think' (*breuis et aperta et ex opinione hominum descriptio*).³⁸ That suggested for the prosecution puts all the emphasis on detraction from any part of the standing, grandeur or authority either of the people as a whole or of those to whom the people have given authority (*maiestatem minuere est de dignitate aut amplitudine aut potestate populi aut eorum quibus populus potestatem dedit aliquid derogare*).³⁹ It makes no reference to the claims of *patria potestas* because to do so would only acknowledge a rival source of authority in the given example. Counsel for the defence is instead advised to essay the following definition: 'To diminish *maiestas* is to conduct some element of public business when you do not possess the authority to do so' (*maiestatem minuere est aliquid de re publica, cum potestatem non habeas, administrare*).⁴⁰ The point here is that the father would indeed merit conviction were he seeking to do state business without due authority, but that in fact he is doing purely family business and on the basis of *patria potestas*. The proposed definition overlaps to some degree with the terms of the *lex Iulia maiestatis* as cited by Marcianus at *Digest* 48.4.3.pr. (*quique priuatus pro potestate magistratuue quid sciens dolo malo gesserit*), but not even the imagined prosecutor of the father of Flaminius could suggest that he had attempted to pass himself off as one holding public office. The only power that he claims for himself is that of the father.

The final example of what appears to be a fictional *maiestas* trial concerns Claudia, sister of P. Claudius Pulcher (cos. 249), who found her return from the games delayed by the surrounding crowds; enraged by this situation, she prayed for her brother to return to life and lose another fleet, so that the population of the city might be diminished. Suetonius reports that, for this intemperate remark, she was tried for *maiestas*, an event that instituted a new custom (*nouo more iudicium maiestatis subiit*).⁴¹ Elsewhere the matter is rather different. In the *De iudiciis publicis*, which formed Book 9 of his *Coniectanea*, the Augustan and Tiberian jurist C. Ateius Capito discusses this episode at length. He records that the plebeian aediles

³⁴ Polyb. 2.21.7–8; Livy 21.63.2; Cic., *Acad.* 2.13, *Brut.* 57, *Sen.*, 11.

³⁵ Clashes between father and son are ubiquitous in declamation, not least when the father repudiates the son and the son then challenges him in court. See e.g. *Sen.*, *Controv.* 1.1, 1.4, 1.6, 1.8.

³⁶ When Yavetz 1962: 326 states as fact that Flaminius 'brought tribunicia potestas and patria potestas into conflict', he unwittingly brings to light the ends that this declamatory fiction served within the schools.

³⁷ For more on this point, see Section VI and Appendix, where I seek to document the stronger claim that the Republican *maiestas* laws were only ever applied to actions committed by tribunes of the plebs or magistrates in the course of their period in office.

³⁸ Cic., *Inv.* 2.53, 55.

³⁹ Cic., *Inv.* 2.53.

⁴⁰ Cic., *Inv.* 2.55.

⁴¹ Suet., *Tib.* 2.3.

imposed on Claudia a fine of 25,000 sesterces, but makes no mention of any trial for *maiestas*.⁴² The rather briefer accounts offered by Livy and Valerius Maximus likewise record the imposition of a fine, but neither speaks of *maiestas*.⁴³ It would appear that Suetonius or his source has misread as an authentic historical record a declamatory exercise that employs the same statute as is used in *Controuersiae* 9.2 and thereby challenges pupils to address limit cases such as whether a woman can be put on trial for *maiestas laesa* or whether anyone at all can be tried simply on the basis of what they have said.⁴⁴

What is at issue here is the persistent tendency of declamation to make out of historical tradition fictions that suit its particular ends as a form; less than discriminating ancient writers subsequently mistake these fictions for an authentic record and they find their way into more serious genres. Over a century ago, Leuze demonstrated this with regard to *Controuersiae* 4.2. Here the law states that a priest must be entire (*sacerdos integer sit*); when the pious L. Caecilius Metellus rescues the Palladium from the burning temple of Vesta and loses his sight, a contest arises over whether or not the law should now bar him from the priesthood. As Leuze demonstrates, earlier sources do indeed record that Metellus rescued the Palladium from the burning temple and date this to 241 B.C.; it is, however, only declamation that insists on his becoming blind and thus falling foul of any law requiring bodily integrity in a priest.⁴⁵ Likewise, Matthew Roller has argued convincingly that reproduction in later historians of elements of the theme of Senecan declamations is proof not of the authenticity of the data Seneca deploys, but rather of the capacity of declamatory fictions to be mistaken for fact.⁴⁶ Roller takes as a case in point *Controuersiae* 7.2, which is a trial *de moribus* of one C. Popillius Laenas, whom Cicero once successfully defended on a charge of parricide only for him later to be sent by Antony to kill the orator in the course of the proscriptions. Roller suggests that the patterning is just too pointed to be true; references in later historians to Popillius as Cicero's client-turned-killer betray an over-trusting acceptance as fact of what has been fashioned to make a properly paradoxical theme and should be treated with considerable scepticism.⁴⁷

The worst thing that a scholar can do with those declamatory exercises that turn on events of history is to put them to the service of an unnuanced positivism. In particular, it does not help to mine the text of *Controuersiae* 9.2 in search of data with which to reconstruct the history of actual Roman legislation and case law, while neglecting to consider the cultural practice of which the exercise forms a part and what impact this may have on the evidence it appears to provide.⁴⁸ The end result is to invest the exercise with evidentiary weight that it is too frail to bear. As empirical evidence for the history of the early second century, *Controuersiae* 9.2 is very bad indeed, but that is no reason to drop it outright. For as a contribution to the cultural and legal history of the early imperial period, it is dynamite.

⁴² C. Ateius Capito ap. Gell., *NA* 10.6. For Capito, see further Jörs at Pauly, *RE* II. 1904–1910; SCPP I. 2 with Cooley 2023: 147 *ad loc.* For criminal prosecutions undertaken by both curule and plebeian aediles and fines levied in the case of success, see the material gathered at Oakley 1997–2005: iv.259–61. In this instance, it was presumably the patrician status of Claudia that led her to be targeted by the plebeian and not the curule aediles.

⁴³ Livy, *Per.* 19; Val. Max. 8.1.damn.4.

⁴⁴ For the question of whether women can stand trial for a given offence, see Sen., *Controv.* 10.4.14 and the discussion in Section VI. For objections to trial on the basis of words alone, cf. Sen., *Controv.* 6.8, where a Vestal is put on trial for unchastity simply because she has exclaimed on the felicity of married women.

⁴⁵ Leuze 1905.

⁴⁶ Roller 1997.

⁴⁷ Val. Max. 5.3.4; Plut., *Cic.*, 48.1; App., *B Civ.* 4.20; Cass. Dio 47.11.1–2; Roller 1997: 125–8.

⁴⁸ Cf. Lemosse 1968: 487–8; Ferrary 1983: 557.

IV *Maiestas* and the age of Seneca

It is not possible to state precisely when the fiction of Flamininus' trial for *maiestas* was created, but one can trace the spectrum of years across which the various iterations of its performance recorded in *Controuersiae* 9.2 were held. Seneca himself was an enthusiastic visitor to the declamation schools from the early 30s B.C. onwards and was still attending in the reign of Tiberius. That he has witnessed a number of separate performances of the theme adopted in *Controuersiae* 9.2 at distinctly different moments in the age of Augustus and Tiberius is evident from the cast of speakers whom he cites: those who can securely be dated to the early Augustan period include Arellius Fuscus, Porcius Latro, Rubellius Blandus, Pompeius Silo and Buteo;⁴⁹ among those active in Augustus' final years and under Tiberius are Musa, Cassius Severus, Vibius Rufus, Votienus Montanus and Romanus Hispanus.⁵⁰

A declamatory *maiestas* trial will have resonated differently at different points in the period, but real-world *maiestas* cases are recorded from the first decade of the reign of Augustus through to the final years of Tiberius, and there can be no doubt that the concept was in the air at all times. As with the Republican period, it is well beyond the scope of this article to engage in proper detail with each and every one of these.⁵¹ I choose instead to address two cases that, in their concern with misuse of *imperium* in provinces and on campaign, overlap significantly with the issues brought to the fore in *Controuersiae* 9.2. Though the offences targeted by both are recognised by the Republican *maiestas* laws as early as the *lex Cornelia maiestatis* and are a deal more substantive than those that made the Tiberian trials notorious, both also have significant constitutional implications and illustrate the problematic evolution of the concept of *maiestas populi Romani*.

The constitutional settlement of 28–27 B.C. purported to restore the old political order while in fact it ratified its transformation.⁵² Among its key provisions was the division of the provinces of the Roman Empire into those that were to be governed by magistrates officially appointed by the senate and those that Augustus himself would administer through prefects of his own choosing.⁵³ The tensions inherent in this arrangement were soon exposed when the governor of the senatorial province of Macedonia, M. Primus, made war against the Thracian people, the Odrysae.⁵⁴ In 23 B.C., he stood trial in Rome on what is generally agreed to have been a charge of *maiestas*, because the campaign at issue had been undertaken without due authorisation.⁵⁵ The venue was the standing court (*quaestio perpetua*).⁵⁶ When Primus stated at different points in his own defence that he had acted at the instigation either of Augustus or of Marcellus, he implicitly accused the *princeps* and his heir

⁴⁹ Key evidence for dating: Arellius Fuscus (Sen., *Suas.* 2.10); Porcius Latro (Sen., *Controv.* 1.pr.13; Rubellius Blandus (Sen., *Controv.* 2.pr.5); Pompeius Silo (Sen., *Controv.* 1.7.13); Buteo (Sen., *Controv.* 1.1.20, 1.6.9, 2.5.15). Both Echavarren 2007 and Berton 2008 provide detailed and largely reliable prosopographical data for all those speakers to whom Seneca refers.

⁵⁰ Musa (Sen., *Controv.* 7.5.10, 10.pr.9). For all other figures cited, see below, Sections VI–VII.

⁵¹ For systematic investigation of the Augustan and Tiberian *maiestas* trials, see Seager 1972: 151–62; Bauman 1974; Levick 1999: 180–200; Peachin 2015.

⁵² *Mon. Anc.* 34; Vell. Pat. 2.89; Suet., *Aug.* 28.2; Syme 1939: 323–30; Cooley 2009: 256–60.

⁵³ Cass. Dio 53.12.

⁵⁴ Cass. Dio 54.3.1–6 is the key but far from unproblematic source for this episode.

⁵⁵ Cass. Dio 54.3 is part of his account of the events of 22 B.C. and this date is defended by Atkinson 1960: 443–52; Bauman 1967: 183–90. For the redating of the trial and of the conspiracy to 23 B.C., see Syme 1939: 333 n. 3; Stockton 1965; Levick 1975: 156. That the trial of Primus was for *maiestas* is largely consensual. Inasmuch as the Odrysae were a tribe of Thrace, their territory lay outside the boundaries of the province of Macedonia. For their good relations with Rome and exception from the retaliatory action of M. Crassus against the other peoples of Thrace in 29 B.C., see Cass. Dio 51.23.4 and 25.4–5.

⁵⁶ Suet., *Tib.* 8; Cass. Dio 54.3.2; Jones 1972: 91–2; Talbert 1984: 460.

of failure to respect the terms of the 27 B.C. settlement.⁵⁷ When Augustus then presented himself in court entirely on his own initiative, counsel for the defence, whom Dio names Licinius Murena, bluntly asked him what he was doing there and who had summoned him.⁵⁸ Augustus replied that it was the public interest (τὸ δημόσιον). Though Primus was found guilty, some members of the jury voted to acquit. The crucial factor here is what the case for the defence adopted by Primus apparently exposed: that Augustus had little *de facto* intention to confine his activities to the provinces formally allotted to him and was happy to undermine the authority of the senate that the settlement of 27 had purported to restore. The provisions of the *lex Cornelia maiestatis* regulating the activities of provincial governors, whether under that law itself or as incorporated into the *lex Iulia maiestatis*, furnished the basis for the prosecution of M. Primus, but the defendant's claim, that he had not awaited authorisation from the senate because he had been urged to launch a campaign by members of the imperial family, exposed a relation of power very different from that which Sulla had sought to sustain. When Augustus stated that he had come to court in defence of the interests of the people, some will have found his employment of that term distinctly disconcerting.

Forty-two years later, another provincial governor stood trial under the *maiestas* laws, though in large part only posthumously and now before the senate.⁵⁹ In the case of Gnaeus Calpurnius Piso, many of the substantive offences that he was alleged to have committed as governor of Syria could as easily have been tried under the *lex Cornelia* as under the *lex Iulia maiestatis*.⁶⁰ When at SCPP I. 33 he is stated to have neglected the law of the people, what is at issue is the law passed by the people granting Germanicus greater power of command (*imperium maius*), in whichever province he entered, than even the appointed proconsul, and second only to that of Tiberius himself.⁶¹ That this is placed second syntactically to his neglect of the *maiestas* of the imperial house is not so much evidence that the *maiestas domus Augustae* enjoyed recognition under the *lex Iulia maiestatis*;⁶² rather this is part of the effort

⁵⁷ For the contrary view that 'Marcellus' here refers to M. Claudius Marcellus Aeserninus cos. 22 B.C., see Atkinson 1960: 444–5, 450; Bauman 1967: 185.

⁵⁸ For the contested identification of the Licinius Murena to whom Dio here refers with Aulus Terentius Varro Murena, *consul ordinarius* for 23 B.C. alongside Augustus, who was caught up in the conspiracy against Augustus led by Fannius Caepio in the aftermath of the trial, see Stockton 1965; Levick 1975: 159 and n. 14.

⁵⁹ For the suicide of Gnaeus Calpurnius Piso Pater while his trial was ongoing, see Tac., *Ann.* 3.16.3. The publication of the *Senatus Consultum de Cn. Pisone Patre* in Eck et al. 1996 has inspired a great deal of work by Roman historians, reference to which is conveniently collected in Cooley 2023. For an excellent narrative of the background to the prosecution and analysis of the ideological work being done by the composition and distribution across the empire of the senate's resolution, see Suspène 2010.

⁶⁰ That the offence with which Piso and his associates are charged is in fact *maiestas* only emerges explicitly at SCPP II. 120–3. On this point, see De Castro-Comero 2000: 44. For the applicability of earlier laws to the case of Cn. Piso, see Levick 1999: 195: 'The guilt of Piso was a hard fact, covered by Republican categories.'

⁶¹ SCPP II. 29–37; Cooley 2023: 171. For Piso's neglect of *ius publicum*, cf. Cic., *Pis.* 50, which refers to several laws, particularly the *lex Cornelia maiestatis* and the *lex Iulia de pecuniis repetundis*, as penalising actions undertaken by a magistrate (in this case by L. Capurnius Piso Caesoninus as proconsul of Macedonia from 57–55 B.C.) without the authority of the Roman people and the senate (*iniussu populi Romani ac senatus*). See also Cloud 1963: 206–7, 215–19, who takes Digest 48.4.3 *qui iniussu principis bellum gesserit delectumue habuerit* as maintaining the substance of the *lex Iulia maiestatis* but glossing in terms relevant to the later empire what the law itself would have phrased as *iniussu populi Romani*. See further Suspène 2010: 865.

⁶² Eck et al. 1996: 162; Pani 2000: 691–2. Some support for this view is offered by Tac., *Ann.* 4.34.2, where Cremutius Cordus denies that the words that have led to his prosecution were written in *principem aut principis parentem, quos lex maiestatis amplexitur*. The point, however, is more likely that by A.D. 25 successive prosecutions for *maiestas* had turned on the argument that harm to the *maiestas* of Tiberius or of Augustus was *ipso facto* harm to the state as a whole. See e.g. Tac., *Ann.* 2.50 for the A.D. 17 trial of Appuleia Varilla the pretext for which was her disparaging commentary on Augustus, Tiberius and Livia as well as her adultery. Though excluding adultery as having no bearing on *maiestas*, Tiberius did not make the same point with regard to Varilla's words: calling for conviction if

of the senate to find language giving institutional recognition to what at the time remained a state of exception.⁶³ Likewise, the return of Piso to Syria after the death of Germanicus and his attempt to wrest control from the new governor, Cn. Sentius Saturninus, was apt to be presented as a violation of provisions in the *lex Iulia maiestatis* penalising those who failed to hand over authority to a successor at the end of their legal term of office and that surely would also have been fully at home in the *lex Cornelia*.⁶⁴ Had he but been present, Sulla could have had many reasons to regard the trial of Piso as a thoroughly proper process. Even the replacement of his standing court with trial by the senate would at least have guaranteed that those he regarded as the right judges were still in charge. Only when the senate chose to insert reference to the neglect of the *maiestas domus Augustae* might he have had reason to question proceedings ... or indeed to reflect that the one thing he had been unable to abolish was his own example.⁶⁵

V Trying Flamininus

The evidence of the trials of M. Primus and Cn. Calpurnius Piso offers an important point of comparison for the trial of Flamininus staged in *Controuersiae* 9.2. This works on two levels. First, the declamatory case shares with its real-world analogues a preoccupation with categories of offence already codified under Republican statute (the *lex Cornelia*) and those speaking to it underline how far the scandalous conduct of Flamininus calls out for punishment on these very grounds. Second, however, just as analysis of both of the historical trials reveals the cracks that open up when the concepts of *maiestas populi Romani* and *maiestas domus Augustae* are made to overlap with each other, so close reading of *Controuersiae* 9.2 exposes certain speakers' awareness of how the legal category of *maiestas* was evolving in the final years of Augustus and under Tiberius and of the discomfort that this could provoke. The next section of this study therefore engages with the issues that the declaimers identify as central to the case and considers how retreat into the world of 184 B.C. restores a simpler world free from those changes that the Augustan and Tiberian trials have enforced.

Seneca typically divides each exercise in his *Controuersiae* into three parts: the *sententiae*, which represent the most pointed and epigrammatic statements of key aspects of the case; the *diuisio*, in which different declaimers identify the fundamental issues concerning the application of the statute to the theme; and the *colores*, in which speakers seek to strengthen their case through narrative twists on the basic data supplied in the theme. A good declaimer such as Porcius Latro will begin his preparation by methodical reflection on which key issues emerge from the statute and the theme; he will then build his argument

she had said anything impious against Augustus, he simply stated that he did not wish things said about himself to be brought to court and, at the next meeting of the senate, reported that Livia had taken the same view. That he subsequently acquitted Varilla of *maiestas* indicates only that the specific comments on Augustus attributed to her did not meet the standard for conviction.

⁶³ Both Pani 2000 and Corbier 2002 are illuminating on what is meant by the term *domus Augusta* and on the parallel between the language of SCPP ll. 32–3 and that of *Tab. Siar.* fr. I, ll. 9–11 and fr. II, col. B, ll. 21–3. It is striking that one of those who drafted SCPP was the jurist Ateius Capito, who in A.D. 22 opined that, while Tiberius was entitled to show clemency towards the personal offence implied when the Roman knight L. Ennius melted down a silver statue of him, he was not entitled to deprive the senators of the right to punish the crime against the state implied in any such violation of his person. See SCPP l. 2; Tac., *Ann.* 3.70; Corbier 2002: 272. For the ideological work being done by those who drafted and distributed the senate's resolution, see Suspène 2010: 865–70.

⁶⁴ SCPP l. 47; Digest 48.4.2: *quiue de prouincia, cum ei successum esset, non decessit*; Cloud 1963: 213; Cooley 2023: 177–9, who notes that Sentius was appointed by leading Romans in the province, a decision only subsequently ratified by Tiberius.

⁶⁵ Syme 1939: 17.

around those issues that most favour the side that he represents.⁶⁶ Seneca presents the citation of *sententiae* before anything else as his way of pandering to the tastes of his three sons, to whom the work is addressed, but he knows that what truly comes first is the *diuisio* and that all else derives from it.⁶⁷ Any analysis of how the declaimers use this exercise in order to think about *maiestas* as a legal category must therefore also begin in the same place. In the case of *Controversiae* 9.2, Seneca reports the contributions of Votienus Montanus (§§13–16) and Pompeius Silo (§17). Though the latter makes points that are interesting in themselves, those of real substance and pertinence for this argument come from Montanus and it is on these that I shall concentrate.⁶⁸

Montanus opens the *diuisio* by asking whether every crime committed by a proconsul in the course of his office should be tried as a violation of *maiestas*. If not, the defendant may confess the crime but deny that he is being tried under the appropriate statute. He then argues that more is required of a crime than that it be committed during his time in office. If the accused kills his father, poisons his wife or commits adultery, these are all criminal offences sanctioned by the law, but none *per se* meets the standard for conviction for *maiestas laesa*. If, however, the act at issue is performed in the context of the authority that he derives from the people (§14 *auctoritate publica*), then a case for *maiestas laesa* may hold. As an example of how the same speaker developed these claims, we may turn to the *sententiae* and his indignant complaint that the *maiestas* of the Roman people, which spreads through all the nations and all the provinces, now lies in the lap of prostitutes (§11 *maiestas populi Romani per omnes nationes, per omnis diffusa prouincias, in sinu meretricum iacet*).

Montanus' next question turns on how a holder of *imperium* performs those duties that his office requires of him. One of these is punishment of the guilty, and nothing can be held against him if he follows all due procedure. What, however, if he fails to don the proper costume, ignores established custom, mounts the bench in a dinner suit and orders a party band to play when the blast of the trumpet is required? This is an issue of direct pertinence to the case of Flamininus because the theme identifies his chosen victim as a condemned criminal (*unum ex damnatis*) and his eventual execution will have been one of the proconsul's formal responsibilities. It is not the prisoner's death, but how and where and why he died that make Flamininus liable for prosecution. All this Montanus appears to have developed by comparison of the hypothetical scenario of the dinner suit and the party band with Flamininus' actual actions and the assertion that what he did was much worse (§14 *atqui quod fecit foedius est. et comparauit*).

Montanus finally asks whether a crime that demonstrates the necessary connection to the *maiestas* of the Roman people is also sufficiently serious to constitute harm? If neither the strength nor the reputation of the Roman people has been harmed, then the defendant cannot be convicted. Here Montanus offers nothing so ambitious as the counter-claim familiar from the courts and the rhetorical textbooks of the Republican period, that the acts at issue have in truth enhanced the *maiestas* of the people.⁶⁹ He simply asserts that Flamininus has done no actual harm to the strength or the reputation of the Roman people. The point here is twofold: the death of one prisoner clearly has no impact on the strength of the Roman people, but neither does it affect the nation's reputation: the disrepute belongs to one man alone and has no bearing on the community as a whole. Montanus canvasses the contrary view, that others judge the community by the standards of the individuals it chooses to represent it, but he has little time for such arguments. How he developed his case

⁶⁶ Sen., *Controv.* 1.pr.21.

⁶⁷ For the sons' tastes, see Sen., *Controv.* 1.pr.21, 4.pr.1, 7.pr.9.

⁶⁸ Silo argues that the essence of the *maiestas* law, unlike others, is its concern with what it is proper to do (*quid oporteat*), but then adds that Flamininus' actions are also illegal (*non licuit*). The point may be that what he did was both improper and in violation of procedural requirements set down by other statutes.

⁶⁹ Cic., *Part. or.* 105, *Fam.* 3.11.2.

is apparent from the points attributed to him in the *colores* at §19: looking back to the faults of Q. Fabius Maximus Gurges, Manlius Torquatus, Sulla and Lucullus, he reminds the jury how much the Roman people have tolerated in their generals, the implicit point being that here too they perceived the disrepute as fastening on the individual and not the community he represented.

Neither Montanus nor Silo nor any of the other speakers whose contributions Seneca records offer any more precise a definition of *maiestas* than do their Republican predecessors. They do, however, share with them one fundamental presumption: whatever *maiestas* is, it is the property of the Roman people and a part of it has been vested in Flamininus via the office that he holds. The *diuisio* itself contains seven references to the *populus Romanus*, one in §13 and six in §15; the *sententiae* and the *colores* contribute a further two each (§§3, 11, 19, 24). When speakers ask whether ‘we’ gave you a legate and a quaestor so that you might dine with a prostitute or refer to ‘our’ empire, ally and praetor, they take on the collective identity of the *populus Romanus* and speak for them.⁷⁰ This also underpins the speakers’ persistent reference to the *lictor* as executioner⁷¹ and to the misuse of the *fascēs*, the rods and the axe in the course of the execution.⁷²

In contrast to those late Republican cases that involved the sacrosanctity of the tribunes of the plebs, this is not a case where the Roman people are differentiated from and pitted against the senate. Rather, the *populus Romanus* refers to the state as a single, united entity that grants to Flamininus the powers that he abuses: if he is praetor, his authority stems from election to office; if he is proconsul, he must first be elected and serve as consul, then participate in a public distribution of provinces by sortition.⁷³ For declaimers projecting themselves back into the early second century B.C. this is, on one level, merely to respect the conditions that held at the time. On another, however, the very act of reconstructing those conditions can prompt reflection on how much has changed in the years since Actium. Nobody in *Controversiae* 9.2 has to talk about the different sources of authority in imperial and senatorial provinces or to ask how meaningful any such division really is. Nor does any individual or family feature, an attack on whom would constitute damage to the *maiestas* of the Roman people as a whole. In its reversion to a constitutionally less complicated time, *Controversiae* 9.2 may come across almost as an exercise in nostalgia, but the very term nostalgia encodes a sense of pain, and the desire to look homeward can be the expression of discomfort with where one finds oneself in the present.⁷⁴

A further feature of Montanus’ *diuisio* may be considered in the same terms. In §15, the declaimer engages with issues on which a successful case for the defence must turn. As has been noted, the bulk of this argument turns on the contention that the actions of Flamininus do not in fact constitute harm to the *maiestas* of the Roman people, and, for his purposes, such denial should be sufficient in itself. Yet, in the middle of making this point,

⁷⁰ Sen., *Controv.* 9.2.9: *imperii nostri*, 24: *socium nostrum*, 27: *praetorem nostrum*. Latro’s reference to the victim as ‘our ally’ suggests that the theme to which he spoke was closer to the Catonian version endorsed by Livy, in which he was a Boian deserter. By calling him an ally, Latro implies that Flamininus is pursuing an independent and unauthorised foreign policy.

⁷¹ Sen., *Controv.* 9.2.2: *maiestatem laesam dixissem si exeunti tibi lictor a conspectu meretricem non summouisset*, 3: *ne a sobrio quidem lictore percussus est*, 22: *percussurus lictor ad praetorem respexit, praetor ad meretricem*, 23: *lictori, quia bene percusserat, propinatum est*. For the lictor, see Pauly, *RE* XVI.1.507–518; Nippel 1984: 22–3.

⁷² Sen., *Controv.* 9.2.6: *uirgae promuntur, et uictima crudelitatis ante mensam ac deos trucidatur*, 9: *exsurgite nunc Bruti, Horatii, Decii et cetera imperi decora: uestri fascēs, uestrae securēs in quantum, pro bone Iuppiter, dedecus recciderunt! istis obscenae puellae iocantur*, 21: *uerbera! sed uide ne uirgae tuae pocula nostra disturbent*, 24: *refulsit inter priuata pocula publicae securis acies*, 27: *praetorem nostrum in illa ferali cena saginatum meretricis sinu excitauit ictus securis*.

⁷³ For sortition and the distribution of provinces, see Rosenstein 1995.

⁷⁴ Livy pr. 5.

Montanus goes further and inserts a positive statement of what does constitute damage to the *maiestas* of the Roman people:

is laedit populi Romani maiestatem qui aliquid publico nomine facit: tamquam legatus falsa mandata adfert, sic audiuntur tamquam illa populus Romanus dederit; imperator <turpe> foedus percussit, uidetur populus Romanus percussisse et continetur indigno foedere.

He harms the majesty of the Roman people who does something in the name of the people; an example is if an ambassador bears false messages, and these are heard as if the Roman people had given them; if a general strikes a disreputable treaty, the Roman people appear to have struck it and are bound by an unworthy treaty.

What matters here is how far the examples that Montanus offers make *maiestas* cohere with the categories of offence identified by the *lex Cornelia*. The first instance given is that of an ambassador who communicates false messages. Though this specific example is not covered by surviving statutes or case law on *maiestas*, the principle is evident from Livy's account of the events leading up to the nation's defeat by the Gauls at the Allia: the misdeeds of an ambassador damage the reputation of the Roman people as a whole and must be repudiated by the people should they wish to evade disaster.⁷⁵ The second concerns the general who binds the Roman people by an unworthy treaty (*indigno foedere*). Here a clear precedent is to be found in the case of C. Popilius, who, in the aftermath of defeat by the Tigurini, could only secure his retreat by agreeing to hand over hostages and half of the property of the army. Orosius describes this as a treaty most disreputable (*turpissimo foedere*) and reports that, on his return to Rome, Popilius only escaped prosecution from the tribune Caelius by entering into voluntary exile.⁷⁶ The charge in this case was *perduellio* but, given the degree to which offences previously marked as *perduellio* came in the first century B.C. to be treated as *maiestas*, there must be a strong legal basis for Montanus' claim here that such an offence represented an authentic violation of *maiestas*.⁷⁷ For all that the trial of Flamininus for *maiestas laesa* is a declamatory fiction, those cases of authentic harm adduced by Montanus are grounded either in Roman statutes or in case law or in both. It is therefore all the more important to recall that, in order to establish the second *quaestio* and to set out how the defence should respond to it, he is in no sense bound to introduce any positive sense of what real *maiestas laesa* looks like. That he takes the opportunity to do so speaks as much to the world in which he lives as to that of 184 B.C.

VI *Maiestas* and the liability of the *priuatus*

The preceding pages have surveyed how the declaimers employ the *diuisio* to identify the issues on which the trial of Flamininus turns and how they handle them in the *sententiae* and the *colores*.⁷⁸ It has also identified presuppositions and claims that, while appropriate

⁷⁵ Livy 5.36.6–11. For the declamatory afterlife of this episode, see Quint., *Inst.* 3.8.19.

⁷⁶ Oros. 5.15.23–24; Bonner 1949: 108–9.

⁷⁷ Pauly, *RE* XIX.1.638. *Rhet. Her.* 1.25 reports that Popilius was in fact tried for *maiestas* but this is surely an early instance of the pattern identified by Sherwin-White 1969 whereby the writer describes in terms operative in his own time prosecutions originally undertaken under a separate if related statute. See further Ferrary 1983: 557–8; 2009: 240.

⁷⁸ The summary is not exhaustive. One important theme concerns the consequences of Flamininus' action for faith in the justice of the original conviction of this victim and of others. See esp. Porcius Latro at §3: *ecquid intellegitis quemadmodum damnatus sit qui sic occisus est? qui scio an, in cuius gratiam occisus est, in eiusdem etiam damnatus sit?* For further examples, see Albus Silus at §6 and Glycon at §29.

to the historical fiction of a trial held in the mid-Republican period, run up against the new reality of *maiestas* at the time when the speeches were delivered. In this section I look in greater depth at another point of tension between *maiestas* as a category of Republican jurisprudence and its emergent shape at the close of the reign of Augustus and through that of Tiberius.

As has been noted above, the first issue identified by Montanus in §13 is whether prosecution for *maiestas laesa* is available for any misdeed committed by a magistrate during his period of office or only those crimes committed in the course of carrying out that role. Montanus argues strongly for the latter position. Yet in the midst of this he injects a further point that moves in a rather different direction:

uis scire non a quo fiat ad rem pertinere sed quid fiat? priuatus potest accusari maiestatis laesae, si quid fecit quo maiestatem populi Romani laederet.

Do you want to know that what is relevant to the matter is not by whom the deed is done but what is done? A citizen holding no office can be accused of harm to *maiestas*, if he did something in order to harm the *maiestas* of the Roman people.

Having put all the emphasis on the claim that what makes Flamininus guilty of *maiestas laesa* is that the execution of the prisoner abused the authority vested in him by the state, Montanus acts to correct a potential misapprehension: anyone can damage the *maiestas* of the Roman people, not just an office-holder. Yet what Montanus here adduces as a logical proof elsewhere appears as an issue (*quaestio*) in its own right. *Controversiae* 10.4 concerns a man who rescues exposed children and then prepares them for life as beggars by sundry acts of mutilation; he is charged with damage to the state (*res publica laesa*).⁷⁹ Not only does the wording of this statute partially echo that found at *Controversiae* 9.2, but comparison of the *diuisiones* at *Controversiae* 10.4.11–14 and 10.5.12–16 (also a trial for *res publica laesa*) reveals considerable overlap with it in terms of issues: both ask whether the deed done constitutes actual harm to the state and cite in contrast actions that certainly do;⁸⁰ both consider whether it is possible to harm the state by doing something which one is legally entitled to do;⁸¹ the latter further considers whether the crimes of a single villain can damage the reputation of the state as a whole.⁸² All this indicates that the law targeting harm to the state in *Controversiae* 10.4 and 5 is cognate with that concerning harm to *maiestas* in 9.2.⁸³ It is therefore all the more noteworthy that Seneca observes in 10.4.14 that some include the question whether the state can be harmed by an individual without office (*an possit a priuato homine laedi res publica*) and that he records Sparsus declaiming to this effect. Seneca adds that one cannot put this question without asking whether the state can be harmed by a woman, an old man or a pauper and observes that, in declamatory cases tried under this statute, the defendant invariably claims that the state could not have been harmed by a citizen without office, a pauper, a sick man or an old man (*ne potuit quidem laedi a priuato*,

⁷⁹ For this statute, see Sen., *Controv.* 5.7, 10.4 and 5, *Suas.* 2.21; Calp. Flacc. 5 and 45; Quint., *Decl. Min.* 260 and 326; ps-Quint., *Decl. Mai.* 12; Lanfranchi 1938: 423–4; Bonner 1949: 97–8. Lanfranchi suggests that the declamatory statute recalls the Attic γραφή δημοσίων ἁδικημάτων and distinguishes Sen., *Controv.* 10.4, to which he ascribes a strong Roman character, from the other exercises, where he finds the theme to be Greek in inspiration. It is only really in Sen., *Controv.* 10.4 and 5 that any productive comparison with 9.2 can be found.

⁸⁰ Sen., *Controv.* 10.4.11, 10.5.14; cf. Quint., *Decl. min.* 260.5–6.

⁸¹ Sen., *Controv.* 10.4.12, 10.5.15.

⁸² Sen., *Controv.* 10.5.13.

⁸³ Lanfranchi 1938: 421–5; Bonner 1949: 98; Thomas 1991: 374 and n. 85.

a paupere, ab aegro, a sene).⁸⁴ Seneca's account of the *diuisio* is dominated by the contribution of the revered Porcius Latro (§§11–13), and this further *quaestio* features as a rather unimpressive addendum. Inasmuch as Montanus in 9.2 treats it as an established fact that a citizen without office can damage the *maiestas* of the Roman people, it is unlikely that he would have been any more tolerant of the approach attributed to Sparsus in this exercise. Yet the fact remains that declaimers of this period were thinking about whether damage either to the *maiestas* of the Roman people or to the state could be accomplished by a citizen without office. In what follows, I investigate what could have brought such questions to mind.

To Quintilian writing at the end of the first century A.D., assault on a simple citizen constitutes *iniuria*, but the same offence committed against a magistrate will be *maiestas*.⁸⁵ The criterion to be employed is the status of the victim, not that of the assailant, and there is no reason to infer that the latter has any bearing on the matter. To the late antique jurists quoted in *Digest* 48.4, there is no doubt that a citizen without office can contravene the *lex Iulia maiestatis*; this he can do should he desert to the enemy or pass himself off as a magistrate and then knowingly do some misdeed.⁸⁶ Neither Quintilian nor the jurists appear likely to have had any time for the type of case for the defence that Seneca identifies as standard in the declamation schools. Things, however, had not always been the same.⁸⁷ In the years between the passing of the *Lex Appuleia Maiestatis* and the outbreak of civil war in 49 B.C., all but one of the reported or suspected trials for *maiestas* definitely turned on offences alleged to have been committed while the defendant held at least the rank of quaestor or was serving as tribune of the people.⁸⁸ In the case of tribunes, this could range from violent conduct while in office, particularly in order to ensure the passing of legislation, to disregard of the veto imposed by colleagues.⁸⁹ Quaestors were prosecuted for violent action taken to prevent the passage of unwelcome legislation and for incitement of military sedition.⁹⁰ The only proconsul known to have been prosecuted was accused both of unauthorised campaigning outside his province and of failing to hand over his province to his successor, but two others have been hypothesised.⁹¹ Of the one possible exception to the pattern that I have identified, the prosecution of M. Atilius Bulbus, the very least that can be said is that he was a senator and that the accusation of *maiestas* related to his alleged instigation of mutiny on the part of troops serving in Illyricum.⁹² This he is most likely to have done in the course of his quaestorship or as a military tribune.

The ancient sources say disappointingly little about the specific terms of any of the late-Republican *maiestas* laws. The provisions of the *lex Cornelia* reported at Cicero, *In Pisonem* 50 targeted misdeeds that could only have been performed by holders of *imperium*, but this is only one part of one law. Yet from each of the prosecutions summarised in the previous paragraph and documented in the Appendix at the close of this paper, it is clear that the defendant was vested with some part of the *maiestas* of the Roman people at the time that he committed the alleged offence, and that that offence involved abuse of the powers

⁸⁴ *ab absenti, a; [ab] a sene*, Håkanson praeeunte Novák.

⁸⁵ Quint., *Inst.* 5.10.39: *iniuriam fecisti, sed quia magistratui, maiestatis actio est, Decl. Min.* 252.5: *nam ut pulsatus cuius iniuriarum aget, si magistratus erit, maiestatis crimen obligabitur*. For alleged offences against magistrates, however trivial, as the pretext for *maiestas* prosecutions under Tiberius, see Jones 1972: 106–7.

⁸⁶ Ulpian at *Digest* 48.4.2.pr. and Marcianus at *Digest* 48.4.3.pr.

⁸⁷ For some anticipation of the case to be advanced here, see Bauman 1967: 87–8; Cloud 1994: 518.

⁸⁸ My argument develops and documents the claims of Zumpt 1865–1869: ii.1.232–4, 379–81; Brecht 1944: 357–8; Ferrary 2009: 225–6.

⁸⁹ See Appendix §A.

⁹⁰ See Appendix §B.

⁹¹ See Appendix §C.

⁹² See Appendix § D.

granted to him by the Roman people. Where, moreover, detailed statutes do survive, important comparative material can be identified. In particular, the inscription recording what is generally taken to be the *lex Acilia repetundarum* of 123–122 B.C. begins by specifying that it concerns the actions of Roman office-holders (and their sons) all the way from a *dictator* down to a *tribunus militum* of one of the first four legions.⁹³ In two other much more fragmentary inscriptions, we find lists of office-holders from *dictator* downwards while in the *Pro Cluentio* Cicero recites the terms of the *lex Cornelia de sicariis et ueneficiis* going upwards from the *tribunus militum* of the first four legions.⁹⁴ He indicates that the prosecutor, T. Accius, has railed against the fact that not everyone is held by the same laws (Cluentius was a Roman knight), urges that it would be better to pass new laws than disregard those that currently exist, and indicates that a senator must simply accept that he is to be held to a higher standard than a private citizen.⁹⁵ In the *Pro Rabirio Postumo* he indicates that the ‘first verse’ of many a law would run ‘dictator consul praetor master of horse’.⁹⁶ On the basis of this evidence, it seems highly likely that the *quaestio maiestatis* also restricted itself to offences committed by office-holders and their sons.⁹⁷

That a citizen without office may be prosecuted for *maiestas* features in two texts of the late Republic. The evidence of one of these, *De Inuentione* 2.52–56, has already been identified as a declamatory fiction and may therefore be disregarded. The second relevant passage comes at Cicero, *In Verrem* II.1.12. Here Cicero accuses Verres of having kept pirate chiefs alive and well in his house, after his return to Rome and having resumed the status of *priuatus*, and of having done so until Cicero intervened to reign him in (*priuatum hominem praedonum duces uiuos atque incolumis domi suae, posteaquam Romam redierit, usque dum per me licuerit retinuisse*). He then raises the threat that he will prosecute Verres in the *quaestio maiestatis* on this count (*hoc in illo maiestatis iudicio si licuisse sibi ostenderit, ego oportuisse concedam*). This passage forms part of an extended section in which Cicero accuses Verres of a rich variety of crimes and lists the various statutes under which, should he escape conviction in the *repetundae* court, he can still be brought to justice.⁹⁸ There is, as Mitchell notes, a certain amount of ‘rhetorical bluster’ in this section of the speech, and the prosecutions with which Cicero threatens Verres were destined never to materialise given that the defendant abandoned all hope after the first hearing and fled to voluntary exile in Marseille.⁹⁹ As for the specific events at issue, the more extensive account supplied at *Verrine* II.5.75–79 indicates that the description of Verres as a *priuatus* requires a degree of modification. For what Cicero states here is that Verres kept alive and in his possession one or more pirate leaders until his command expired (*piratam uiuum tenuisti. quem ad finem? dum cum imperio fuisti*) and that he continued to do so after the end of his office (*uerum esto, sit tibi liberum omne tempus quoad cum imperio fuisti: etiamne priuatus, etiamne reus, etiamne paene damnatus hostium duces priuata in domo retinuisti?*).¹⁰⁰ What is here at issue is therefore very different from a citizen who has never held office and whose diminution of the *maiestas* of the Roman people was performed in a purely private capacity. Rather, Cicero chastises Verres for his failure to recognise the formal end of his command and continuation of conduct that was legitimate only so long as that command endured. This has an obvious relationship to those

⁹³ Mommsen 1899: 710–11; Crawford 1996: i.95.

⁹⁴ Crawford 1996: i.341, 343; Cic., *Clu.* 148.

⁹⁵ Cic., *Clu.* 150–2, 156.

⁹⁶ Cic., *Rab. Post.* 14.

⁹⁷ I take the liability to prosecution of acts performed by sons as identifying them not as independent agents but rather as extensions of the authority of the father.

⁹⁸ Cic., *Verr.* II.1.9–14.

⁹⁹ For bluster, see Mitchell 1986: 167.

¹⁰⁰ Cic., *Verr.* II.5.75–76.

probably tralatitious parts of the *lex Iulia maiestatis* that target the failure to quit a province on the arrival of a successor (*quique de prouincia, cum ei successum esset, non discessit*).¹⁰¹

For all that the trial of L. Quinctius Flamininus in *Controuersiae* 9.2 is manifestly a declamatory fiction, the fact that it turns on actions performed while the defendant held proconsular or praetorian *imperium* and can be argued to have involved abuse of appurtenances of that *imperium* means that it conforms to what can be established as normative for prosecutions under the Republican *maiestas* laws. To a declaimer of the age of Augustus and Tiberius looking back to the period between the passing of the first *maiestas* law and the outbreak of the civil wars, recognition of the fact that no prosecution had ever been launched under such a statute for deeds performed by a *priuatus* could make meaningful the *quaestiones* implied by Montanus at *Controuersiae* 9.2.13 and explicitly essayed by Sparsus and others at 10.4.14. To the same speakers operating at the close of the reign of Augustus and the start of that of Tiberius, the same issue had a new urgency and the types of prosecution being launched at this time will have seemed very different to what had come before.

What underpinned this change in the status of defendants under the *maiestas* laws? In his account of the first Tiberian *maiestas* trials, Tacitus observes that a precedent had been set under Augustus by the trial of Cassius Severus, whose defamatory writings against men and women of distinction must have been held to meet the criterion for diminution of the *maiestas* of the state as a whole.¹⁰² Tacitus underlines this targeting of words over the distinctly more substantive deeds to which the *maiestas* laws had previously been applied, and subsequently marks a further stage along the path in the trial of the historian Cremutius Cordus, whose alleged crime consisted not of defamation but of praise, and not of the living but of the dead.¹⁰³ Yet there is more to be made of the case. First must come the issue of those whose defamation could be defined as *maiestas minuta*. Though Tacitus names no names, it seems likely that they included members of the imperial house; the 35 B.C. extension to Livia and Octavia of the perpetual tribunician *sacrosanctitas* granted the year before to Octavian now had its own long-delayed impact and, if one criterion for violation of *maiestas* was held to be the standing of the victim, then the emperor's relatives met it in full.¹⁰⁴ And with the status of the victim must come that of the accused. For in stark contrast to the defendants in the Republican *maiestas* trials and, by extension, of M. Primus in 23 B.C., there is no evidence that Cassius Severus had ever held office, let alone composing his libels in the course of his responsibilities. Here too, Tacitus is silent, but not for long. For when he comes to the first *maiestas* prosecutions essayed under Tiberius, he describes the defendants Falanius and Rubrius as knights of modest standing (*modicis equitibus Romanis*).¹⁰⁵ His apparent point here is that these were test cases and staging posts on the way to the prosecution of more distinguished figures such as the praetor Granius Marcellus.¹⁰⁶ Yet in doing

¹⁰¹ Ulpian at *Digest* 48.4.2.

¹⁰² Tac., *Ann.* 1.72.3. This event is dated either to A.D. 8 or A.D. 12 (Cass. Dio 56.27.1; Jerome at Euseb., *Chron.* = vol. viii. p. 574 Migne).

¹⁰³ Tac., *Ann.* 1.72.2: *facta arguebantur, dicta impune erant*, cf. 4.34.2: *uerba mea, patres conscripti, arguuntur: adeo factorum innocens sum*. The effect is to identify a newly pernicious stage in the employment of the *maiestas* laws: where Cassius Severus was likely targeted for what he had said against the imperial family, Cremutius Cordus can proclaim himself innocent of such activity (4.34.2: *sed neque haec in principem aut principis parentem, quos lex maiestatis amplectitur*). For words of praise now being targeted, see Tac., *Ann.* 4.34.1: *Cremutius Cordus postulat nouo ac tunc primum audito crimine, quod editis annalibus laudatoque M. Bruto C. Cassium Romanorum ultimum dixisset*; 4.34.2: *Brutum et Cassium laudauisse dicor, quorum res gestas cum plurimi composuerint, nemo sine honore memorauit*. For the targeting of defamatory speech in the years between the trials of Cassius Severus and Cremutius Cordus, see Tac., *Ann.* 1.74.3 on the prosecution of Granius Marcellus; 2.50.1 for the trial of Appuleia Varilla; Cass. Dio 57.22.5 for the trial and execution of Aelius Saturninus.

¹⁰⁴ Bauman 1967: 213–22; Corbier 2002: 269.

¹⁰⁵ Tac., *Ann.* 1.73.1.

¹⁰⁶ Tac., *Ann.* 1.74.

so he also reveals a very significant extension in the permitted application of the *maiestas* laws.

Earlier in this article, attention was drawn to the question of whether what is later referred to as the *lex Iulia maiestatis* is a single piece of legislation passed under Julius Caesar and of relatively limited scope, or rather two separate *leges Iuliae maiestatis*, the latter passed under Augustus and including, amongst a great deal of tralatitious material, some very significant innovations.¹⁰⁷ On the strength of the evidence gathered above, I conclude that there was an Augustan law; that it was passed in the final years of his reign; that it tasked the senate with trying at least some prosecutions for *maiestas* (alongside but soon superseding the established *quaestio perpetua*); and that it removed the status restrictions observed by the Republican standing court governing who could be held liable for *maiestas* offences.¹⁰⁸ In both the judicial powers that it granted to the senate and the extended protections that it offered to officeholders, such legislation might easily be portrayed as enforcing the traditional locus of authority in the state and even contributing to the *res publica restituta*. In time, obliged to try fundamentally malicious prosecutions on grounds that bore no resemblance to Republican precedent, some senators at least must have regretted this new authority. With a glowering and unpredictable Tiberius in attendance, the requirement that senators try *maiestas* cases was less an act of empowerment than a test of their loyalty.¹⁰⁹

VII *Maiestas* and the declaimers — the view from A.D. 37

Seneca is a strikingly jovial writer and one who relishes the ludic character of declamation. At times he appears almost to close his eyes to the darker side of this world. At *Controuersiae* 2.1.34–36, for instance, he delivers a light-hearted narrative concerning how the declaimers Valerius Syriacus, Brutteditius Niger and Iunius Otho handled an exercise turning on the theme of adultery, and then at 2.1.39 quotes the witty observation of M. Aemilius Scaurus that the insinuating style of Otho was like that of one whispering the news into one's ear.¹¹⁰ What he omits to mention is that in A.D. 22 Niger, Otho and Scaurus joined forces to prosecute C. Silanus on a series of charges that included scorning the *maiestas* of Tiberius,¹¹¹ and that Scaurus for certain and very likely Niger were eventually brought down by the same means.¹¹² It may be asked whether he finds it more powerful to leave it to the reader to make the connection. Looking back on all these events from A.D. 37, Seneca himself can scarcely have been indifferent to them.

As one moves mentally between the courtrooms of declamation and the real-world *maiestas* trials, it is hard not to note how many figures turn up in both. This is particularly true of *Controuersiae* 9.2. Some speakers here are notable for the close shaves that they experienced in a world where unguarded speech was ever more a source of peril; others found themselves prosecuted under the *maiestas* laws; and others still became emblematic of the new culture of malicious prosecution.

Three declaimers quoted in this exercise experienced close shaves. At *Controuersiae* 9.2.2 and 25, Seneca quotes two contributions to the trial of Flamininus from the declaimer Vibius

¹⁰⁷ See above, Section II.

¹⁰⁸ The key feature of the provisions that I attribute to the Augustan *lex Iulia maiestatis* is that they could not simply have been the product of a more elastic interpretation of the known terms of prior *leges maiestatis*.

¹⁰⁹ See e.g. Tac., *Ann.* 4.34.2 for Cremutius Cordus doomed in part by the hostile expression with which Tiberius listened to his defence.

¹¹⁰ Granatelli 1990 is much the most substantive discussion of this passage, but I struggle to accept her view that what Seneca records is an actual adultery trial.

¹¹¹ Tac., *Ann.* 3.66.1.

¹¹² For the fall of Scaurus, see Sen., *Controv.* 10.pr.3, *Suas.* 2.22; Tac., *Ann.* 6.9.3–4 and 29.3–4. For Niger, see Tac., *Ann.* 3.66.4; Juv. 10.81–89; Pigón 2018: 150–1.

Rufus whom, in the latter passage, he describes as speaking in the ‘old style’ (9.2.25 *qui antiquo genere diceret*).¹¹³ In A.D. 16 the same man became suffect consul at Rome, but it could have been very different. This, at least, is what Cassius Dio records (57.15.6). Passing straight on from the case of the young L. Scribonius Libo, who was suspected of seeking to unseat Tiberius, brought into the senate when seriously ill and committed suicide as an escape from his troubles (57.15.4–5), Dio notes the good fortune of Vibius Rufus, against whom Tiberius levelled no accusation, even though he was wont to sit in the very seat in which Caesar had been assassinated. The historian adds that the same man married the wife of Cicero and gave himself airs on both points as if he was destined to become an orator on account of his wife and a Caesar on account of his chair.¹¹⁴ The matter of the chair again reveals quite how easily reckless use of imperial accoutrements could bring one to the *crimen maiestatis* and to destruction.

At *Controuersiae* 9.2.3, Seneca quotes from the speech for the prosecution of Porcius Latro. Here the reader may think back to *Controuersiae* 2.4.12–13, where Maecenas, who is making a visit to his school alongside Augustus and Agrippa, twists an innocent slip by the declaimer into a slur against the humble origins of Agrippa. Seneca treats the fact that Latro did not finally suffer for this as proof of the spirit of tolerance shown by Augustus (and implicitly not by his successor).¹¹⁵ A similar point may be made with regard to Albucius Silus, whose extended contribution for the prosecution is quoted at §§6–8. Albucius strikingly identifies the victim as a Roman citizen (8 *ne sobri quidem carnificis manu ciuis Romanus occisus est*), and here it may be borne in mind that Flamininus was serving as governor of Gaul at the time of his offence and that Valerius Antias places the episode in Placentia. For by the time that the crime of Flamininus became a declamatory topic, what was once a province of the Roman empire had been fully absorbed into the Roman citizenship. A man of Novaria, Albucius Silus was alert to this point. While speaking as counsel for the defence before the proconsul Lucius Piso at a trial in another city of this region, Mediolanum, he deplored the condition of Italy and complained that it was being driven back to the form of a province, then turned to a statue of M. Brutus standing close by and called on him as the originator and defender of law and liberty. For this he nearly paid the penalty.¹¹⁶

If these three speakers escaped the worst consequences of unguarded speech, others were less fortunate. The trial of Cassius Severus for *maiestas* has already figured prominently in previous sections of this paper.¹¹⁷ This must make it all the more noteworthy that *Controuersiae* 9.2.12 quotes his contribution to the trial of Flamininus. He is in fact speaking for the prosecution and objects that it is not right for punishment to be inflicted even on a slave or a prisoner wherever or however or whenever one pleases, and that a magistrate’s involvement in such situations is to ensure right practice, not to enjoy himself (*ne de seruo quidem aut captiuo omni loco aut omni genere aut per quos libebit aut cum libebit supplicium sumi fas est, adhibeturque ad ea magistratus ob custodiam non ob laetitiam*). This contribution is cast in the form of a universalising *sententia*: it is fully relevant to what Flamininus is alleged to have done but it is put in such a way as to state a generally applicable rule. When he says that it is wrong to do otherwise even in the cases of slaves and prisoners, his phrasing appears to point to a further category of victim — free citizens — who are beginning to

¹¹³ Berton 2008: 666–7.

¹¹⁴ Syme 1958a: 388 finds the notion of C. Vibius Rufus being married to Publilia chronologically improbable, but (1978: 84–7) points to CIL XIV, 2556: *M. Publilius Publiliae et C. Vibi Rufi l. Strato* and concludes that Dio’s evidence is correct, and that C. Vibius Rufus must simply have been somewhat elderly when appointed suffect consul.

¹¹⁵ For more on this episode, see Leigh 2021: 131–2.

¹¹⁶ Suet., *Rhet.* 30.5. For the strangeness of a proconsul serving at Milan at the apparent point of the reign of Augustus (24–15 B.C.) and the possibility that this episode belongs to the triumviral period, see Kaster 1995 *ad loc.* For more on this episode, see Leigh 2021: 139–40.

¹¹⁷ See above, Section VI.

endure such arbitrary chastisement and in whose cases this will seem more patently unjust. In this declamatory *maiestas* trial, Cassius is therefore speaking for the prosecution, but this serves him as a vehicle for commentary that, in his own time, would have been even more pertinent to the experience of the accused.

Another figure whose destiny stands in stark contrast to the lucky escapes just recounted is Votienus Montanus. As the preface to *Controuersiae* 9 opens, Seneca notes that his sons have asked him to say something about this gentleman and states that he never declaimed as a training exercise, let alone for display; the surviving sections quote what Montanus said in reply to Seneca, asking him why this should be the case: declamation is about entertaining the audience, not winning your case; those trained in the declamation schools are coddled by their teachers and receive no preparation suited to the rigours of trials in the forum (9.pr.1–5).¹¹⁸ Yet elsewhere Montanus is presented as the epitome of the *scholasticus* and something of an innocent: *Controuersiae* 7.5.2 refers to the prosecution of Montanus by another declaimer, P. Vinicius, and records how, on the very same day, he observed that he had enjoyed Vinicius' delivery and even repeated the *sententiae* that his prosecutor had delivered.¹¹⁹ His end was not good. Tacitus, *Annals* 4.42 records his A.D. 25 trial and conviction on a charge of *maiestas*. The substance of Montanus' offence was to have spoken insultingly of the emperor (*ob contumelias in Caesarem dictas*); the soldier Aemilius' dutiful recitation of all that the defendant was alleged to have said so enraged Tiberius that he exclaimed that he would refute the slurs either on the spot or at trial; only the prayers of those closest to him and the flattery of all restored his equanimity.¹²⁰ Montanus died in exile on the Balearic Islands in A.D. 27.¹²¹ Once again, the historical fiction of the trial of Flamininus enters into an uncomfortable relationship with reality.

One figure more than any other quoted in *Controuersiae* 9.2 exemplifies the perils of the age.¹²² At §§ 4 and 22, Seneca quotes contributions to the prosecution from Romanus Hispo. In both, Seneca surely gives instances of what elsewhere he describes as the prosecutorial aggression of Romanus Hispo (*Controv.* 1.2.16: *accusatoria usus pugnacitate*) or of the same individual's malign and prosecutorial manner (*Controv.* 2.5.20: *maligne et accusatorie*).¹²³ Why would Seneca emphasise this particular feature of Hispo's declamations? Tacitus, *Annals* 1.74.1–2 surely supplies the answer. In what is only the third *maiestas* trial of the reign of Tiberius, he identifies Hispo as junior counsel for the prosecution and presents him as an archetype for all that was to go wrong in the coming years (1: *qui formam uitae iniit, quam postea celebrem miseriae temporum et audaciae hominum fecerunt*). Elaborating on this claim, he describes Hispo as needy, unknown, restless and adept at provoking the savagery of the emperor through secret publications (2: *nam egens ignotus inquires, dum occultis libellis saeuitiae principis adreptit*). Launching assaults on all men of the greatest distinction, he soon won influence with Tiberius and the hatred of everyone else (2: *mox clarissimo cuique periculum facessit, potentiam apud unum, odium apud omnis adeptus*). He was a prototype for all those who, following his path, made themselves rich and fearsome, and brought doom on others and finally themselves (2: *dedit exemplum, quod secuti ex pauperibus diuites, ex contemptis metuendi*

¹¹⁸ For this critique, cf. that attributed to Vipstanus Messala at Tac., *Dial.* 34–35.

¹¹⁹ For the contradiction between the attitude to declamation expressed by Votienus Montanus at Sen., *Controv.* 9.pr.1–5 and the figure that he cuts elsewhere in the *Controuersiae*, see Fairweather 1981: 47–9.

¹²⁰ For the trial of Votienus Montanus, see Seager 1972: 199–200; Levick 1999: 192–3.

¹²¹ Pauly, *RE* N.F. IX.A1.924.

¹²² For the name Romanus Hispo, see Syme 1949: 14–15; Badian 1973. The implication of Syme 1949: 14 'a delator regarded as archetypal by Tacitus' is that the clause beginning *qui formam uitae ...* refers to Hispo and not to Caepio Crispinus. Syme 1958a: 326 and n. 5 supposes the opposite but allows for the possibility that Hispo is the referent. I prefer Syme's original view, as does Goodyear 1981: 159–60. For more, see now Echavarren 2007: 234–6; Berton 2008: 625–7.

¹²³ Cf. Rivi re 2002: 86.

perniciem aliis ac postremum sibi inuenere). One may wonder whether Romanus Hispo made his contribution to the trial of Flamininus before he set out on his career of *maiestas* prosecutions or simply as a pause and a training exercise between them. Either way, there is no innocence in his shuttling between the courtrooms of the declaimers and those of the state.

VIII Conclusion

This article has sought to show quite how much *Controuersiae* 9.2 can contribute to understanding of the *maiestas* laws in the early imperial period and *vice versa*. Its claims on the attention of historians are doubtless undermined by the manifest fictionality of the trial that it stages and by the ludic attitude of the declaimers as they coin *sententiae* and invent narrative *colores*. Though the historical Flamininus never stood trial for *maiestas*, the misconduct in office that resulted in his expulsion from the senate was apt to be related to categories of misdeed eventually targeted under the *lex Cornelia maiestatis* and the *lex Iulia maiestatis*. At its heart, in the contribution to the *diuisio* of Votienus Montanus, *Controuersiae* 9.2 does contain serious reflection on the proper application of the *maiestas* laws and with it an implicit critique of the uses being made of them at the close of the reign of Augustus and under Tiberius. Moreover, the same contribution records, if only to dismiss it, a line of argument in declamation that may be related to one distinctive and concerning feature of those *maiestas* trials held from the very first years of Tiberius: not only was the Republican standing court superseded by a newly empowered senatorial court, but the range of potential defendants was expanded in the process. When the declaimers of *Controuersiae* 9.2 and 10.4 ask whether it is possible for a *priuatus* to do harm to *maiestas* or to the *res publica*, they surely have more than half an eye on the misfortunes of Falanius and Rubrius, those knights of modest standing who would never have attracted the attention of the Republican court.

Above all else, however, this paper has sought to show what can be gained from expanding our conception of the judicial spaces of Republican and early imperial Rome to take in the declamatory courtroom. It matters that the earliest available evidence for fictional *maiestas* trials stems from Cicero's *De inuentione*, a work of the 80s B.C., and it is only reasonable to conclude that those appearing in real-world Republican *maiestas* cases did so on the basis of the sort of schooling set out in Cicero's manual. By the period of the *Controuersiae*, however, one crucial change had occurred. For sure, the declamatory schools of Rome still trained youths aspiring to a career in forensic (and political) oratory; but, along with pupils and pedagogues, Seneca also records the contributions of mature adults, many of them public figures, politicians and advocates. Where the late Republican orator left the rhetorical school in order to progress to the forum, the movement between spaces in the time of Seneca was significantly less unidirectional.

One temptation is to treat the declamatory courtroom as a place apart in which criticism of the regimes of Augustus and Tiberius could find subtly mediated voice.¹²⁴ There is a place for such an approach in this paper, and it makes a difference that the figure who offers the most stimulating commentary on *maiestas* as a legal category should himself eventually have been condemned under the *lex Iulia maiestatis*. Yet for every Votienus Montanus, there was also a Romanus Hispo, and he is but one of a number of declaimers quoted in the *Controuersiae* who also earned notoriety for their vicious exploitation of the *maiestas* law. The relationship between the senatorial and the declamatory courts is not one of compromised reality on the one hand, innocent play and reflection on the other. Many a *declamator* turned *delator* and many a *delator* heading home from court will have taken time out in the schools and played the *declamator*. It is as nasty as that.

¹²⁴ Leigh 2021.

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Appendix: *maiestas* prosecutions in the Late Republic

The aim of this appendix is to document those prosecutions for *maiestas minuta* launched between the passing of the *lex Appuleia* and the outbreak of civil war in 49 B.C. and to offer support for the thesis that the law was exclusively applied to alleged misdeeds performed while the defendant was serving as a magistrate of the Roman people or as tribune of the plebs. The cases are divided by office:

(A) *Tribunes of the Plebs*:

(i) **Sextus Titius**: Jul. Obseq., p. 167.17–21 Rossbach refers to determined action taken by Sex. Titius as tr. pl. for 99 B.C. to pass an agrarian law in the face of the veto of his colleagues. This is the obvious basis for his prosecution in 98 B.C. (Cic., *Rab. Perd.* 24; Val. Max., 8.1. damn. 3 clearly distort the basis for the prosecution).

(ii) **C. Appuleius Decianus**: The trial of C. Appuleius Decianus (Cic., *Rab. Perd.* 24) almost certainly also related to his actions as tr. pl. for 99 B.C. (Schol. Bob., p. 94 Stangl). For more, see Gruen 1966: 37–8.

(iii) **C. Norbanus**: For C. Norbanus, who as tribune had used violence to see off the veto of two fellow tribunes when he sought to try Q. Servilius Caepio Senior in the *concilium plebis*, prosecuted for *maiestas* c. 95 B.C., see Cic., *De or.* 2.107, 197–204, *Part. or.* 104–105; Val. Max. 8.5.2; Bauman 1967: 45–52; Zetzel (forthcoming).

(iv) **Cn. Pomponius:** Badian 1969: 474–5 convincingly identifies the 89 B.C. prosecution of Cn. Pomponius tr. pl. 90 B.C. as being obscured by the reference at Asc. 79C to a trial of Cn. Pompeius for *maiestas* under the *lex Varia*. This view is endorsed by Marshall 1985: 273–4.

(v) **Q. Varius:** Varius was convicted ‘under his own law’ in very late 90 or early 89 B.C. (Cic., *Brut.* 304–305, *Nat. D.* 3.81; Val. Max. 8.6.4), for offences committed during his tribunate of late 91 to late 90 B.C.

(vi) **C. Cornelius:** For C. Cornelius, who as tribune in 67 B.C. had ignored the veto of his fellow tribune P. Servilius Globulus and was twice tried in 66 and 65 B.C., see Asc. 60–62C; Bauman 1967: 71–5.

(vii) **C. Manilius:** For C. Manilius, tr. pl. 66 B.C. prosecuted in 65 B.C. by Cn. Minucius, see Schol. Bob., 73.25–24.3 Hildebrandt; the connection between the violence of the tribunate and the subsequent prosecution for *maiestas* is evident.

(B) Quaestors:

(i) **Q. Servilius Caepio jun.:** For Q. Servilius Caepio jun. tried for *maiestas* in 95 B.C. on the grounds of the violence with which, as urban quaestor for 103 or 100 B.C., he had resisted the efforts of Saturninus to pass a grain law, see *Rhet. Her.* 1.21, 2.17; cf. Sall., *Hist.* 1 fr. 62 Maurenbrecher; Bauman 1967: 39–40, 46–7.

(ii) **C. Aelius Paetus Staienus:** For C. Aelius Paetus Staienus, quaestor for 77 B.C., and tried between 74 and 70 B.C., for military sedition, see Cic., *Clu.* 99; Bauman 1967: 80–1.

(C) Proconsuls:

(i) **A. Gabinius:** For the 54 B.C. prosecution of A. Gabinius, for unauthorised campaigning in Egypt and the refusal to hand over his province to his successor, see Cass. Dio 39.55.3–4, 39.60.4, 39.62.2; Bauman 1967: 76–7.

(ii) **C. Antonius:** For the possibility that the 59 B.C. prosecution of C. Antonius was for *maiestas* either on account of his alleged role in the Catilinarian conspiracy or his incompetent 62 B.C. proconsulship in Macedonia, see Pauly, *RE* I.2580–2582. There is no definite evidence to support this claim.

(iii) **Ap. Claudius Pulcher:** For the hypothesis that P. Cornelius Dolabella’s 50 B.C. prosecution of Ap. Claudius Pulcher, proconsul of Cilicia 53–51 B.C., was for *maiestas* on the grounds that the defendant had left for his province without waiting for the passing of the *lex curiata*, see Bauman 1967: 79; Shackleton Bailey 1977: 375.

(D) Uncertain but senatorial rank:

(i) **M. Atilius Bulbus:** Pauly, *RE* II.2078–2079 cites Cic., *Verr.* 1.39, which refers to the conviction for *maiestas* of M. Atilius and alleges that as a member of a senatorial jury he took bribes. Cf. Cic., *Clu.* 97 on M. Atilius Bulbus, who was bribed as a juror in the 74 B.C. trial of Oppianicus, but was also later condemned for *maiestas* for instigating *sedition militaris* in Illyricum.