ROMAN LADIES ON TRIAL: THE CASE OF MAESIA OF SENTINUM

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MAESIA OF THE UMBRIAN city of Sentinum makes her sole appearance in history as the heroine of a brief anecdote relayed by Valerius Maximus. Brought to trial before the praetor L. Titius, she presumes to defend herself and her courage and rhetorical virtuosity win her an almost unanimous vote for acquittal. However, her very triumph in this male forum also earns her the nickname of *Androgyne* which satirizes her usurpation of the male role in court. The large audience drawn to the occasion is further noted as a measure of its unusual nature:

Maesia Sentinas rea causam suam L. Titio praetore iudicium cogente maximo populi concursu egit modosque omnes ac numeros defensionis non solum diligenter, sed etiam fortiter executa, et prima actione et paene cunctis sententiis liberata est. quam, quia sub specie feminae virilem animum gerebat, Androgynen appellabant.[1]

The following will be referred to by author's name only: F. d. M. Avonzo, *La funzione giurisdizionale del Senato Romano* (Milan 1957); R. A. Bauman, "Criminal Prosecutions by the Aediles," *Latomus* 33 (1974) 245–264; J. Bleicken, *Senatsgericht und Kaisergericht* (Göttingen 1962); T. R. S. Broughton, *The Magistrates of the Roman Republic* (New York and Atlanta 1951–1986); E. Costa, *Cicerone giureconsulto* (Bologna 1927); J. F. Gardner, *Women in Roman Law and Society* (London 1986); P. Garnsey, *Social Status and Legal Privilege in the Roman Empire* (Oxford 1970); A. H. J. Greenidge, *The Legal Procedure of Cicero's Time* (Oxford 1901); Cl. Herrmann, *Le rôle judiciaire et politique des femmes sous la république romaine* (Brussels 1964); A. H. M. Jones, *The Criminal Courts of the Roman Republic and Principate* (Oxford 1972); W. Kunkel, *Untersuchungen zur Entwicklung des römischen Kriminalverfahrens in vorsullanischer Zeit* (Munich 1962), hereafter cited as Kunkel (1962); W. Kunkel, *Über die Entstehung des Senatsgericht* (Munich 1969), hereafter cited as Kunkel (1969); W. Kunkel, *Kleine Schriften* (Weimar 1974), hereafter cited as Kunkel (1974); A. J. Marshall, "Ladies at Law: The Role of Women in the Roman Civil Courts," *Latomus* 206 (1989) 35–54; Th. Mommsen, *Römisches Strafrecht* (Leipzig 1899), hereafter cited as Mommsen (1899); *idem*, *Römisches Staatsrecht*[3] (Leipzig 1887–1888), hereafter cited as Mommsen (1888); L. Peppe, *Posizione giuridica e ruolo sociale della donna romana in età repubblicana* (Milan 1984); S. B. Pomeroy, *Goddesses, Whores, Wives and Slaves* (New York 1975); R. S. Rogers, *Criminal Trials and Criminal Legislation under Tiberius* (Middletown 1935); G. Rotondi, *Leges publicae populi romani* (Milan 1922); J. L. Strachan-Davidson, *Problems of the Roman Criminal Law* (Oxford 1912); R. J. A. Talbert, *The Senate of Imperial Rome* (Princeton 1984); E. Volterra, "Il preteso tribunale domestico in diritto romano," *RISG* 85 (1948) 103–153.

[1] Val. Max. 8.3.1, text as established by C. Kempf in the second Teubner edition of the *Factorum et Dictorum Memorabilium libri ix* (Leipzig 1888). The reading *Sentinas* is

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The praetor named is of uncertain date and cannot be identified with assurance, but he is probably to be assigned to the first half of the first century B.C.[2] Maesia gains admission to Valerius Maximus' work under the rubric *quae mulieres apud magistratus pro se aut pro aliis causas egerunt*, as a striking object-lesson of abandonment of womanly decorum and breach of the taboo on self-representation in court by women. Despite some grudging admiration for her rhetorical expertise (apparently shared by the jurors), the author appears to endorse this censure by recording the nickname indicating her "manliness."[3] He does not explain the absence of a male orator or directly state that this unusual arrangement was Maesia's own choice. But her educational level indicates that she came from a social level in which she could normally expect to call upon able male supporters, so that the lack of male assistance, if not deliberate, suggests the context of social and

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disputed, but her comparatively infrequent name is attested at Sentinum in *CIL* XI 5783. Cf. also *CIL* III 3535, 5366; VI.3 21808. For the connotations of the term "androgynos" in its literal sense, see, e.g., Cic. *Div.* 1.98; Lucr. 5.839; Livy 27.11.4; Gell. *NA* 9.4.16.

[2]Cf. T. R. S. Broughton, 2.466, 626. F. Münzer, "Titius," *RE* 6A. 2 (1937) 1558 no. 14, identifies him as probably father of the consul of 31 B.C. (on whom see Broughton, 3.206). E. S. Gruen, *The Last Generation of the Roman Republic* (Berkeley 1974) 171, 177, 511, suggests that he may be father of the praetor of 50 B.C. D. R. Shackleton-Bailey, *Cicero: Epistulae ad Familiares* (Cambridge 1977) 2.533, further identifies the Titius of Cic. *Fam.* 10.21.3 with L. Titius, father of the consul of 31 B.C. M. F. Lefkowitz and M. Fant, *Women in Greece and Rome* (Toronto and Sarasota 1977) 150, do not explain their assurance in dating this praetor to 77 B.C. It is amusing to note that the magistrate who had to maintain his dignity while confronting the unruly Maesia could also be the praetor described in Pliny *HN* 31.8.11 as having the face of a marble statue.

[3]Ulp., *Dig.* 3.1.1.5 stigmatizes court-room appearance by women as *contra pudicitiam sexui congruentem*. For the referents of the terms *modosque omnes ac numeros* in rhetorical prose-rhythm, see Cic. *Brut.* 32; *Orator* 198; *De Orat.* 1.70, 1.151, 1.254, 3.184–186; *Inv.* 1.49; Quint. *Inst.* 9.4.45–46; Hor. *Epist.* 2.2.144. Such rhetorical expertise indicates that Maesia was well-educated, or at least had familiarity with formal rhetoric at the same level as her (nowadays) more celebrated sisters Hortensia and Laelia, for male approbation of whose oratorical ability see Cic. *Brut.* 101, 211; Quint. *Inst.* 1.1.6; App. *BC* 4.32.136–34.146; Val. Max. 8.3.3. For the stereotypical assumption that Roman women were normally too ignorant of the law and too weak for court-room activities, see, e.g., Ulp. XI.1, *De Tutelis, ... et propter sexus infirmitatem et propter forensium rerum ignorantiam*; Papin., *Dig.* 22.6.8., *iuris error*; Paulus, *Dig.* 22.6.9. pr., *sexus infirmitas* and *iuris ignorantia*; *CJ* 1.18.10 (to Amphia, A.D. 294), *ius ignorans*; *Dig.* 48.5.39(38).4, *mulieres in iure errantes*; Paulus, *Dig.* 2.8.8.2, *imperitia*. Cf. J. Beaucamp, "Le vocabulaire de la faiblesse feminine dans les textes juridiques romains du troisième au quatrième siècle," *Rev. Hist. de droit Fr. et Étr.* 54 (1976) 485–508; S. Dixon, "*Infirmitas sexus*: Womanly Weakness in Roman Law," *Tijd.v.Rechtsgesch.* 52 (1984) 343–371; J. A. Crook, "Feminine Inadequacy and the *Senatusconsultum Velleianum*," in B. Rawson (ed.), *The Family in Ancient Rome* (London 1986) 83–92. But Cic. *De Orat.* 2.142 shows Republican women questioning jurists on points of law, including criminal law.

political dislocation which may also account for the unrepresented appearance of Afrania (heroine of the twin court-room drama in Val. Max. 8.3.2) before a civil court.[4]

But the narrative indicates that the taboo breached was a social one, and no legal impropriety is noted in either the procedure of the trial or the favourable verdict. The derisive soubriquet given to Maesia satirizes only her usurpation of the male role in the court-room, and the passage does not indicate that Maesia's situation as defendant before a public court was in itself either improper or unusual. Valerius Maximus uses language expressive of moral, rather than legal, censure of her conduct, and the reader's attention is directed to the unusual nature of Maesia's self-representation and her surprising level of competence. Although no external evidence is on hand as to the historicity of this episode, Valerius Maximus' narrative need not be held suspect as a mere moralising fiction. His sources here may well derive from the collections of actual court-decisions which were compiled by orators as a source of precedents in the late Republic, and the identification of the praetor by praenomen and nomen indicates a genuine case culled from a detailed source.[5] Moreover, the three items presented under the overall rubric of 8.3 to illustrate the unnatural brazenness of women who spoke in public are not lumped together in any vague, generic fashion but are differentiated by their occasion and formal setting. Most notably, as will be seen, Maesia's case is presented as a formal criminal proceeding, as distinct from the civil suits in which her fellow "reprobate" Afrania spoke.[6] The detail of her virtuosity in rhetorical *modi* and *numeri* also suggests that a record of an individual historical event lies behind the story.

[4]For an examination of the possibly unusual social context of Afrania's case, see Marshall 43–47. For brief historical comment on Maesia, see F. Münzer, "Maesia," *RE* 14.1 (1928) 282 no. 10; Herrmann 100–101. Greenidge (370) suggests that it would be chiefly women of the lower classes or disreputable professions who would normally be subject to public trial.

[5]So F. Schulz, *History of Roman Legal Science*[2] (Oxford 1953) 93; A. Watson, *Law Making in the Later Roman Republic* (Oxford 1974) 172. Cf. B. A. Marshall, *A Historical Commentary on Asconius* (Columbia, Miss. 1985) 41, 55–57, for recording of judicial proceedings prior to 59 B.C. For Valerius Maximus' limitations as a historical source, see R. Helm, "Valerius Maximus," *RE* 8.1 (1955) 90–116, at 100–114. Legal sources are not illuminated by C. Bosch, *Die Quellen des Valerius Maximus* (Stuttgart 1929), or A. Ramelli, "Le fonti di Valerio Massimo," *Athenaeum* 14 (1936) 117–152. G. Maslakov, "Valerius Maximus and Roman Historiography. A Study of the *exempla* Tradition," *ANRW* II 32.1 (1984) 437–496, provides a helpful survey but does not discuss Val. Max. 8.3.

[6]For the civil nature of Afrania's suits, indicated by the phrase (Val. Max. 8.3.2) *ad lites contrahendas*, see Marshall 43–44. Cf. L. Labruna, "Un editto per Carfania?," *Synteleia Arangio-Ruiz* 1 (Naples 1964) 415–420. Hortensia, subject of the third portrait in Valerius Maximus' triptych of lady orators (8.3.3), does not speak in a judicial setting.

The passage under discussion presents no surprises as to the taboo which was broken, a taboo firmly underscored in Valerius Maximus' vocabulary by such potent value-terms as *pudor* and *pudicitia*. The introductory sentence which prefaces the narrative of Maesia is also replete with significant value terms: *ne de his quidem feminis tacendum est, quas condicio naturae et verecundia stolae ut in foro et iudiciis tacerent cohibere non valuit.*[7] Roman readers will doubtless have felt the rebuke to be richly deserved. But Maesia does not also deserve the disregard shown by the minor and perfunctory appearances allowed her in modern discussions of Roman women. Indeed, the challenge of dating the otherwise unattested praetorship of her judge L. Titius seems to have drawn more attention than Maesia's own case history. Most discussions are content simply to list the episode without analysis, with a summary treatment considered suitable for the brevity of the text, and her triumph is summarized *en passant* as a preface to the longer story of Afrania retailed by Valerius Maximus in the following paragraph. For Afrania's story contains at least one secure dating reference and has the added lure of a linkage with legal scholarship through a celebrated passage in the *Digest* which records how women came to be debarred from acting as legal representatives.[8] In place of detailed discussion we find Maesia's experience set as an incidental detail in broad historical panoramas depicting the march of "emancipation."[9] Occasionally Maesia is also to be glimpsed in the setting of more focussed narratives of the failure of the Roman woman's supposed ambi-

[7]Livy 34.1.5 similarly censures female agitation for repeal of the lex Oppia as a breach of *verecundia*. Cf. Val. Max. 3.8.6, *prisca consuetudo, verecundia*; Ulp., *Dig.* 3.1.1.5, *pudicitia*; *CJ* 8.37.14.1 (A.D. 531), *naturalis pudor*; Just. *Inst.* 1.26.3, *sexus verecundia*. The chronological range of these texts indicates the longevity of the taboo. Its antiquity is suggested by Plut. *Comp. Lyc. et Num.* 3.6, where a woman's pleading of her own suit in the forum is said to occasion consultation of an oracle by an astonished Senate. It is significant that a proposal to speak for herself in a court setting is attributed to a woman by Propertius for poetic effect: see 4.11.27 and 99, where Cornelia boldly intends to plead her own suit before the bar of Hades.

[8]See Münzer (above, n. 4) for a brief listing without analysis. Peppe 133, n. 161, mentions Maesia *en passant* without discussion, despite extensive treatment of women's legal position in 17–50, 70–72, 112–127, 134. Maesia finds no mention in the studies by S. Dixon (above, n. 3), and G. Fau, *L'Émancipation féminine dans la Rome antique* (Paris 1978). Despite his important discussion of women's rights under Roman criminal law, Maesia's case is omitted also in Kunkel (1962) 26–27, 49. Labruna (above, n. 5) 418 refers to Maesia briefly as incidental to the tale of Afrania.

[9]For Maesia as a minor curiosity in narratives of women's "emancipation," see the classic works of J. Chauvin, *Étude historique sur les professions accessibles aux femmes* (Paris 1892) 69; J. Donaldson, *Woman: Her Position and Influence in Ancient Greece and Rome, and among the Early Christians* (London 1907) 125. Herrmann's cursory treatment (100–101) is presented from the general perspective of a persistent drive for emancipation by Roman women.

tion to secure the right to careers in advocacy, although the reader may well question the judgement shown in selecting as evidence for such ambitions a case in which a woman is herself the defendant on a criminal charge.[10] At all events, Maesia has not been ranked as a heroine with Hortensia, Turia, or even Afrania, and the standard *exempla* of women who show timely eloquence under duress in court-room settings tend to be heroines of senatorial trials such as the courageous Fannia (Pliny *Ep.* 7.19.5).[11]

If Maesia richly earned her notoriety in a man's world by her defiantly "manly" conduct in court, she does not deserve neglect in the annals of social and legal history. I will argue that her true importance does not lie in any supposed attempt to launch a legal career, since it is inconceivable that she would have sought criminal prosecution to achieve that. Nor is her significance limited to exemplification of male moralizing about "unnatural" women. Rather, her case may also be seen as a challenge to the prevailing axiom that women, like slaves, could not be tried before any of the criminal *quaestiones* of the late Republic.[12] This axiom is open to challenge on the point of servile liability, but it has not yet been fully tested as to women's standing.[13] Nor has the relevance of Maesia's case to this question been appreciated. But the question is one of importance since the answer to it will prove formative in reconstructing the role of Roman women as active participants in, rather than as passive objects of, the legal system. The case of Maesia, therefore, merits particular attention if it challenges the principle of women's exclusion from the *quaestio* system. That women were liable for trial for criminal offences before a *iudicium publicum* during Valerius Maximus' own lifetime may be inferred from the *senatusconsultum* of A.D. 19 which forbade senators to marry or retain as a wife a woman

[10]For Maesia as an unremarkable detail of the struggle for women's admission to the legal profession, see F. F. Abbott, *Society and Politics in Ancient Rome* (London 1912) 84–85; D. Daube, *Civil Disobedience in Antiquity* (Edinburgh 1972) 25. Pomeroy 175 lists her summarily to illustrate the rare phenomenon of female orators, and dwells on the star performance of Hortensia. Lefkowitz and Fant (above, n. 2) 223 cite her to illustrate their phantom category "lawyers, female."

[11]On the brave Fannia see Avonzo (112), who classes her as just a witness. Talbert 486 notes that it is not clear whether she spoke as witness or as an accomplice on trial herself. But her subsequent banishment suggests the latter.

[12]See especially Costa 2.121–122, dismissing the statement of Cic. *Cluent.* 148, *omnes viri, mulieres, liberi, servi in iudicium vocantur* (which apparently states that women were liable under the terms of the *Lex Cornelia de sicariis et veneficis*), as "un' iperbole." Costa reaffirms the fundamental rule that only free men and male citizens could be tried before a *quaestio* at that date. He does not note or examine the case of Maesia. This rule has now been enshrined by B. Nicholas and A. Berger in *The Oxford Classical Dictionary*[2] (Oxford 1970) 588.

[13]See A. Watson, *Roman Slave Law* (Baltimore 1987) 129–133; K. R. Bradley, *Slaves and Masters in the Roman Empire* (New York and Oxford 1987) 129–130.

convicted before such a court.[14] It is also beyond dispute that, at least for women of the upper class, trial before the Senate had become a possibility by the reign of Tiberius.[15] Must we assume some radical change from the practice of the late Republic in the matter of women's standing before the *publica iudicia*?

Closer examination of the description of Maesia's trial yields clues which show it to be an accurate outline sketch of a criminal procedure. Although the passage contains no explicit identification of the court which tried her and the charge itself is not specified, the vocabulary contains significant details.[16] The designation of Maesia as *rea*, the conduct of the proceedings before a praetor, the reference to a *prima actio*, and her acquittal (*liberata est*) by a majority vote (*sententiae*) are features which establish that a criminal procedure is being described rather than the civil procedure envisaged in the twin vignette concerning Afrania.[17] It may be objected that

[14]Ulp., *Dig.* 23.2.43.10–13 (dated to A.D. 19 by Talbert 44, 450), esp. *senatus censuit non conveniens esse ulli senatori uxorem ducere aut retinere damnatam publico iudicio* .... The *iudicium* in question here cannot be solely that established by the *lex Iulia de adulteriis coercendis* since this law had already mandated divorce of the offending wife and stigmatized her remarriage with a free-born Roman after conviction for adultery (Rotondi 445–447). Cf. Ulp. *Reg.* 13.2 for the barring of *ingenui* from marrying a woman *iudicio publico damnatam* or a *senatu damnatam*.

[15]For trials of women before the Tiberian Senate on such charges as *repetundae*, *maiestas*, *falsum*, and *iniuria*, see Rogers 206–214; Garnsey 24–37; Bleicken 47–60, 158–166; Avonzo 76; Kunkel (1969) 39–48; Talbert 466–468. Cf. A. H. M. Jones, *Studies in Roman Government and Law* (Oxford 1960) 83–87; B. Walker, *The Annals of Tacitus*[2] (Manchester 1960) 263–269. For the continuing jurisdiction of criminal *quaestiones* over the great majority of women defendants under the Principate, and reservation of trial before the Senate for crimes of the elite or crimes having political significance, see Garnsey 24–27, 33, with comment by P. A. Brunt, *JRS* 62 (1972) 166–170, at 168 (book-review).

[16]Herrmann 100–101 speculates that Maesia was on trial for adultery, but the existence of a Sullan law *de adulteriis et de pudicitia* is justly doubted by Gardner 127, and Kunkel (1974) 62. It is listed tentatively in Rotondi 359 on the slender evidence of Plut. *Comp. Lys. et Sull.* 3.2.

[17]See especially Jones 27–28, 45, 58–59, and 71, for presidency of some courts by the praetor himself instead of a *iudex quaestionis*, division into *actiones*, and use of voting, in the Sullan *quaestio* procedure of the first century B.C. Val. Max. does not use the word *quaestio*, and refers to the proceedings as a *iudicium*, but as Jones shows (45–46) proceedings before a criminal *quaestio* under the Sullan founding legislation were properly designated as a *iudicium publicum*. Macer, *Dig.* 48.1.1, defines *iudicia publica* as those proceedings *quae ex legibus iudiciorum publicorum veniunt*; his examples include, with Pompeian and Julian laws, the *lex Cornelia de sicariis et veneficis* and the *lex Cornelia de testamentis*. Cf. also Ulp., *Dig.* 23.2.43.10; Pomponius, *Dig.* 48.2.1; Papin., *Dig.* 48.2.2. A woman charged before a standing *quaestio* is also described as *rea* in Ulp., *Dig.* 48.1.3 (under the rubric *De publicis iudiciis*). For the Sullan *quaestio* system, see further Kunkel (1974) 56–67; *idem*, "Quaestio," *RE* 24.1 (1963) 719–786, esp. 740–768. Kunkel (1962) 49 vigorously attacks Mommsen's view that the consuls alone exercised criminal jurisdiction over women.

the omission in her trial of *comperendinatio*, or mandatory adjournment for a second *actio*, casts doubt on the historicity of the account, since this requirement would have made a verdict at the end of the *prima actio* a procedural impossibility.[18] However, *comperendinatio* is only directly attested as standard procedure for *repetundae* trials, and there is no positive evidence that it extended to all the other *quaestiones* established under Sullan legislation.[19] Moreover, the survival of *ampliatio*, or optional adjournment to allow a second *actio* to reexamine the evidence only if no verdict could be reached in the first *actio*, can be shown to be more than just a theoretical possibility for some other *quaestiones* during the period subsequent to the introduction of *comperendinatio*. For Cicero (*Caec.* 29) refers to *ampliatio* as a procedural possibility (*et potestas esset ampliandi*) during a trial described as having been held before a *publica quaestio*. Since the *Albianum iudicium* to which Cicero here refers is the trial of Albius Oppianicus in 74 B.C. before the *quaestio de sicariis et veneficis*, we may infer that *comperendinatio* had not been made obligatory for all criminal *quaestiones* as a consequence of Glaucia's law. If so, Valerius Maximus' report of Maesia's acquittal after only the *prima actio* may be accepted as procedurally possible for a *quaestio* other than that for *repetundae*.[20]

Can we proceed to identify the particular *quaestio* which provides the setting for Maesia's triumph? Here the inquiry must take account of a major limiting factor in our evidence for the operation of the criminal law. Since the *crimina* attested as having been brought before the *quaestiones* mostly involve offences against the state of a public or political nature, and were regularly brought as initiatives important for political careers, women are far less likely than men to be reported as either plaintiffs or defendants from the simple fact of their exclusion from public and political life.[21] Our literary

[18]For *comperendinatio*, also *ampliatio*, see Ps.-Asconius, 230–231 (Stangl); Strachan-Davidson 2.114; Costa 2.149–150; Hartmann, "Ampliatio," *RE* 1 (1894) 1979–1980; Th. Kipp, "Comperendinatio," *RE* 4 (1901) 788–791; J. P. V. D. Balsdon, "The History of the Extortion Court at Rome 123–70 B.C.," *PBSR* 14 (1938) 98–114, esp. 108 f. For the relevant consequences of the *lex Servilia Glauciae* of 101 B.C., see Cic. *Verr.* 2.1.26: *antea vel iudicari primo poterat vel amplius pronuntiari* (referring to the period prior to this *lex*).

[19]Jones 71 notes the meagreness of the evidence and is only prepared to infer that it would be rash to exclude the possibility of the extension of *comperendinatio* to trials other than those for *repetundae*. Kipp (above, n. 18) 790 cautions that it cannot be proved that *comperendinatio* extended beyond *repetundae* trials after Glaucia's law.

[20]Cf. Balsdon (above, n. 18, 111), who claims that while it is probable that *ampliatio* survived Glaucia's introduction of formal *comperendinatio*, this "cannot be proved by definite evidence"; also Greenidge 499, "We know, in fact, of no criminal case of his [Cicero's] time in which the *ampliatio* was resorted to." True, but hardly conclusive against Cicero's testimony as to its availability as an option. For the trial of Albius Oppianicus, see D. Stockton, *Cicero: A Political Biography* (Oxford 1971) 16, 61; Broughton 2.102.

[21]This limiting factor is not recognized in Costa's treatment (above, n. 12). For

evidence for the first century B.C. accordingly tends to portray criminal *quaestiones* mainly as political battlefields for senatorial males.[22] Hence a particular danger in using the argument from silence in debating women's formal liability to the *quaestiones*. But it must be conceded that Roman social conventions probably rendered potential prosecutors more reluctant to indict women than men in this public forum even if women were legally eligible for such treatment. Such reluctance to prosecute women would doubtless be most keenly felt among the very senatorial class males who attract attention in the literary evidence, and would be especially strong in the case of "domestic" crimes perpetrated by close female relatives.[23] If it may be presumed that the typical criminal offence committed by a woman would, because of her exclusion from public life, probably comprise non-political crimes such as poison or *falsum*, which could be committed in a domestic setting, the woman's natural accusers, normally her own male relatives, would as a rule be concerned to avoid so far as possible the open scandal attaching to a charge before a public tribunal under the Cornelian laws *de sicariis et veneficis* or *testamentaria nummaria*. Since under the *quaestio* system a willing accuser was essential for the activation of the proceedings, the factor of social restraint would indeed function as a powerful limiting factor to discourage the regular appearance of women in court.

However, these considerations relate to the social context of the operation of the *quaestiones* and they are not in themselves conclusive for the question of women's formal and legal liability to stand trial before the courts. Even though social inhibitions and the wish to avoid the scandal of public trial may well have resulted in a continuing male preference during the late Republic for domestic tribunals as the proper forum for punishment of female relatives, especially among the educated class to which Maesia clearly belonged, Valerius Maximus need not be judged implausible or unhistorical in pitting Maesia against a praetor's court. For there is no firm evidence to support the assumption that *hausgericht* by family *consilia* remained during this period the primary, still less the exclusive, procedure for women's offences. Not only is punishment of women by state authority attested well before this period, without mention in our sources of any prior or necessary role played by a family tribunal,[24] but family trial was evidently fading into

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formal exclusion of women from public life and consequent limitation of their right to prosecute others, see Ulp., *Dig.* 50.17.2 pr.; Mommsen (1899) 369.

[22]E. S. Gruen's study of this topic, *Roman Politics and the Criminal Courts, 149–78 B.C.* (Cambridge, Mass. 1968), lists no women as principals in the criminal trials examined.

[23]Cf. Greenidge 370–371; Kunkel (1962) 27; *idem* (1974) 137.

[24]There is no indication that the family played any role in the public procedures described in Livy 10.31.9 (295 B.C.), 25.2.9 (213 B.C.), 40.37.5–7 (180 B.C.); Val. Max.

desuetude by the early first century A.D.[25] It had, moreover, more probably been permitted in selected circumstances by delegation of state authority than generally exercised as the primary jurisdiction by the family in its own right.[26] It is also plausible to suppose that by the first century B.C. the prevalence of marriage *sine manu* had allowed the more discreet option of unilateral repudiation by the husband in cases of serious offences committed in a domestic context (cf. Greenidge 371).

Public trial for women would, in any case, be no novelty in Maesia's day since their offences had already been placed potentially in the public domain by varied liability to trial on criminal charges before aedile, praetor or consul. During the third and second centuries, women had been accused *apud*

5.4.7. The family also plays no regular or necessary role in the procedures described by Tacitus, *Ann.* 3.10, 23, 36; 4.20, 22, 42, 52; 5.3; 6.10, 18, 26, 47, 49; 12.22, 52, 65; 16.33. Cf. Rogers 27–28, 42–57, 75–78, 150–151, 206–214; Peppe 118–127. For argument that women were not solely under family jurisdiction, and that the state held jurisdiction over women in its own right by the later Republic, see Mommsen (1888) 2.54–55, 492; Greenidge 340–341, 370–371; Strachan-Davidson 1.32–35 (arguing for the family as executing by delegation the prior judgement of the state); Kunkel (1962) 26–27, 49 (arguing strongly that the state-run poison cases directly refute any notion that women were exclusively under house-jurisdiction even in the fourth century B.C.); *idem* (1974) 117–149, esp. 136–137 (arguing that women *sui iuris* were not liable to *hausgericht*). The possibilities for crime within families are luridly illustrated by *CJ* 9.1.14 (A.D. 294), where a woman intends to prosecute her own son for attempted murder before a governor; *CJ* 9.1.18 (A.D. 304) where a man proposes to charge his own sister before a governor; Modest., *Dig.* 49.14.9, where a woman is accused of poisoning by her sister-in-law.

[25]Suet. *Tib.* 35, *matronas prostratae pudicitiae, quibus accusator publicus deesset, ut propinqui more maiorum de communi sententia coercerent auctor fuit*, implies primacy of public procedure, delegation to the family as a state option to avoid procedural difficulties or scandal, and revival of an obsolescent procedure. Presumably such delegation was not normally granted if a public prosecutor presented himself. In Tac. *Ann.* 2.50, Tiberius intervenes to request (for Appuleia Varilla, guilty of adultery) *ut exemplo maiorum propinquis suis ultra ducentesimum lapidem removeretur*. In Tac. *Ann.* 13.32, referral of a charge of *superstitio externa* against Pomponia Graecina to family trial is similarly termed *priscum institutum*. Cf. Talbert 479, 483; P. E. Corbett, *The Roman Law of Marriage* (Oxford 1930) 134–135.

[26]Special delegation to domestic procedure of punishment for public crimes is seen as early as 186 B.C. in Livy 39.18. Volterra argues persuasively that no public crime was regularly reserved to domestic jurisdiction, which operated only if there was no relevant law or by delegation from state authority, and that the family held no power of jurisdiction parallel to and recognized by the state. S. B. Pomeroy's spirited counter-attack, in "The Relationship of the Married Woman to her Blood Relatives in Rome," *Anc. Soc.* 7 (1976) 215–227, asserts that family trials continued to be the regular and primary procedure, but her argument involves the sweeping and *a priori* assumption that all the main attested cases of state trial of women should be categorized as exceptions due to extraordinary circumstances. Pomeroy does not deal with the evidence for obsolescence of *hausgericht*.

populum by the aediles themselves on charges of *stuprum* or *maiestas*.[27] The lurid episodes of the mass trials for poisoning, related by Livy with such gusto, had also seen women arraigned *en masse* by the praetors before inquisitorial *quaestiones extraordinariae* which could and did subject them to capital punishment. Although such emergency tribunals, set up amid public panic to deal with large groups of defendants, should not be taken as typical procedures for criminal offences by women of that period, they do establish the principle of women's direct liability to trial by state authority.[28] Evidence indicating that women might also be haled before the regular criminal courts is not entirely lacking for the Republican period.[29] Moreover, the fuller legal evidence for the Principate establishes that by this period women were certainly considered capable of, and formally charged with, at least some of the major offences defined under the *leges Corneliae*. These include poisoning,[30] stereotypically represented as a crime to which

[27]See Strachan-Davidson 1.142; Mommsen (1888) 2.1.483, 492; Gardner 122–123; Peppe 118–127; Bauman 245–264; Greenidge 340–341; G. W. Botsford, *The Roman Assemblies* (New York 1909) 326.

[28]For *Giftmordprozesse* dating from the late fourth to the second century B.C., see Mommsen (1899) 143; Kunkel (1962) 26–27, 49 (vigorously attacking Mommsen's theory that the praetors conducted these trials only as the consuls' delegates); Bauman 256 (arguing that aediles might also preside over these proceedings). The defendants on some occasions included men (Livy 40.43.2–3).

[29]See Val. Max. 6.3.8 and Livy *Ep.* 48 for a possible prosecution of widows of *viri consulares* for *venenum* before an unspecified *publica quaestio*. Cf. Mommsen (1899) 143; Strachan-Davidson 1.34; Kunkel (1962) 27; Bauman 256; Volterra 127. The 180 B.C. trial of Quarta Hostilia for poisoning (Livy 40.37.5–7) implies procedure before a special *quaestio* under a praetor. No safe inference can be drawn from Val. Max. 5.4.7, an undated lactation myth involving a woman condemned by a praetor and his *consilium* to death by strangulation by the public *triumvir*, in view of the story's lurid and moralizing focus. Mommsen (1899) 143 doubts its historicity. Kunkel (1962) 49 has more faith in this "rührende Erzählung" but notes that it cannot be securely dated. *Pace* J. W. Crawford, *M. Tullius Cicero: The Lost and Unpublished Orations* (Göttingen 1984) 35–36, Curio's presumably humorous attribution of his memory lapse in court to potions and spells of the litigant Titinia (Cic. *Brut.* 217; *Orator* 129, referring to *iudicium privatum* and *causa privata*) hardly suffices to establish that she was actually on trial for murder under the *lex Cornelia de sicariis et veneficis*; nor is it even clear that Titinia was the "defendant."

[30]Women's liability for *veneficium*: Tac. *Ann.* 12.66; *CJ* 9.41.3 (A.D. 216); Modest., *Dig.* 49.14.9. Tac. *Ann.* 3.22, 4.52, records trials of women before the Senate for poisoning. Marc., *Dig.* 48.8.3.2 and Ulp., *Dig.* 48.8.8 refer to women as having been made specifically liable under the *lex Cornelia de sicariis et veneficis*, by *senatusconsulta* subsequent to the *lex*, for offences (presumably newly defined) such as lethal administration of fertility potions or abortion by self-inflicted violence. For this *lex* and the Senate's decree, see Rotondi 356–357; Kunkel (1974) 57–58; Talbert 455 no. 192. Cf. A. N. Sherwin-White's comments in *JRS* 53 (1963) 203–205 (book-review), at 203, on the Senate's role as interpreter of the application of *leges publicae* to particular cases. For women's general liability to the *quaestiones* under the Principate, see Ulp., *Dig.* 48.1.3 (under the

women were prone,[31] *falsum*,[32] and *repetundae*.[33] The rescripts which address points of criminal law in response to women's inquiries further demonstrate the level of women's concern for and involvement in this area of the law as both prosecutors and defendants.[34] Of course, by this period the Julian laws of 18 B.C. had also rendered women liable to a new criminal *quaestio* probably unknown in the first century B.C.[35] It may be concluded that, however reluctant men may have been to prosecute their own female relatives in a public court, there is no good reason to doubt that women were liable to trial in this forum if a willing prosecutor, related or not, presented himself before the praetor. The "scandal factor" and male preference for trial *intra parietes* would in any case only have deterred such prosecutions between members of the same family unit.

Even though we lack the evidence required to identify the particular *quaestio* which tried Maesia, we may proceed on the assumption that her accuser was more likely to be a non-relative than a relative. How then did the accusation arise? The question invites a further attempt to reconstruct the social and political context of her ordeal. The readiness of a male citizen to accuse a woman of Maesia's social standing before a *quaestio* indicates an unusual historical context. Equally, for all Maesia's own self-reliance and oratorical competence, the absence of a male relative to serve as her

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rubric *De publicis iudiciis*): *publica accusatio reo vel rea ante defunctis permittitur*; Ulp. *Reg.* 13.2, *ingenui* forbidden to marry a woman either *iudicio publico damnatam* or *a senatu damnatam*. Ulp., *Dig.* 23.2.43.10–13 (cited above, n. 14) shows that women, including senators' wives, could then be condemned in a *publicum iudicium*.

[31]See, e.g., Juv. *Sat.* 1.70–73; 6.629–633; Tac. *Ann.* 2.71 (poisoning as *muliebris fraus*), 74.2; 3.7; 12.66; Suet. *Nero* 33; Cass. Dio 61.34.2; Seneca *Contr.* 9.5.15; Tibullus 2.4.55–60; Jerome *Ep.* 54.15 *ad fin.*

[32]Women's liability for *falsum*: Macer, *Dig.* 48.2.11. Cf. Rotondi 356–357; Kunkel (1974) 58–59. For trials before the Senate of selected cases of *falsum* involving women, still under the terms of the *lex Cornelia de falsis*, see Tac. *Ann.* 3.22–23; Suet. *Tib.* 49. Cf. Rogers 51–57; Kunkel (1969) 47; Talbert 467; G. B. Townend, "The Trial of Aemilia Lepida in A.D. 20," *Latomus* 21 (1962) 484–493.

[33]For joint husband-wife trials for *repetundae*, see Rogers 27–28, 42–51, 75–78; Bleicken 158–166; Talbert 507–510. Cf. Walker (above, n. 15) 263–268

[34]*CJ* 1.19.1, 3.15.2, 5.12.11, 6.34.1, 9.1.5 and 14, 9.22.14, 9.33.5, 9.35.3, 9.51.9, with L. Huchthausen, "Herkunft und ökonomische Stellung weiblicher Adressaten von Reskripten des Codex Iustinianus," *Klio* 56 (1974) 199–228, at 226; also, "Zu kaiserlichen Reskripten an weibliche Adressaten aus der Zeit Diokletians (284–305 u.Z.)," *Klio* 58 (1976) 55–85, at 63; Th. Sternberg, "Reskripte des Kaisers Alexander Severus an weibliche Adressaten," *Klio* 67 (1985) 507–527, at 511–514; R. MacMullen, "Women in Public in the Roman Empire," *Historia* 29 (1980) 208–218, at 210–211.

[35]See above, n. 16. Despite attested adultery trials before the Senate, the bulk of cases under the Augustan laws must have continued to go before the *quaestio de adulteriis*. Cf. Garnsey 24. Trial of women for *incestum* is also implied by Marcianus, *Dig.* 48.5.8; Papin., *Dig.* 48.5.40.7.

advocate also indicates disturbance of social and family conventions. We should here recall that while Valerius Maximus' description does not indicate that it was considered unusual for a woman to be prosecuted before such a court, it does highlight as extremely unusual Maesia's speech in her own defence.[36] If this aberration is interpreted as indicating disturbed social conditions leading to the absence, disgrace, or death of Maesia's natural male protectors, it may in itself furnish our best clue to the historical context. Would Maesia have voluntarily dispensed with qualified male representation in such circumstances had it been available? It hardly seems realistic to assume that Maesia would view her perilous situation as defendant on a serious criminal charge primarily as an opportunity to promote fuller participation in public life for other women or to open up a "career" in advocacy for herself and would elect to decline male advocacy. Maesia was presumably a victim of circumstances which she had not chosen, and it would be hard to imagine a less appropriate setting for a deliberate gesture of defiance of social convention than trial before an all-male jury empowered to decide her fate. Interpretations based upon assumptions of a desire for "emancipation" or "careerism," therefore, appear implausible, and it is more reasonable to assume both that acquittal was her natural objective and that she would have employed experienced male assistance to that end had it been available. As in the similar cases of self-help by Turia in 49 B.C. and Hortensia in 42 B.C., it seems safer to infer that Maesia adopted her unorthodox procedure because she was bereft of male defenders.[37]

The first century B.C. does not lack potential occasions for such a disruption of social niceties. The Social War, Sulla's military hegemony, the insurrections of Lepidus, Sertorius, and Catiline, might each be readily invoked as possible causes of loss of protection by male relatives or their *amici*. But

[36]See above, n. 7. Juvenal's parody (*Sat.* 6.242–245) of meddlesomely litigious women (including defendants) still assumes that female litigants would have male representatives to speak for them in court (see Marshall 46). For the male Roman's attitude to perceived aggressive or "masculine" behaviour in women, see M. McDonnell, "Divorce Initiated by Women in Rome," *AJAH* 8 (1983) 54–80, at 64.

[37]See Marshall 40–41, 45–46. Pliny *Ep.* 4.17.7 shows how important family ties could be in securing talented legal representation for women. Cf. Ulp., *Dig.* 3.1.1.4 for recognition that a litigant might be unable to secure a *patronus* because of *ambitio adversarii* or *metus*. The women protesters under Hortensia's leadership were relatives of *proscripti*, so that no male protector dared come forward to take up their cause (Val. Max. 8.3.3, *nec quisquam virorum patrocinium eis accommodare auderet*; cf. App. *BC* 4.5.32). The celebrated Turia was also compelled to conduct her own legal business by the absence of her menfolk in the civil war: see *ILS* II.2 8393.1–8; M. Durry, *Éloge funèbre d'une matrone romaine* (Paris 1950) lxvii–lxxiii, 30. Jerome *Ep.* 54.15 portrays hypothetically wanton and youthful widows as alleging their want of male representation in public affairs (*quis procedet ad publicum?*) as one of a range of excuses for indulgence in remarriage. I am obliged to the anonymous *Phoenix* referee for this last reference.

the aftermath of the Social War suggests itself as the most likely context for Maesia's crisis. For her home town of Sentinum, rare bird though it is in our literary sources for the Republican period, had presumably been party to the Umbrian revolt of 90 B.C.[38] If Maesia's case is dated to the two decades following the Social War, we may proceed to call to witness from the speeches of Cicero two other Italian women, whose experiences well illustrate the disturbed conditions of the time which could involve women from the "wrong" side in serious legal difficulty and land them in a criminal court in Rome. In the first (*Cluent.* 162), Cicero recounts how Cluentius, in the aftermath of the Social War, rescued the wife of the Samnite Ceius from abduction; after purchasing her from *sectores* (who had presumably obtained her at a state auction of public property) he learnt that she was really free and surrendered her to her husband *sine iudicio*. Presumably a legal suit might have occurred had Cluentius not been so obliging. The second affair did involve litigation at Rome. In *Caec.* 97, Cicero briefly records that around 79 B.C. he had defended the freedom of a woman of Arretium, whose Roman citizenship was in question as a consequence of Sulla's punitive measures against her city. This action presumably was heard before the court of the *decemviri stlitibus iudicandis*.[39] It would not be fanciful to suppose that it was some similarly damaging or punitive consequence of the Social War which both forced Maesia into a Roman court and deprived her of her natural male protectors.

Reconstruction of the circumstances of Maesia's trial can at best remain conjectural. Seen through the eyes of the Roman male, it was her bold self-defence rather than the laying of the charge which made the case noteworthy. But Maesia's brief bravura in legal history merits more than the passing

[38]All Umbrians joined in the rebellion according to App. *BC* 1.6.49. Cic. *Mur.* 42 shows that senators maintained ties of *clientela* with Umbrian municipalities. Cf. T. P. Wiseman, *New Men in the Roman Senate 139 B.C.–14 A.D.* (Oxford 1971) 139. For the destruction of Sentinum in 41 B.C. by Octavian's troops, see App. *BC* 5.30; Cass. Dio 48.13.2–5. For what is known of the city's history, see Philipp, "Sentinum," *RE* 2.2 (1923) 1508–1509; R. Syme, *The Roman Revolution* (Oxford 1939) 90, 210, 360, 466; A. Pagnani, *Sentinum: Storia e monumenti* (Ancona 1954); L. R. Taylor, *The Voting Districts of the Roman Republic* (Rome 1960) 272; W. V. Harris, *Rome in Etruria and Umbria* (Oxford 1971) 241, 249, 300, 339–340.

[39]For the law of 81 B.C. that degraded Volaterrae, see Rotondi 352. Cic. *Dom.* 79 attests Sulla's confiscation of Roman civic rights from rebel *municipia* and the controversial consequences of this action. See A. N. Sherwin-White, *The Roman Citizenship*[2] (Oxford 1973) 162–165, for the court-system of Italian *municipia* after 90 B.C.: serious crimes were transferred to Roman courts, which could exercise criminal jurisdiction over *municipes*. For the *decemviri*, see G. Franciosi, "Sui decemviri stlitibus iudicandis," *Labeo* 9 (1963) 163–202, with discussion of Cic. *Caec.* 33.97 at 181, 186, and 195–196. See further Crawford (above, n. 29) 33–34. I am again indebted to the anonymous *Phoenix* referee for this closing reference.

attention which it has received. For it is arguable that Valerius Maximus has here preserved the record of an historical case, best interpreted as a criminal proceeding before a standing *quaestio*, in which a woman found herself on trial before the praetor. Afrania and Hortensia shared the ancient notoriety for unseemly displays of oratory and have since attracted greater notice in conventional listings of feminist heroines. But Maesia's place in history should be an equal one. It was certainly no less valiantly earned, and it may now be appreciated that she faced far greater peril in that grim forum than either of her sister orators.

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