
BACCHANALIAN REWARDS: PUBLIUS AEBUTIUS AND HISPALA FAECENIA

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I owe this paper to several recent discussions with Olivia Robinson and to reading her forthcoming book, *Penal Practice and Penal Policy in Ancient Rome*.¹ My own interest in the rewards given to Hispala Faecenia and Publius Aebutius for uncovering the alleged Bacchanalian orgies and murders goes back to at least 1974.² My argument here is that the rewards granted to that pair by the Senate³ were not kindly meant. The financial rewards were, I think, no more and no less than was to be expected. It is the other rewards that concern me, and I will now consider those to Hispala:

First, the right of *enuptio gentis*. This right (1) did not exist; if it did (2) it was ignored; and (3) it could not apply to Hispala Faecenia.

- (1) The only mention of this right is in this context, at Livy, 39.19.5. But such a right would be important for solidifying friendly relations between *gentes*. It would be sure to be prominent in the sources. To meet this difficulty, some scholars propose (different) solutions to give *enuptio gentis* a very restricted scope.⁴ But there is absolutely no shred of evidence for the various hypotheses. No texts; not one.
- (2) I need give no textual references for this claim. It is abundantly plain from many sources that marriages among the upper classes were frequently with someone from another *gens*.
- (3) *Enuptio gentis* could not apply to Hispala, at least not according to the definition – admittedly rather later – of Cicero:

“Gentiles are those that have the same name.” That is not enough. “Who are born from free persons.” Not even that is enough. “None of whose ancestors served in slavery.” Something is still missing. “Who have never suffered change of civil status [*capitis deminutio*].” Perhaps

1 Publisher not yet known.

2 “*Enuptio gentis*” in Alan Watson, ed. *Daube Noster* (Edinburgh 1974), pp. 331ff.

3 Livy, 39.19. I accept completely Robinson’s view that the danger to the state was not nearly so great as is stated in her as yet unpublished book *Penal Practice*.

4 For views held, see Watson, (n 2), pp. 332ff.

that is sufficient. For I see that Scaevola the pontifex added nothing to this definition.⁵

But Hispala herself had been a slave.⁶ Therefore *enuptio gentis*, if it existed, was not applicable to Hispala's situation.

Secondly, I wish to take *datio* and *deminutio* together. *Deminutio* in a legal context regularly implies *capitis deminutio*, a change of civil status, and in the case of Hispala this could refer only to marriage *cum manu* which placed this woman in the legal position of a daughter to her husband.⁷ This type of marriage with a freed woman who had been a prostitute when she was a slave, and who continued in that profession after being freed, is (virtually) out of the question. The only realistic possibility of such a marriage is with Aebutius, and I will discuss that when I come to him.

If we take *deminutio* in the wider sense of diminishment, then it would in this context mean a lessening of property, and the separate grant to her of *datio*, a "giving", would be superfluous.

Hispala's third reward was the right to choose her tutor, *optio tutoris*.⁸ "The unreality of the *tutela* of adult women in classical law is shewn by the number of devices for change of *tutor*."⁹ The main purpose of this *tutela* was to guard the pro-property of the woman. In this instance, the right was basically pointless. Her existing *tutor* did not interfere with what Hispala did. Aebutius was maintained by her, to which extravagance a *tutor* might well object.¹⁰ Not only that, but Livy records:

More than that, under the influence of intimacy, after the death of her patron, since she was not in the *manus* of anyone she petitioned the tribunes and the praetor for a *tutor*. When she made her will she instituted Aebutius as her sole heir.¹¹

5 *Topica* 6.29.

6 Livy, 39.12.5

7 See, e.g., W.W. Buckland, *A Textbook of Roman Law* 3rd ed. by P. Stein (Cambridge 1963), pp. 118ff.

8 See, e.g., Buckland, (n 7), pp. 165ff.

9 Buckland, (n 7), p. 166.

10 Livy, 39.9.6

11 39.9.7

The *tutor* did not interfere with her, financially or otherwise. She had no need to be given the right to choose her *tutor*. It should be noticed that she was a wealthy independent woman.¹²

A fourth reward to Hispala was that she was permitted to marry a free born man and no fraud or disgrace would attach to such a husband on this account. The reward was in general terms but the future husband in view, in the eyes of the Senate, was Publius Aebutius. Hispala was a wealthy woman, why should she burden herself with a husband, unless she was in love?

It will be noticed that the very tenor of the reward indicates that such a husband would, in any event, be socially disgraced. The reward would only remove the legal stigma.

The fifth and last reward was that the present consuls and praetors, and their successors, should see to it that no harm would come to Hispala. We could expect no less.

To come at last to Aebutius: His father had been an *eques* (knight) with a horse supplied at the public expense. With that ancestor and with his new-found wealth, Aebutius was eligible to be considered by the censors for a similar military position, and it would be his duty to accept their decision as to his fitness. The censors would take into account his financial position (satisfactory), his ancestry (satisfactory), and his moral character.

The senate, in its reward to him, decreed that the consul should take up with the tribunes of the people that they should bring before the people as soon as possible that Publius Aebutius should be considered as having performed his military service, that he should not serve in the army against his wishes, nor should the censor assign him to a horse at public expense against his will.

12 Slave prostitutes at the higher end of the scale would usually begin work by the age of twelve or earlier and their market value would have begun to drop before they reached twenty. Then normally they would be sold before their value fell even further. But Hispala was manumitted. There are two possibilities. Either she was a favorite of her owner or, much more likely, her owner had made an unenforceable bargain with her that a fixed percentage of her earnings would go into her *peculium* and she could buy her freedom when she paid her owner her market value. This was a standard bargain found in other trades. The owner was not being soft-hearted in keeping to the bargain. The slave would work harder, and be more tractable, and so would the other slaves. Aebutius was no more than twenty (Livy, 39.10.7) and Hispala had been a free prostitute for several years (*aliquot annis*: Livy 39.12.6), so in all probability she was considerably older than he was.

Is this really a great reward for outstanding public service? It puts him out of step with his contemporaries. A future public career would be also out of the question. My feeling is that this supposed that his fellows would not want him to serve with them. He deserved his reward – financial – for what he had done, but an informer who lived off the earnings of a prostitute was not the kind of chap that chaps would wish to associate with. Not only that, but the consul envisaged that Hispala might marry *cum manu*, and the only prospective such husband in the mind of the authorities was Aebutius. Worse and worse.

Informers are often – not always – properly rewarded financially, but those they serve often regard them with a contempt which should not be too obvious. After all, the authorities want more informers – see Livy, 39.14.6. To hide the contempt is an important governmental strategy. In the instance of Publius Aebutius and Hispala Faecenia the Roman authorities scored, and still score, a remarkable success. The rewards to the pair were basically insulting.