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ON THE INTERPRETATION OF THE §37 OF THE HITTITE LAWS
IN THE LIGHT OF OTHER INDO-EUROPEAN TRADITIONS

The recent progress of the study of the Hittite Laws was largely due to the addition of new fragments to the texts that in many respects proved the correctness of the views expressed earlier by Prof. V. Korošec.¹ It seems that another important source of the insights in the original meaning of the oldest parts of the Laws lies in the comparison of the oldest Hittite tradition with other Indo-European legal texts. The comparative studies of the last years have shown that one might speak about the Common Indo-European legal tradition² or - to use Gernet's apt term - »proto-law« »prédroit«³ (that is the oldest system where the legal institutions and the religious practice were blended into one syncretic whole). It has been shown in these studies that several terms connected with the legal status of a woman in the house had Common Indo-European origin.⁴ Thus a Common Indo-European term for the marriage by abduction (Raubehe)⁵ may be reconstructed on the assumption that it is reflected in Iranian (Avestan upa-vādaya- "livrer (une femme) en marriage", us-vādaya- "enlever (une femme)", cf. the participle vadəmnō Y. 5, 3, 5,⁶ Khwarezmian yuō "wife",⁷ Sogdian wōw "wife",⁸ Khotanese bāy-, basta "to lead", Saryqoli dywoō, dywust "to lead"⁹ etc.), Baltic (Lithuanian vedū vēsti "to marry"), Slavic (Old Russian voditi ženū "uxōrem dūcere"), Celtic (Welsh dy-weddio "to marry"), Germanic (Old High German widomo "bride-price"), Greek (hédnon, pl. édna "gifts for the marriage-agreement"), cf. also the meaning of the cognate Hittite verbs huittija- "ziehen", pe-hute- "hinführen", u-yate- "herbringen". The Old Indian survival of the special meaning of the root in Vedic vadhū- "the young bride" (Avestan vaōū "the married woman") seems important in the light of the eviden-

ce on the forcible abduction of a maiden in the Manu laws (III 23). While discussing this passage in his important contribution to comparative Indo-European studies of the law C. Watkins compares it with similar practice reflected in Latin and Celtic texts and in §37 of the Hittite Code. As he remarks, »in Hittite law we have what may be called the "wolf-marriage".« As set forth in the Hittite Code, no action lies for murder arising out of an attempted abduction, and the situation is covered by the doubtless shouted formula Zik-ua URBARRA-aš kištat "you have become the wolf".¹⁰ This formula is explained by Watkins as a reflex of an association of the wolf with warrior typical for archaic Irish; as Watkins states in Old Indian practice »the marriage by abduction is particularly associated with the kṣatriyas, the warrior class in Hindu law.«¹¹ But he missed the general meaning of the formula because he did not take into consideration the same formula found almost in all Indo-European »proto-legal« traditions.

To understand the formula it is not yet sufficient to state with Friedrich that it implies that the abductors became outlawed.¹² This meaning seems to be necessary to understand the text where this formula is somehow opposed to the usual compensation (šarnikzel) : takku SAI-nan kuiški pittinuzzi n/ū...šard/ieš ap-pan anda pānzi takku 3 LU^{MES} našma 2 LU^{MES} akkanzi, šarnikzel NU.GAL zik-ua URBARRA-aš kištat "If someone abducts a woman a/nd ... help/ers go after them, if 3 or 2 men die (are killed), there is no compensation; »you have become a wolf«" (the Old Hittite version A of §37). If as Friedrich saw already this statement refers to the illegal position of the killer - abductor (or his helper) then an other Indo-European parallel suggests itself immediately. As Gernet remarks in a brilliant essay on Dolon the Wolf in Ancient Greece »selon une croyance bien établie, à l'époque historique encore, celui qui avait accompli le sacrifice humain que le culte continuait de requérir devenait, lui aussi, un loup«.¹³ This formula (not cited in Greek by Gernet) that coincides with the end of §37 of the Hittite Code is to be found in Plato's »Republic« in the only place in his works where the word hiereion refers to the human sacrifice:¹⁴ hōs ho geusámenos tou anthrōpínou splánkhnou en állois álloñ hiereíon hendē enkatatētménou, anánkē dē toutōi lýkōi genésthai "when (a) person has tasted the human intestines that were cut up into parts and mixed up with the intestines of the other victims than he beco-

mes a wolf". The formula lýkši genésthai "he has become a wolf" might explain the «proto-legal» meaning of Hittite URBARRA-aš kištat "you have become the wolf". Both in the Hittite law and in the Greek tradition the survival of an ancient custom (the marriage by abduction or the human sacrifice) was supposed to be connected with becoming the wolf. The sacral character of this notion that was suggested for the Hittite tradition by the author¹⁵ is clear in Greek tradition as also in the Germanic law. According to Gernet in the story of Dolon «Le Loup figure un outlaw ... le sanctuaire du Zeus Lyceios est lieu d'asile, et on a pu conjecturer que la notion du loup était, ici comme ailleurs, en rapport avec celle du banni».¹⁶ This suggestion concerning the Greek custom¹⁷ and the Hittite law may be largely based on the comparison with old Germanic legal concept of the vargr - an outlaw (Old Scandinavian útlegð) who could not live in the society and should move into some wild place (hence his other name skógarmaðr "living in the forest", cf. per silvas vādit, caput lupinum gerit). He was considered a wolf-vargr¹⁸ ("friedlos", a taboo name for a wolf in Germanic languages). Especially important for the comparison with the Hittite law and the Greek customs is the Old Icelandic oath which is directed against the man who will break the ritualistic concept of the enemies that are now united as relatives: «That person among you who will break the peace and will commit a murder in spite of the performed rituals - that person will become a wolf and he will be persecuted in all the places where people hunt the wolves.»¹⁹ Again (as in Hittite and Greek traditions) the man becomes the wolf after killing another man. He is considered to be a werewolf (that is a man who can transform himself into a wolf), bloodthirstiness being the main characteristic of the wolf and of the werewolf.²⁰ According to the old Scandinavian customary law any wolf or werewolf was outlawed.²¹

After Dumézil's discovery of an Indo-European tradition of wearing animal masks Gernet supposed that the Greek beliefs concerning the men-wolves were connected with the same tradition: «Rien ne nous autorise à admettre que le kóros qui représente Apollon malgré les accointances de l'Apollon delphique avec le loup - ait été déguisé en loup; mais le personnage de Dolon ne retiendrait-il pas le souvenir d'un officiant ainsi costumé, dans un rite plus ancien ou dans les rites analogues?»²² In Hittite

tradition the similar rite is reflected in the text KUB IX 31 Vs. II nu VIII² DUMU^{MES}.NITA ú-ya-da-an-zi SAL-ni-iš-ša-an ku-i-e-eš na-a-ú-i pa-a-an-zi nu A.NA I DUMU.NITA KUŠ.MAŠ.GAL ya-aš-ši-ia-an-zi nu pí-ra-an a-pa-a-aš i-ia-/a/t-ta nu UR.BAR.RA-i-li bal-zi-iš-ša-i "Dann bringt man acht Burschen herbei, die noch nicht zu einer Frau gehen. Einem Burschen zieht man die Haut eines Schafbockes an; der geht voran und ruft wie ein Wolf".²³ The magical role of a skin (not necessarily a wolf-skin) in connection with the werewolves is reflected also in other Indo-European traditions, particularly in Latin (cf. the term uersipellus "werewolf" that is to be understood in the light of a well-known story in Satir., 62,5), Germanic and Slavic as investigated by Roman Jakobson in his brilliant study on the Slavic prince Vseslav - werewolf, who was born with a caul (the Slavic word jaze-no etymologically connected with the Baltic and Indian names of the "skin", the "goat") over his head.²⁴ As Jakobson discovered in the chapter on the Indo-European background of the Slavic myth the Slavic prince Vseslav as the Greek hero (Dolon the Wolf) is an outlaw²⁵ - »hunter and beast, persecutor and persecuted at the same time.«²⁶ Thus the bloodthirstiness of the hero is connected with his ritual role of a persecuted wolf (as in all other Indo-European traditions).

It might be supposed that LU.MES⁸ UR.BAR.RA "wolf-men" found in other Hittite texts²⁷ (KUB VII 19 Vs.5 etc.) might be connected with the same bundle of ritual and legal functions reconstructed by Gernet and Jakobson on the base of other Indo-Europ. traditions. To the same sphere belongs also the ritual function of a man-wolf who is the symbolic member of a wolf-brotherhood or a wolf-union.²⁸ Such a man might be a supernatural prince (as Slavic Vseslav) or a king: »Lycæon, ancêtre sans doute du clan ou de la confrérie des Anthides, est le type du roi mythique, et il a fondé une ville dénommée d'après le loup.«²⁹ In Hittite tradition the same idea might be seen in a well-known formula of 2BoTU 10A 15f. /su-/mi-in-za-na in^{MES} -am-ma-an UR.BAR.RA-aš ma-a-an pa-an-gur ... 1^{EN} e-eš-tu "Und eure, meiner Diener, Sippe soll eins sein wie die des Wolfes".³⁰ The idea of a ritual union of a human society symbolized by the image of the wolf might be found in South Caucasian traditions.³¹ Here the man who kills the wolf (being considered the member of a clan) should be treated ritually impure until a special rite is performed. Thus one might

suppose that all the customs and rites described before can be united since the idea of a wolf-union (or a wolf-society) could be the oldest concept and the man who kills another man »becomes a wolf« that is an outlaw according to the archaic Indo-European »proto-legal« tradition.

Notes:

¹It is enough to mention the judgement on the §166/51: A. Kammenhuber /Review-article on the/ Keilschrifttexte aus Boghazköy (KBo XIX), *Orientalia NS.*, vol.43, 1974, f.1, S.115.

²E. Benveniste, *Le vocabulaire des institutions indo-européennes*, 2. Pouvoir, droit, religion, Paris 1969; *Myth and Law among the Indo-Europeans*, ed. by J.Puhvel, Berkeley-Los Angeles, 1970; V.N. Toporov, O dvuch praslavjanskich terminach iz oblasti drevnego prava v svjazi s indoevropskimi sootvetstvijami (On two Proto-Slavic terms on the field of the old law in connection with the Indo-European parallels), in: *Strukturno-tipologičeski-je issledovanija v oblasti grammatiki slavjanskich jazykov*, Moscow 1973. Extremely important is also the brilliant etymological dictionary in the book: A.G.Periskhanyan, *Sasanidskij sudebnik* (Sassanidian Code), Brevan 1973, pp. 430-559.

³L.Gernet, *Droit et prédroit en Grèce antique*, in: L.Gernet, *Anthropologie de la Grèce antique*, Paris 1968, pp. 175-260. See also Gernet's statement on Indo-European comparison on pp. 230-231, 298 (Indian *dhārṇa*), 211 and 251 (Latin *sponsiō*).

⁴V.N. Toporov, *Slavjanskije komentarii k nekotorym latin-skim arhaizmam* (Slavic parallels to some Latin survivals), *Etimologija* 1972, Moscow 1974, pp. 3-12. In connection with the data on the archaism of the Slavic tradition collected in both the articles by V.N.Toporov one should note also the coincidence of the use of the Hittite *ta* in the Laws, cf. H.Otten and V.Souček, *Ein althethitisches Ritual für das Königspaar* (Studien zu den Bogazköy-Texten, Heft 8), Wiesbaden 1969, S.90 Anm.2, and Old Russian *to* as a correlative particle in the Russian Code ("Russkaja Pravda"), cf. S.P. Obnorsky, *Očerki po istorii russkogo literaturnogo jazyka starshego perioda* (Essays on the history of the Russian literary language of the oldest period), Moscow-Leningrad 1946, p.24.

⁵E. Hermann, Die Eheformen der Urindogermanen (Nachrichten Gesellschaft der Wissenschaften, Göttingen, Neue Folge 1,2), 1934, SS.46-48.

⁶On these Avestan forms in their relation to other Indo-European words of the same root see E. Benveniste, Hittite et indo-européen, Paris 1962, pp.34-40; see especially on pp.37-38: »On discerne dans av. vādaya- la notion d'entraîner, tirer par force»

⁷A.A. Freiman, Choresmijskij jazyk (The Khwarezmian Language), Moscow-Leningrad 1951, p.63.

⁸See on Sogdian combination of this noun with verb pr(')yp < *pari-āpaya- "take" (= Hittite para ep- "herausnehmen, inhalten"): V.A. Livshitz, Sogdian legal documents and letters from the Mux mountain, Moscow 1962, p.26.

⁹T.N. Pakhalina, Sarykoljsko-russkij slovar' (Saryqoli-Russian Dictionary), Moscow 1961, p.53. The sigmatic formation of the past tense in these Eastern Iranian languages might be compared to the cognate type in Slavic, Celtic and Hittite (huezta) forms of the same root: V.V. Ivanov, Obščeeindoevropskaja, praslavjanskaja i anatolijskaja jazykovyje sistemy (Common Indo-European, Proto-Slavic and Anatolian linguistic systems), Moscow 1965, pp. 162-163 (with further references).

¹⁰C. Watkins, Studies in Indo-European Legal Language, Institutions and Mythology. I. Usurpāre: Indo-European and Indo-Europeans, ed. by G. Cardona, H.M. Hoenigswald and A. Senn, Philadelphia 1970, pp.321 and ff.

¹¹Ibid., n.7.

¹²J. Friedrich, Die hethitischen Gesetze, Leiden 1959, Comments on I §37. C. Watkins remarks that »Friedrich may be correct in this suggestion but he does not see all the conclusions connected with it.«

¹³L. Gernet, Dolon le Loup, in: L. Gernet, Anthropologie de la Grèce antique, Paris 1968, p.157 (Gernet's remarkable essay was first published in Annuaire de l'Institut de philologie et d'histoire orientales et slaves, t.IV, = Mélanges Franz Cumont, Bruxelles 1936, pp.189-206).

¹⁴J. Casabona, Recherches sur le vocabulaire des sacrifices en grec des origines à la fin de l'époque classique (Publications des annales de la faculté des lettres Aix-de-Provence, nouv. série, N 56), 1966, p.34.

¹⁵V.V. Ivanov, Chettskij jazyk (The Hittite language), Moscow 1963, p.23. The critical remarks by C. Watkins, op.cit., are based on the opposition of the religious and legal interpretation that has no sense for the *prédroit*.

¹⁶L. Gernet, Dolon le Loup, p.164.

¹⁷See especially W. Immerwahr, Die Kulte und Mythe Arkadiens I, S.22; O. Gruppe, Griechische Mythologie und Religionsgeschichte, S.918 Anm.7; G. Glotz, La solidarité de la famille dans le droit criminal en Grèce, p.23.

¹⁸G. Ch. von Unruh, Wargus. Friedlosigkeit und magisch-kultische Vorstellungen bei den Germanen, Zeitschrift der Savigny Stiftung für Rechtsgeschichte, Germanistische Abteilung, Bd.74, 1957; A. Ja. Gurevitch, Kategorii srednevekovoj kultury (Categories of Medieval Culture), Moscow 1972, p.144.

¹⁹Isländisches Recht. Die Graugans, Weimar 1937, SS.191-192; M. I. Steblin-Kamenski, Kul'tura Islandii (The Culture of Iceland), Leningrad 1967, p.64; A. Ja. Gurevitch, Problemy genezisa feodalizma v zapadnoj Evrope (Problems of the origins of the feudal system in Western Europe), Moscow 1970, pp.113-114. Cf. also L. Weiser-Aale, Zur Geschichte der altgerm. Todesstrafe, Arch.f. Religionswiss. XXX, 1933, 209-227.

²⁰K. Müller, Die Werwolfsage, Karlsruhe 1937; W. H. Roscher, Das von "Kynanthropie" handelnde Fragment des Marcellus von Side (Abhandlungen der Philol.-hist. Klasse der K. Sächs. Ges. d. Wissenschaften XVII, 1897) S.51 and ff.; E. Olstedt, Varulven i svensk folktradition, Uppsala 1943. See also on human sacrifice K. v. Amira, Die germ. Todesstrafe, Abhandl. der bayer. Akad. d. Wissenschaften XXXI, 1922, 3.

²¹I. Reichhorn-Kjennerud, Vår gamle trolldomsmedisin, Skrifter av det Norske Videnskapsakademi i Oslo, Hist.-fil.Kl., 1947, N 1, p.116.

²²L.Gernet, *Dolon le Loup*, p.162.

²³See F.Sommer, *Die Abhijavā-Urkunden*, München 1932, S.115; H.Otten, *Zur grammatikalischen und lexikalischen Bestimmung des Luvischen*, Berlin 1953, S.59.

²⁴R.Jakobson and M.Szeftel, *The Vseslav Epos*, in: R.Jakobson, *Selected Writings*, vol.IV: *Slavic Epic Studies*, The Hague-Paris 1966, pp.341-353. The Latin term is not discussed in this study.

²⁵*Ib.*, p.35 (Slavic term izgoj referring to Vseslav).

²⁶*Ib.*, p.353. The formula reminds one of Lévi-Strauss's idea of the unity of the members of a binary opposition in the myth.

²⁷L.Jakob-Post, *Zu einigen hethitischen Kultfunktionären*, *Orientalia*, vol.35, nova series, fasc.4, 1966, S.419; see on the possible comparison with Lupercalia: V.V.Ivanov, *Zametki o tipologičeskom i sravnitel'no-istoričeskom issledovanii rimskoj i indoevropejskoj mifologii* (Notes on typological and comparative diachronic study of Roman and Indo-European mythology): *Trudy po znakovym sistemam. Semejotike IV*, Tartu 1969, p.54.

²⁸L.Gernet, *Dolon le Loup*, pp.157-158.

²⁹L.Gernet, *Dolon le Loup*, p.158.

³⁰F.Sommer, *Die hethitisch-akkadische Bilingue des Hattušili I (Labarna II)*, München 1938, S.75 (with another interpretation: »Dies Gleichnis ist durchaus plastisch, vgl. Brehm Tierleben...«).

³¹G.Charachidzé, *Le système religieux de la Géorgie païenne*, Paris 1968, pp.481-482. In an Indo-European (Eastern Iranian) language of the Caucasus-Ossetic there is a formula z-bīræy ī (ssī) "he has become the wolf": V.F.Miller, *Jazyk osetin* (Ossetic language), p.134, §87(2) (but see also p.187, V.I.Abaev's comments); V.F.Miller, *Osetinsko-russko-nemeckij slovar* (Ossetic-Russian-German dictionary), vol.1, Leningrad 1927, p.351. It would be tempting to see in it the reflex of an old Scythian custom of lycanthropy reported by Herodot (IV, 105) speaking of Neuroi but it is possible that this tribe was not Iranian but

Slavic (T. Lehr-Spławinski, O pochodzeniu i praocjizmie Słowian, Poznań 1946, p. 13ff.). See also on Slavic and Indo-European terms referring to the killing of a mythological wolf: V.V. Ivanov, Proischoždenie imeni Kuchulina (On the origin of the name of Kuchulin): Problemy sravnitel'noj filologii, Moscow-Leningrad 1964, pp. 459-461; V.V. Ivanov, Obščeeindoevropskaja, pp. 288-289.

Povzetek:

Avtor V.V. Ivanov poudarja, da moremo hetitski zakonik razumeti delno predvsem ob uporabi primerjalne metode, ob pritegnitvi drugih indoevropskih zakonskih tekstov, s čimer pridemo do skupne indoevropske pravne tradicije (»pra-pravo«). Tako je na razpolago skupni ievr. naziv za zakon z ugrabitvijo (Raubehe): koren ievr. *ued(h)-, ki naj bi v het. živel v huittija- "vleči", pe-pute- "peljati, voditi (proč)", u-uate- "privesti". Tako prakso reflektira het. §37 Zakonika; zaključek tega § ("Če kdo ugrabi ženo in gredo pomočniki zadaš skupaj, če 3 ali 2 moža umre, ni nobene odškodnine") zik-ua URBARRA-aš kištat "ti si postal volk". S tem je treba povezati grško tradicijo o Dolonu-Volku in oboje kaže na ievr. običaj (ženitev z ugrabitvijo ali človeška žrtev), povezan z vero, da storilec postane volk. "Volk" je tu izobčenec, podobno kot v germanskem pravu (nord. vargr ~ útlegr) človek po uboju postane volk = izobčenec. Imajo ga za volkodlaka. Kot v grški tradiciji, tudi v hetitskih tekstih (KUB IX 31 I 2) poznajo ritis, kjer je človek preoblečen v kožo kozla in tuli kot volk. Podobna je zgodba slov. princa Vseslava; v Grčiji pa Lykaon predstavlja volčjo zvezo/bratstvo in to se veže na het. tekst 2BoTU 10A 15sl. ("Vaša družina naj bo eno kot volčja"). I-deja o volčji zvezi je v vsem tem najstarejše jedro.