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SICK-MAINTENANCE IN INDO-EUROPEAN

IN J. Grothus, *Die Rechtsordnung der Hethiter*, p. 57 (Wiesbaden, 1973), we read the following: 'An der Spitze der die Körperverletzung und ihre Rechtsfolgen regelnden Normen ist §10 zu setzen: Wer einen Menschen verletzt, muss ihm zunächst einen Sklaven stellen, der solange im Haus des Verletzten für diesen arbeitet, bis der Verletzte gesundet ist. Ausserdem hat der Täter die Arztkosten zu tragen und nach der Genesung 6 Sekel Silber als Schmerzensgeld dem Verletzten zu geben.'

What does the Hittite say? KBo VI 2 I 16-19 (A, old ductus): *ták-ku LÚ.ULÛLU-an ku-iš-ki hu-ú-ni-ik-zi ta-an iš-tar-ni-ik-zi nu a-pu-u-un ša-a-ak-ta-a-iz-zi pt-e-di-iš-ši-ma LÚ.ULÛLU-an pa-a-i nu É-ri-iš-ši an-ni-iš-ki-iz-zi ku-it-ma-a-na-aš la-a-az-zi-ya-at-ta ma-a-na-aš la-az-zi-at-ta-manu-uš-ši* 6 GÍN KÚ.BABBAR *pa-a-i* LÚA.ZU-ya *ku-uš-ša-an a-pa-a-aš-pat pa-a-i*. Friedrich's translation reads 'Wenn jemand einen Menschen verletzt und ihn krank macht, so pflegt er den betreffenden, an seiner Stelle aber gibt er einen Menschen, und (der) arbeitet (so lange) in seinem Hause, bis er gesund wird. Wenn er aber gesund wird, so gibt er ihm 6 Sekel Silber. Auch für den Arzt gibt eben jener den Lohn.' Goetze's (ANET² 189) differs only stylistically: 'If anyone batters a man so that he falls ill, he shall take care of him. He shall give a man in his stead who can look after his house until he recovers. When he recovers, he shall give him 6 shekels of silver, and he shall also pay the physician's fee.' Both translations are correct.

We may note first that G.'s description of the substitute person furnished by the injurer as a 'slave' is wholly gratuitous; the text simply has the generic 'man' (LÚ.ULÛLU-an, B *an-tu-uḫ-ša-an*) with no indication of status, and the man may perfectly well have been a member of the injurer's kin-group.

But more serious is that G. makes no mention whatsoever of the critical clause *nu apūn šaktāizzi* 'so pflegt er den betreffenden, he shall take care of him.' In so doing he has let slip by unnoticed an extremely archaic legal institution: that of sick-maintenance. I quote from the beginning of D. A. Binchy's pioneering study, 'Sick-maintenance in Irish law,' *Ériu* 12, 1934, 78-134: 'Students of comparative law have long realized that the rules governing compensation for personal injuries offer perhaps the most fruitful field for the work of drawing parallels between ancient legal systems. One of these rules seems to have been a feature of the criminal law of a great many peoples: I refer to the rule that, where one person has suffered physical

injury at the hands of another, the latter is, under certain circumstances, liable, not merely for the ordinary legal mulct, but also for the medical expenses of the injured party. This has received its most widely known formulation in Exodus xxi 18-19 . . . Substantially the same rule may be found in the old Hindu law and in the various Germanic systems . . .

'Old Irish law preserves for us in this, as in many other respects, the relics of a more primitive system. In the earliest texts we find that the injurer, instead of paying the 'leech-fee', must undertake the duty of nursing his victim back to health and providing him with medical attendance . . . In the course of time . . . the more primitive obligation to provide sick-maintenance was commuted for a fixed payment, thereby approximating to the practice of the other systems which I have mentioned. Whether these systems also had begun with an institution akin to *othrus* ['sick-maintenance'], which had been commuted before their rules had been committed to writing, is a question which I may be excused from discussing in the pages of this journal.'

Now in Mesopotamian law we do find the leech-fee system in cases of personal injury: Hammurabi §206 *ù A.ZU i-ip-pa-al* 'and he shall also pay for the physician' (cf. Driver and Miles, *The Bab. Laws* I 406-8), and cf. Ex. xxi 19. But there is no mention of sick-maintenance. We are entitled therefore to conclude that sick-maintenance in Hittite law is probably not a borrowed institution. And when we observe that the characteristically succinctly stated features of the Hittite institution as a total social system agree in virtually every particular with the far more detailed description of the Archaic Irish institution, then we are entitled to conclude that both represent a common inheritance from Indo-European customary law, and that Binchy's implied conclusion is fully vindicated.

The Hittite system in paragraph §10 involves the following features:

mayhem	<i>hūnikzi</i>
sickness	<i>ištarnikzi</i>
sick-maintenance	<i>šaktāizzi</i>
substitute man during sick-m.	LÚ ULŪ ^{LU}
regained health	<i>lazziatta</i>
mulct at end of sick-m.	<i>mān-aš l.</i> , 6 G. <i>pāi</i>
plus payment of physician	LŪA.ZU-ya <i>kuššan pāi</i>

Since the type of injury is not specified in §10, it appears likely (with G.) that the mulct of 6 shekels applied in addition to the fixed wergild for a particular injury.

For the Old Irish system we have the plethora of textual material in the two tracts edited and commented by Binchy, *Bretha Crólige*

(*Ériu* 12, 1934, 1-77) and *Bretha Déin Chécht* (*Ériu* 20, 1966, 1-66), as well as those on *othrus* edited in the article cited above. To quote all the relevant passages from these texts is clearly impossible within the scope of the present discussion; but they may be readily found in Binchy's exemplary studies, to which my indebtedness is surely apparent.

The features of the Archaic Irish system may be listed in the same fashion:

mayhem	<i>imserccuin</i>
sickness	<i>freslige/crólige</i>
removal of the invalid	<i>díngbál</i>
sick-maintenance	<i>othrus/folog n-othrusa</i>
substitute man during sick-m.	<i>fer máma mod</i>
forepledge (surety)	<i>aurgell</i>
physician's verdict of regained health at end of sick-maintenance	<i>derosc n-arsláine inna iarsláine</i>
after-judgement (further compensation in addition to fixed vergild)	<i>iarmbrethemnus</i>

The Old Irish system differs from the Hittite in its further specificity of the removal of the invalid for his nursing, whereas the Hittite does not say where the nursing takes place, and in the important and archaic feature of giving a forepledge as surety. The total absence of any mention of suretyship (Bürgschaft) in the Hittite Laws has been noted before (though G. makes no note of this legally important feature), and may be taken as an index of the simple fact that the Hittites in 1500 B.C. had a more highly evolved, urban society with a system of public authority than did the Irish in the seventh century A.D.

Otherwise the two systems agree to such a remarkable extent that we must recognize the primitive institution of sick-maintenance as a feature of Indo-European customary law, marginally preserved intact in Irish and Hittite, and in other cognate Indo-European legal systems commuted, with Binchy, to the later 'leech-fee' alone (OEng. *læcefeoh*, Skt. *samutthāna-vyayam* Manu 8.287).

This conclusion, based on the comparison of institutions, may be corroborated by linguistic comparison.

The Hittite verb *šaktāizzi* 'performs sick-maintenance' has the form of a denominative, though no base noun is attested. Kronasser, *Etym.* 411, 475, takes it as primary, with 'dental enlargement', and suggests connection with *šak-* 'know', comparing Lat. *medēri* and Gk. *μήδομαι*. This analysis, already morphologically dubious, must

be rejected on semantic grounds: *šaktāizzi* refers to the process of sick-maintenance, carried out by the one who has committed the injury, whereas the semantic parallel of *medēri* would be appropriate rather to the actions of the attendant physician (^{LŪ}AZU), which is a separate notion.

A denominative *šaktāizzi* presupposes a base noun **šakta-*, which looks very like an archaic Indo-European formation of the νόστος type (cf. Brugmann, Grdr.² 2.1.408, 420, Wackernagel-Debrunner, *AiGr.* 2.2.587. The same formation may underlie the apparent thematic forms of GIŠ^š*ašt(a)-* 'bed' and TŪG^š*ašt(a)-* 'Bett-Tuch', cf. Gk. κοῖτος.) But an appropriate comparandum for an IE ***sokto-* (various velars are possible) remains to be discovered, and with such a technical legal term as *šaktāizzi* 'performs sick-maintenance', the possible avenues of semantic change which one might conceive of are virtually limitless.

Yet consider the one concrete semantic parallel we have: the Irish word for sick-maintenance. As Binchy has shown (*Ériu* 12.78-9), the older name was *folog* 'maintenance', specified as *folog n-othrusa* 'maintenance of sickness', from which *othrus*, originally 'sickness' alone (with second abstract suffix from *othar* 'sickness') 'by a process familiar both to jurists and philologists' came to be used for 'sick-maintenance' in the legal sense. Similarly the denominative verb *othraid* is built directly on *othar* 'sickness', but has a specific legal meaning identical with that of Hittite *šaktāizzi* in its earliest attestation (v.n. *othrad*, BCrö. §10). Strict parallelism with the Old Irish facts, then, would allow us to infer a meaning 'sickness' for the noun **šakta-*, ***sokto-* underlying Hittite *šaktāizzi*. Have we a comparandum?

I suggest that we do, in the Old Irish noun *socht*, which reflects exactly a preform **soktos*. The first meaning given in the RIA Contribb., and that which later predominates, is 'silence'; but in the Old Irish period the basic meaning is clearly something more, specifically 'stupor'. Note especially Ml. 92*7 *a socht-som* translating *stupor eorum*, whereas Lat. *silentium* is translated in the same glosses as *in tuai* (58°5), pl. *silentia* as *inna tuai* (112°3). This 'stupor' is furthermore a pathological state imposed impersonally from outside on one: *ro:lá|do:rat N. i socht ~ ro:lá|do:rat socht for N.* 'it put N. in a stupor ~ it put a stupor on N.' The pathological context is clear in Scéla Mucce Meic Dathó §3: *ro:lá didiu i socht innī MacDathó corraib trí thráth cen dig cen biad, acht 'co immorchor ón taib co araile. is and dixit a ben: 'is fota in troscud i-tai'* 'It put MacDathó in a stupor, moreover, so that he was three days without drink and food, only turning from one side to the other. His wife said then, "long is the fasting you are in".' Similar descriptions of varieties of 'sickness' abound in Early Irish saga-literature.

I suggest that OIr. *socht* 'stupor' originally denoted a pathological state or variety of 'sickness', and would further derive it specifically from an abstract **sóktos* from the root **sek-*, in the meaning 'dryness'. We have an adjectival *-to-* formation in Ved. *vi-śaktā* 'dry (cow)', and the reduplicated adjective in Av. *hišku-* and Irish *sesc*, Welsh *hysb* 'dry', as well as Ir. *samaisc* 'heifer' < 'summer-dry', in the same semantic field as Vedic *viśaktā*. It is characteristic for the semantics of IE **sek-* that it refers regularly to an either pathological, unnatural or unwelcome alteration of a previous state to one of 'dryness'. Compare Schulze's restoration (*Kl. Schr.* 368) of 'έσκετο for 'έσχετο in the repeated Homeric formula for losing one's voice, θαλερή δέ Foi έσκετο φωνή, with the verb a reduplicated **σε-σκ-ετο* like Ved. *á-saścat-*, *a-saścāt-* 'undrying'. We have the same collocation of roots in the Ionic medical term *ισχνόφωνος*, *ισχνοφωνίη* (Hippocr.) 'having a speech impediment'. As such, the abstract **sóktos* 'dryness', whence 'sickness' in general, from this root, which I propose to see in Irish *socht* and Hittite *šaktāizzi*, is an entirely appropriate term for what may well in Indo-European medical doctrine have been considered an elemental pathological state, probably with an antithetical 'wetness', similar to 'heat' and 'cold' (Pindar, Pyth. 3.50 ἦ θερινῶ πυρὶ περθόμενοι δέμος ἦ χειμῶνι).

If the first of my conclusions be accepted, then we may reconstruct the Hittite and Archaic Irish legal institution of sick-maintenance as an inherited feature of Indo-European customary law. If the second of my conclusions be accepted, then we have an etymology for Hittite *šaktāizzi*, and at the same time a new reconstructible Indo-European word **sóktos*.

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