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Comparative perspectives on bee law in Indo-European*

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ABSTRACT:
An illuminating comparison can be made between Early Irish bee law, as reflected in the *Bechbretha*, and the bee section of the archaic Albanian law code, Chapter 53 of the *Kanun* of Lek Dukagjin, with reference as well to the relatively brief mention given to bees in the Hittite Laws. Of particular interest are some features of the legal treatment of bees pertaining, e.g., to the role of tracking or pursuing bee swarms and to the issue of ownership in cases of stray swarms, since they show some specific parallels as to content. Still, one must keep in mind that the parallels could reflect independent development based on the nature of the matter at hand; therefore, by way of adjudicating this question, a case involving bees from US law is considered. Ultimately, it is hard to make a definitive case for the bee-law parallels, there is evidence suggestive of Proto-Indo-European practices regarding bees and the law.

KEYWORDS:
bees; comparative Indo-European law; Albanian, Old Irish

1. INTRODUCTION

Two threads within Indo-European studies inform the present study: the role played by bees generally within the Indo-European language family and the examination of Indo-European comparative law.

First, as to bees, it is clear that these industrious and economically important creatures played a key role in literature and mythology in a number of ancient Indo-European cultures and languages (and see below for more on this).[1] Although such aspects

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1 Katz 2007 has some discussion, among other interesting observations, of images of bees in Greek and Latin literature. Further consideration of bees in Indo-European mythology can be found in Toporov 1983 and Masson 1989; I thank Peter Nikolaev and Craig Melchert for drawing my attention, respectively, to these sources.

of apine involvement in the lives of ancient Indo-European peoples are interesting in their own right, the more concrete nitty-gritty details of how humans interacted with bees from a legal standpoint are the focus here, which leads to the legal thread.

Regarding Indo-European law, I start with the observation that just as with the comparison of languages, the comparison of legal systems can be done with one of two goals in mind: the historical and the typological. On the historical side, we have available the powerful methodology of the Comparative Method, which has been honed over more than two centuries[2] through its use on purely linguistic data, focusing on elements of grammatical or phonemic correspondence between related languages. Nonetheless, it has increasingly been extended to other domains of inquiry, and with considerable success.

From a historical perspective, the study of Indo-European comparative law has generally focused on the linguistic side of the comparisons. It has been demonstrated, for instance by Watkins 1970, that words and phrases to be found within characteristic Indo-European legal diction, especially when they are matched up with details of legal practice that the words and phrases represent, can make compelling material for the reconstruction of an earlier legal system that gave rise to the items being compared. At the same time, though, comparative law can be a typological exercise, aimed at seeing what elements go into making up a particular law or set of laws and legal practices.

With regard to comparative law within Indo-European studies, parallels among the law codes and legal practices of various Indo-European traditions can allow for a common Indo-European legal prototype to be discerned and posited as an explanation for aspects of the law in a single tradition. As with any intriguing comparison made across related languages or the cultures associated with them, any such legal parallels must always be measured against the possibility of an explanation by reference to what might be termed "universal" or "natural" legal designations and treatment of offenses, as cautioned by Watkins (p. 437). From the legal standpoint, such universals would be legalities and punishments that derive from a range of possible outcomes defined by how humans and animals behave in general.

As suggested at the outset, these two threads come together in the present study, a comparative examination across several traditions within the Indo-European family, looking specifically at the rules pertaining to bees and their treatment by humans. Bees are an interesting subject in a comparative legal exercise within Indo-European because of the fortuitous availability two texts with considerable coverage of bee-related legal issues.

In particular, there is a detailed tract of early Irish law that deals quite extensively with bees, the *Bechbretha* 'Bee-judgments', an Old Irish text dated by Charles-Edwards and Kelly (1983: 13), in the introduction to their edition and translation of the text, to "the middle of the 7th century", and discussed most recently by Hily 2015. Moreover,

2 The starting point for this dating is the 1816 publication of Franz Bopp's *Über das Conjugationssystem der Sanskritsprache in Vergleichung mit jenem der griechischen, lateinischen, persischen und germanischen Sprachen*; see Joseph 2016 for praise of the Comparative Method, as part of a volume celebrating the Bopp bicentennial.

the archaic Albanian law code, the *Kanun* of Lekë Dukagjin, an orally transmitted compilation of laws governing all aspects of behavior that dates from approximately the 15th century, though first written down only in the 19th century by Shtjefën Gjeçov,[3] contains a section, Chapter 53 to be exact, which also deals fairly thoroughly with bees. These two legal sources, moreover, are augmented by the occurrence in the far more ancient Hittite law code (Hoffner 1997), dating from the second millennium BC, of two sections that pertain to bees (§§91 and 92).

In examining these materials, I am attempting to offer some further illumination simultaneously onto the sources of both the relevant Irish law and Albanian law, and to a more limited extent, Hittite, through this comparative exercise. As becomes clear, it proves difficult to use the comparison to definitively determine any shared history amongst these legal systems; however, it is not unreasonable to suppose that there *could* be some aspect of reconstructible Indo-European law that pertains to bees, since we know that bees were an important part of Proto-Indo-European culture.

In particular, while there is no single reconstructible word for 'bee', a word for 'bee' is found in all the branches. Relevant here are such forms as Latin *apis*, although it is an isolated form with no clear cognates (de Vaan 2008: s.v., echoing earlier works); Germanic outcomes of *bhi-k^{w}o-: OE *bēo*, OHG *bīa*; Old Irish *bech*, also from *bhi-k^{w}o-; Greek μέλιττα and Albanian *bletë*, which offer the interesting shared feature of the manner in which 'bee' is formed, namely in both languages as a derivative of 'honey', *melit-jə$_2$. Sanskrit offers a descriptive compound here, *madhu-kara-*, literally 'honey-maker', and in the case of Hittite, only the Sumerogram NIM.LÀL is used for 'bee', so we do not actually know what the Hittite word is that underlies the Sumerogram. Thus while there are a few matches among geographically contiguous branches of the family, the key fact of relevance here is the common occurrence of a word for 'bee', suggesting that the insect was of importance throughout the family and therefore by extension, of importance in PIE.

Also, there are words for different kinds of bees across the family, especially drones, though again no clear PIE prototype, though the geographic distribution of cognate forms might point to a "central" and "western" IE word. That is, Latin *fūcus* is from *bhoi-k^{w}o-, with an *o*-grade counterpart to the Germanic 'bee' words, while OEng *drān* and Greek θρῶν-(αξ) match up well as to their root, *dhren-, and Greek κηφήν and OHG *humbal* point to a proto-type *km̥Hp-H$_2$-.

Furthermore, on the purely linguistic front, a word for the product of bees' activities, namely 'honey' is securely reconstructible for PIE; a pre-form with the form *melit is guaranteed by the existence of such cognates as Greek μέλι (genitive μέλιτ-ος), Albanian *mjaltë*, Hittite *milit*, and Gothic *miliþ*, among others. Similarly, there is a reconstructible word for 'mead' — a product associated with and derived from honey — namely *medhu, based on Greek μέθυ 'wine', OEng *meodo* 'mead', Slavic *medv- (e.g. Russian мед), and Sanskrit *madhu* 'honey; wine'.

Finally, on the cultural front (and note the references given in footnote 1), it must be acknowledged that bees figure in various myths across several traditions in the family, including Hittite (e.g., the Telepinus myth) and Greek (via the presence of

3 A fine edition with an English translation has been published by Leonard Fox (1989).

bees in the cave in Crete where Zeus was born (Cook 1895)); furthermore, there are also Germanic bee-charms to take into consideration, specifically the Old English metrical charm #8 and the Old High German *Lorscher Bienensegen*.[4]

Given all of this evidence, and given what bees do in terms of swarming and other activities, it would be surprising if there were not some IE legal conventions governing bees and their care. It therefore becomes a potentially fruitful exercise to see what comparisons can be made and what conclusions, if any, can be drawn from them regarding the Indo-European legal system. At the very least, moreover, this investigation can inform a typological perspective on bee-law cross-culturally.

2. SOME NECESSARY BACKGROUND ABOUT BEES IN EARLY SOCIETIES

Laws pertaining to flying creatures have been a cause for amusement in some circles; testimony to that effect can be seen, for instance, in the references by Charlie the janitor to "bird law" as a basis for humor in an episode of the American television series *It's Always Sunny in Philadelphia*.[5] And yet, there is nothing funny about laws that pertain to bees as far as Indo-European law codes are concerned; rather, they are a serious matter. And with good reason — as Murray Loring (1981: 27–28), in his slender but very informative volume *Bees and the Law*, reminds us:

> in the days of those whom we term the ancients, the bee occupied a much more important place in the economy of the state than it does now. In Greece, in Egypt, in Judea, and to a somewhat less extent in the Roman provinces, honey was a most important article of commerce.

And Hoffner (1974) notes that honey was the primary sweetening agent available in the ancient Middle East at least, and thus important for that reason.

Moreover, in terms of the geographic and cultural foci of the present study, the observations of Hily (2016) about bees in early Irish society are telling as to the importance of these creatures:

> "En Irlande ancienne, les abeilles avaient une importance non négligeable, en particulier au niveau économique grâce à leur production de miel et de cire qui pouvait server à des usages multiples et variés." (p. 22)

4 See Spamer 1978, Hamp 1981, Elsakkers 1987, and Holton 1993 on these Germanic materials; though they are not of a legal nature, nonetheless they may have some relevance to the line of argumentation offered herein, a topic I plan to take more careful note of in a future paper.

5 A relevant clip from this episode can be viewed at www.youtube.com/watch?v=qcderLXiwa8 (accessed 18 October 2018); brief reference to the relevance of 'bird law' to the show can be found at en.wikipedia.org/wiki/Charlie_Kelly_(It%27s_Always_Sunny_in_Philadelphia)#Legal_and_monetary_issues (accessed 18 October 2018).

> "Le miel servait pour la production de boissons alcoolisées, à savoir l'hydromel (*med*) et la bière faite à partir de malt et de miel (*brocóit*)." (p. 24)

Furthermore, Hily's main premise, one that is convincingly argued and supported, is that for the most part, laws regarding bees in the *Bechbretha* are modeled on existing laws regarding cows; from this analogical formulation of laws, she claims, the importance of bees can be inferred, since they are given parallel treatment with cows, whose importance in early Irish society is abundantly clear and quite well known and well supported.[6]

3. BEES AND LAW: THE INDO-EUROPEAN SOURCES

There are in fact many issues concerning bees for which a principled basis for decisions, of the sort that a law code can provide, is called for. Loring, for instance, touches on bees and property rights, nuisance, negligence, damages, pesticides, trespass, larceny, zoning, regulation of honey, disease legalities, importation of bees, and taxes and the beekeeper. Not all of these had relevance in ancient times — regulations regarding the use of pesticides, for instance, clearly answer to a modern need — and while the topics treated in *Bechbretha* and in the *Kanun*, as well as in the Hittite laws, show some overlap, these codes are perhaps to be distinguished largely by the differing extent of coverage they show for bee issues.

The *Bechbretha* has 55 sections, each one fairly short, consisting of a sentence or two, though a few run to several sentences; the editors of the modern edition of this tract, Thomas Charles-Edwards and Fergus Kelly, give the following breakdown of its contents (p. 30–31):

1. The keeper of a new hive and his neighbours …
2. Injuries to persons …
3. Acquiring and retaining ownership of swarms and their produce …
4. Thefts of bees …

The *Kanun*, by contrast, has 14 sections that deal with bees; most of them are short though a couple of them run to several clauses. These 14 sections touch on various topics, but particularly relevant here are:

1. Violation and theft of a beehive
2. Value of the bees, the hive, and the produce
3. Establishing ownership of swarms, including bees in the wild.

6 Hily (p. 23) draws attention, for instance, to the fact that in ancient Ireland, "le statut social était déterminé par le nombre de vaches en sa possession" and that "la littérature médiévale vernaculaire abonde de récits sur les *tána* (*bó*) 'razzias (de vaches), avec notamment la célèbre *Táin Bó Cúailnge* 'Razzia des Vaches de Cooley'."

The sections of the Hittite *Laws*, by contrast, are very limited in their scope, dealing only with theft and subsequent punishment, but distinguishing different contexts for the theft, in particular when the bees are swarming versus the stealing of a hive. The laws in question, adapted from Hoffner 1997, are:

§91: *takku* NIM.LÀL-*an kammari kuiški taiezzi karū* … GÍN KÙ.BABBAR *pišker* / *kinun-a* 5 GÍN KÙ.BABBAR *pāi parna-šša šuwaizzi*
'If anyone steals bees in a swarm, formerly they paid … minas of silver, but now he shall pay 5 shekels of silver, and he shall look to his house for it'

§92: *takku* 2 É.NIM.LÀL *takku* 3 É.NIM.LÀL *kuiški taiezzi karū BU-BU-Ú-TA-NU-UM ŠA* NIM.LÀL / *kinun-a* 6 GÍN KÙ.BABBAR *pāi takku* É.NIM.LÀL *kuiški taiezzi* / *takku I-NA* ŠÀ-*BI* NIM.LÀL NU.GÁL 3 GÍN KÙ.BABBAR *pāi*
'If anyone steals 2 or 3 bee hives, formerly (the offender) would have been exposed to bee-sting. But now he shall pay 6 shekels of silver. If anyone steals a bee-hive, if there are no bees in the hive, he shall pay 3 shekels of silver.'

Even so, there are differences of scope and treatment of bee issues: the value, for instance, is given a specific monetary amount in the *Kanun* whereas the *Bechbretha* focuses more on percentages of yield as a measure of value, and while oath-taking is mentioned in both traditions, the impact of the oath differs in each case. And the Hittite laws are more concerned with punishment for the relevant thefts. Even with these differences, though, there is some overlap in terms of general content especially between the Irish bee-law tradition and the Albanian. Consequently, I focus on these two traditions in what follows, leaving Hittite out of consideration here.[7]

Of particular interest are the following three specific features of the respective legal treatment of bees and bee ownership:

— the issue of ownership in cases of stray swarms
— the role of tracking or pursuing bee swarms
— where a swarm alights

since they show some more specific parallels between the two traditions, certainly as to content and possibly as to form.

As I proceed to explore these parallels, it must be kept in mind that the points of similarity could reflect independent development based on the nature of the matter at hand; therefore, by way of adjudicating this question, I consider also some aspects of case law involving animal property from the British and the American legal traditions.

7 And see footnote 4 concerning relevant Germanic material.

4. OWNERSHIP

The ownership of bees, as creatures that are *ferae naturae* ('of a wild nature'), is notoriously hard to establish; one cannot brand them like sheep or cattle. The first section of the *Bechbretha* that deals with ownership, §36, says:

> *Ní asu for brithemnaib i mbechbrethaib beich thetechtai gaibte*
> *crann n-úasalnemid*
> 'It is no easier for judges in bee-judgments when tracked bees settle
> in the tree of a noble dignitary.'

and the *Kanun* states:[8]

Nuk	*mundet*	*kush*	*me*	*thânë*	*se*	*kjo*	*bletë*	*âsht*	*e*	*êmja …*
not	can.3sg	who	INF	say.PPL	that	this	bee	is	CONN	my.DEF

se	*"Bletë*	*kjo,*	*bletë*	*ajo"*
that	bee	this	bee	that

> 'One cannot say that this bee is mine … [recognizing] "This bee, that bee."'

That is, bees can pretty much go where they please as they swarm and typically do not have any identifying marks or characteristics. Accordingly, some principles for establishing ownership are needed and the *Bechbretha* has 14 sections that deal with ownership and the *Kanun* has 8 such sections.

Right from the start of the relevant grouping of sections of the *Bechbretha*, in §36 as quoted above, one key element in establishing ownership is mentioned, namely the tracking of the bees as they swarm. I turn now to that specific aspect.

5. TRACKING BEES AND TRACKING IN GENERAL

Both traditions make much of tracking/pursuing the swarm, that is following the swarm as it sets out for and ultimately finds and settles on some new place.

Tracking is mentioned in eight of the sections of the *Bechbretha*, and in five of the sections of the *Kanun*. These numbers alone suggest the importance of the concept. There are, however, no matchings as to the specific language used in each tradition: Irish has *in-étet* 'follows', from *in-in-tet, where *-tet in some way continues the PIE root *(s)teigh- (Rix 2001: 593), while Albanian uses the phrase *merret mbrapa* 'be taken from behind' (with the nonactive (mediopassive) form of the verb *marr-* 'take', from the preverb *me* with the root of Greek ἄρνυμαι and Armenian

8 In glossing Albanian, I use def for 'definite', inf for 'infinitive marker' (which combines with the participle (ppl) to form an infinitive), subj for the subjunctive marker, and conn for the element connecting a modifier (adjective or genitive) to the modified noun.

aṙnum (*H_2er-, Rix 2001: 270). Moreover, the *Kanun* even gives what amounts to a definition of tracking:

§207:	*Bleta,*	*qi*	*lshon,*	*do*	*të*	*mirret*	*mbrapa*
	kambë	*me*	*kambë*				
	bee.DEF	that	swarm.3sg	must	SUBJ	be-taken.3sg	from-behind
	footstep	with	footstep				

That is, "step-by-step" is the defining characteristic of a successful act of tracking/pursuing in regard to bees.

Furthermore, the adjudication of the outcome of tracking in both traditions depends in part on where the bees alight, and in particular if they are in a garden or a courtyard, or its equivalent, that is, in some sort of enclosed area:

Bechbretha §50:	*Beich*	*bíte*	*i*	*llugburt*		*no*	*i*	*llius …*
	bees	that-are	in	garden (*lubgort/lugbart*)		or	in	courtyard (*les*)

Kanun §210:	*Bleten*	*e*	*gjetun*	*nder*	*kopshtîje*	*të*	*hueja*
	bee.ACC.DEF	CONN	found.PPL	within	garden	CONN	stranger
	a	*në*	*rrethînë*	*të*	*shpís*	*së*	*huej*
	or	in	vicinity	CONN	house.GEN	CONN	stranger

'… a bee found within the garden of someone else or in the vicinity of someone else's house …'

Although the specific lexical items for 'garden' and 'courtyard'/'vicinity' found here in the two languages are not directly comparable cognate forms, the disjunction of the two locations and the meanings match up rather well, especially when one considers that *rrethînë* in Albanian can mean also 'uncultivated narrow strip of land surrounding a field' (Newmark 1998: s.v.), thus perhaps to be understood here more like the perimeter around a house that defines something akin to an enclosed courtyard.

These particular aspects of the respective bee-law traditions have echoes — it might be overstating things to call them parallels — elsewhere in Indo-European, though admittedly one has to be cautious in that "legal universals" may be involved. In particular, one could argue that tracking the bees is equivalent to being present with the bees throughout their swarming away from their original home, so that failing to track them is equivalent to being an absentee owner, so to speak. This opposition of presence vs. absence is relevant in other IE law codes, though not pertaining to bees; in particular, Watkins 1970, in his discussion of IE comparative law, notes the occurrence of such an opposition in two different parts of the old Roman Laws of the Twelve Tables. Moreover, there are other details about this opposition that become noteworthy in regard to bee laws.

First, a distinction is made in Roman law between *furtum manifestum* 'manifest theft' (e.g. the thief is discovered in the act) and *furtum nec manifestum* 'nonmanifest theft' (e.g. the theft is discovered after the fact). Watkins interprets this in terms of presence/

absence: "Thus *furtum manifestum*/*f. nec manifestum* may be put more generally as an opposition *present*/*absent* (*not* present)". Second, again quoting Watkins (p. 442):

> "Another variant of 'present' occurs in the law of procedure in the Twelve Tables. Proper 'court' procedure requires that both parties to the action be present, *ambo praesentes* (Tab. I 1, 9): the opposition must in a certain sense be neutralized. Where one of the two is not present, the case is adjudged by default to the party present."

Moreover, there is reason to believe that the act of tracking itself had a special significance in Indo-European culture; Watkins (op. cit., p. 446) observes the following, concerning the legal terminology in a key passage of Euripides's *Trojan Women* (l. 998ff.): "This passage is impregnated with technical legal terms … [including] *íkhnos* [in l. 1003] the tracking" and notes further, in a different but related discussion, following Wilhelm Schulze, that "there is a Vedic patron divinity of tracking, Pūṣan … [whose] function is delineated in RV 6.54; cf. line 7 *pūṣā́ gā́ ánu etu naḥ* 'let Pūṣan go after our cattle'".

Returning to *furtum manifestum*, it turns out that what makes for a "manifest theft" is not just if the thief is caught in the act; the theft is still manifest if the thief is discovered by tracking, and moreover, as Watkins puts it (p. 437), "one of the distinctive features of manifest theft is *enclosure*: catching the thief within the yard or house, not in the open field". Moreover, there are parallels in other Indo-European legal traditions, specifically the Sanskrit *Laws of Manu*, for enclosures mattering in the specification of laws and consequences (see Watkins p. 444).

Thus, in the Irish and Albanian bee-laws, there is explicit reference to a notion, that of enclosure, that figures in Roman law, as well as a means of tracking that also has echoes in Roman law. Such parallels are suggestive, to be sure, of a common ancestry.

6. CONCLUSION

With any comparative exercise of this sort, one has to be cautious about taking the comparisons too seriously with regard to their prehistorical import. That is, one has to reckon with the possibility of universals being at play rather than the singular facts that point to a historical connection. With regard to the above echoes, despite their suggestive nature in terms of a common inheritance, there are parallels in other traditions that raise the specter of universals being at play. In the case of bees alighting here or there, there is perhaps just a limited number of places where they might land and swarm; still, one does have to wonder why particular combinations of circumstances need to be mentioned, i.e. gardens and other enclosures, as opposed to just saying "wherever found" or in whosever land they end up.

However, in the case of tracking, it has to be noted that independently of any early Indo-European interest in tracking, a judge in New York State, in a 1916 case he presided over, ruled as follows (Loring, p. 28):

> "The qualified property of an owner of a swarm of bees, which flies from the hive, continues so long as he in person or by agent can keep them in sight and possesses the power to pursue them."

suggesting that the relevance of tracking (via keeping the bees in sight and pursuing them) may just be a matter of common sense rather than common inheritance.

Ultimately, it is hard to make a definitive case for the bee-law parallels reflecting shared history, especially in the absence of any specific and directly comparable shared phraseology or lexical cognates, as opposed to showing only semantic or typological parallels; that is, there is enough suggestive evidence on the content side, without, unfortunately, any support from the purely formal linguistic side, so that we have to say that perhaps the jury is still out on this matter of law.

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