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THE HITTITE LAW CODE AND THE TWELVE TABLES: A COMPARISON IN THE LIGHT OF INDO-EUROPEAN LEGAL DISCOURSE

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Summary

1. Early Indo-European Legal Traditions

1.1 Introduction

In this master's thesis I try to shed light on the Indo-Europeans legal heritage, stepping beyond the commonplace affirmations of linguists and historians who simply take its existence for granted without further specifications. Despite legal texts are among the oldest (and usually the most linguistically conservative and carefully framed) written attestations of so many Indo-Europeans peoples, and despite their undoubtful relevance on a linguistic, sociological and cultural point of view, to the extent of my knowledge, no in-depth comparisons have been conducted on the thematic of Indo-European legal discourse. Comparisons have so far been episodic, and more often than not one-sided: linguists, historians and jurists have rarely adopted a comprehensive and multidisciplinary approach to the existent *data* so to frame and interpret their meaning.

The thesis is structured as follows. In Chapter 1, I will delineate the general outlines of the (bipartite) legal tradition of Indo-European peoples as reconstructable from paleo-linguistic evidence, so to present what I expect to be the possible outcome of comparative research and be able to recognize the correspondences. I will also introduce the hypothesis that the written content of the Hittite Laws reflects an underlying oral Indo-European legal heritage, and that the Twelve Tables reflect it too. In Chapter 2, I will delve into the uniqueness of the Hittite Laws within the cuneiform world, highlighting the features that clearly set them apart from other Ancient Near Eastern legal traditions and which, in my opinion, bring them closer to attested Indo-Europeans traditions. Those features will be shown to be linguistic and juridical at once. In Chapter 3, I revisit the path from formulaic orality to (formulaic) codification in Early Rome, and I note the linguistic characteristics of the provisions settled in the Twelve Tables that link them to the oral Indo-Europeans heritage. I notice that the linguistic findings are consistent with historical narratives regarding the birth of Roman Law. In Chapter 4, I examine the syntactic, lexical and normative parallelisms between the Twelve Tables and the Hittite Law Code. While none of the similarities is a smoking gun for shared origin, I believe that the legal principles and logics that stay behind them are shared inherited features. The main shared features are the reverence for self-authoritative verbal formulas, and the compensatory rather than punitive approach to justice. The elliptical syntax of provisions from both texts is consistent with the theorized memorable and incisive formulas.

As methodological premises, it is necessary to investigate the very possibility (and opportunity) to begin a comparison based on such uneven touchstones as the Hittite normative tradition and the Roman one. In the early 20th century, academics resisted comparative approaches to Roman law, fearing that such studies would undermine its perceived uniqueness (Bonfante, 1909). It took some years before certain authors realized the potential for broadened insights by integrating findings from Indo-European comparative linguistics into legal scholarship (Devoto, 1933). More recently it has been argued that classical Roman Law is the only "true" ancient law, and that there is a quintessential gap between Roman Law and the other "primitive" legal systems of antiquity which distorts comparisons (Zaccagnini, 2008). Hoverer, limiting the comparison to the primitive and precocious stage represented by Twelve Tables averts the gap. On a more general ground, it should be noted that linguistic, historical and legal comparatists face similar problems distinguishing genetic similarities from accidental ones, whether random or due to historical convergences. I believe that the best strategy to obtain meaningful results is to remain cognizant of the unavoidable constraints of any backward reconstruction, to employ a scientific method (i.e. modelling research to validate or deny a fixed hypothesis), and to always look for multiple (i.e. multidisciplinary) validations. So the historical reconstruction of Indo-European legal culture, primarily a domain of linguists, benefits from historic-juridical validation and corroboration. The technical expertise developed in the context of Roman Law may prove useful to scholars interested with this peculiar aspect of Indo-European studies, as it could help them refine their research questions and hypotheses utilizing existing Roman legal concepts. Additionally Roman law categorizations provides a range of models and solutions to issues concerning commercial and personal relations, which could guide attempts to explain the relationships between the people and the laws evidenced by old legal sources (Mantovani, 2008).

A second methodological issue we must address is, to what extent we should pursue the comparison of Roman and Hittite Laws. The comparative method can be purposefully employed to reconstruct the splitting path and revise the degree of closeness between two entities which are already assumed by hypothesis to be related, but it cannot verify the relatedness of the two given entities (Clackson, 2007: 20-1). My working hypothesis is that the Indo-European legal culture pivoted around powerful customary formulas which had a performative force of their own, authoritatively uttered by their professional custodians who orally transmitted and reworked them: thus it was a legal discourse. Evidence for some kind of ancestral oral customs, opposed to written laws, arises from linguistic comparison and reconstruction of various Indo-European branches. What I argue is that, if Hittite Laws are contrasted with Akkadian and Sumerian cuneiform Law Codes, the difference can be explained as a persistence of a different attituded towards the expression of binding commands. In the Mesopotamia the king bound his subjects to his divinely-inspired justice; in Anatolia, the Hittite Laws appear as a positivistic codification of pre-existing oral customs possessing a force of their own. So the Hittite Laws did not try to seek the royal sanction, nor did they want to prove their fairness through an exasperate pursuit of strict equivalence between crime and punishment (so-called talion law): they are abode by due to their (long-established) customary acceptance. At the same time, the early-republican Twelve Tables are undoubtedly inspired by the revolutionary Greek logic of democracy (i.e. self-regulation of a community of individuals), but they bear the hallmark of prior oral knowledge of customary origins, which resulted in an impersonal and epigrammatical style. The pontifical interpretation of written laws continued to employ the esoteric methods of oral reworking to fixed wording, resulting in the historical development of Roman jurisprudence. I reckon that the same unquestionable reverence which Romans showed for their formulas can be inferred from the neat indisputability in which the Hittite Laws were formulated. Roman Law has been long distinguished from Cuneiform Laws as a culturally opposite phenomenon: the Roman Law emerged from folk customs, while the Cuneiform Laws was imposed from the royalty to the commoners

(Volterra, 1937). This appears to be the same difference that existed in the cuneiform world between Hittite and Akkadian-Sumerian Laws.

It must be clear that what I try to glimpse is just a reflection of a shared cultural attitude, that is, the reverence for a sacred formula possessing a force on its own. As for the constraints of the research, I believe that it would be almost impossible to trace precise normative or linguistic parallelisms between single provisions of the Hittite Laws and single provisions of Twelve Tables or other Early Roman Statutes. Anatolian branch, based on genetic data, is believed to have split from the rest of the Indo-Europeans sometime between 4400-4000 BCE (Lazaridis et al., 2025). Kloekhorst (2023) maintained from both an archeological and a linguistic perspective that Indo-Anatolian first diverged around 4300 to 4200 BCE, and the Anatolians then began a great trek across the Balkans until their arrival in Anatolia just before the 3rd millennium BCE. The Italic peoples are also believed to have been an early offspring of Indo-Europeans, although they most likely originated within the archeologically-defined Yamnaya culture splitting from the rest of Indo-European group around in the second half of the 4th millennium BCE and entering Italy during the early 2nd millennium BCE. In light of this long distance in time and space which divides Rome and Hattusa from the last common ancestor, I advise against seeking direct linkage between wordings, customs and institutions, since it would be anachronistic to assume that single provisions were independently and exactly passed down. Instead, it is more fruitful to focus on shared cultural patterns, as the insistence on compensatory rather than punitive approaches to reparations, or the outlawing of a culprit, or the presence of a highly developed juridical vocabulary implying abstract categorizations.

I suggest that the formula had an epigrammatical and concise style, represented by the linguistic undermaking of both the Hittite Laws and the Twelve Tables. Several (cultural, rather than strictly linguistic) factors concurred to this linguistically laconic outcome. The formulas came to be the domain of word professionals associated with dumézilian first priestly function: thus obscure wording could be thought as a mean to conceal magical power, or to silence the not-initiated. Furthermore, under-specification of subjects, punishments, and logical connections may have served the same purposes. Besides, linguistic brevity and idiosyncrasy may also have favored memorization. It is not easy to determine the proportion of retainment of Indo-European features and genuine innovation among the formulas employed by the Hittites and the Italics. The Indo-Europeans society which the Anatolians left was an early pastoralist one, and they failed to participate in subsequent wool-weaving and wheel-driving innovations which brought prestige to Indo-Europeans among the pre-Indo-European populations. During their great trek, whether across the Balkans or the Caucasus[1], the Anatolian speakers borrowed intensively from paleo-Europeans folks, especially in the high cultural semantic categories related to cult, royalty and rulership (Kloekhorst, 2023). However they surely preserved to some degree the Indo-European customs as proved beyond any doubt by HL §200a, but unfortunately we do not know which were the channels of this preservation, since priestly colleges do not seem to have played a pivotal role in the legal sphere (Cammarosano, 2021). On the other hand Rome was since its beginnings a melting pot of Indo-Europeans and non-Indo-Europeans peoples, experimenting with new social order and rulership models, but it preserved some incredibly ancient legal features associated thanks to the priestly colleges which jealously guarded sacred religious and legal formulas. Certain scholars (e.g. Courtney, 1999, as for the lack of specification of grammatical subjects in the earliest Roman Laws) tried to assign individual linguistic peculiarities of old prose to a remotest Indo-European influence (the same was sustained for the Hittite Laws by Friedrich (1959)). As told, I prefer a more nuanced approach focusing on patterns rather than isolated traits, and thus I think that I have been able to glimpse some reflections of attitudes which are actually consistent with the segmentary society we can postulate as the paradigmatic evolutionary stage to which the Indo-Anatolians (and the later nuclear Indo-Europeans) society belonged.

As for the Hittites, the idea of the Laws as possessing a force of their own can partially be inferred by the lack of royal sanction which makes the text apodictic, partly by the lack of any attempt to justify the measure of the punishment. The existence of oral customs is certain, and the Laws

[1] Lazaridis et al. (2025) sustain the hypothesis of an Anatolians' descent through the Caucasus.

themselves testify them. The occurrence of a specialized legal technical vocabulary, evidently derived from some oral legal system, assures us that the customs were systematized and formalized. Such formalization can only occur if oral formulas are somehow perceived as entities surviving the moment of their utterance, that implies a ideology promoting their sacredness. The subsequent fixing resulted in a laconicism which could be due to any of the factors mentioned above.

As for the Romans, the sacredness of the verbal formulas is directly attested within the religious sphere. Since the pontifical are a priestly colleges, is all to easy to demonstrate that the juridical sphere also relied on the same mechanism. The incisive style Twelve Tables is to be associated with direct and yet impersonal speech (Poccetti, 2009). Law is thus a living and yet impersonal force: jurists have translated this concept by saying that with the enactment of the Twelve Tables the (written) *lex* absorbed the *imperium* (Humbert, 2008). Using terms common to both disciplines, and delving deeper back in time, it can be said that the verbal formula is abstracted, then vested with power, and then sacralized. Two key etymologies from the sacred-legal sphere testify this connection at the utmost. The first concerns the term *ius* 'law' as it appears in *ius iurandum*, which Benveniste (1969) literally renders as the oral "formula to be formulated" (whence the attested meaning of *iurare* 'to take an oath, to swear'). The second one regards *fas*, which stands in complementary opposition with *ius*, and is linked to *fari* 'speak'. De Vaan (2008) plainly reconstruct the meaning of the sequence *fās est* as *'the saying exists' > 'it is right', offering a striking support to the idea of a formulaic oral legal discourse.

1.2 The Legal Tradition of the Indo-Europeans

In this section, I attempt a reconstruction of Indo-European legal conception, focusing on roots associated with law and order. The emerging architecture reveals a bipartition between positive laws, derived from divine authority and upheld by chiefs, and customary laws, rooted in the traditions and practices of the community. I explore how these concepts manifest in various Indo-European legal traditions, notably in pre-classical and classical Greek Laws, and Early Middle Ages Celtic and

Germanic ones. The analysis highlights the importance of formulaic orality in Indo-European legal culture and the role of specific professionals, such as poets, priests and jurists, as custodians of legal knowledge capable of producing binding effects when uttered.

Based on the work of Mallory and Adams (1997, 2006), the Indo-European vocabulary related to law is limited. Many legal concepts seem to stem from the broader idea of order, conformity, and proper fit. The mental representation underlying this linguistic structure is that harmony and order must be maintained, both in the physical cosmos and in the social sphere.

The idea of order and proper fit is associated with the root *$h_2$er-(tus)* (Latin *artus* 'joint', dialectal Greek *artús* for *súntaxis* 'order, arrangement, disposition', Middle High German *art* 'innate characteristic, disposition', Armenian *ard* 'ornament, figure', Sanskrit *ṛtu* 'order, rule', Avestan *arəta* 'order'). More closely associated with the ritual sphere seems to be the Italic-Indo-Iranian isogloss that continues *yew(e)s* with Latin *ius* 'law, right, justice', with Avestan *yaož-da* 'to make ritually pure', while the adjectival forms are in Latin *iustus* 'just, legitimate, valid', in Old Irish *uissse* 'just, adequate' and perhaps in Old Church Slavonic *istŭ* 'true, authentic': the Sanskrit *śáṃca yóśca* 'health and happiness' is explained since full happiness derives from conformity with the *yew(e)s*, that is, the ritually correct state of being.

The exact way of maintaining order varies from one branch to another of the Indo-European family, but it is often objectified in a codification always derived, at the time of familiarization with writing, from a pre-existing oral heritage: from the *Russkaja Pravda* of Jaroslav in Kievan Rus' (11^{th} century AD), to the Germanic Law Codes such as the *Lex Salica* and the *Lex Romana Burgundionum* (6^{th} century AD), passing through the Twelve Tables of the Romans, the early medieval Brehon Law of the Irish, and the very ancient Hittite Law Code.

One of the few robust linguistic reconstructions in the field of Indo-European legal discourse revolves around the root *$dheh_1$* 'to put, place, establish'. Thus, the law is *$dheh_1$-men-/i-* 'that which is placed, that which is established', and this is found in Sanskrit *dhaman-* and Greek *thémis* 'law' (we also find a concrete co-radical form *$dheh_1$-ti-* from which Latin *conditio* 'foundation, base', English *deed* 'notarial act', Greek *thésis* 'placement, disposition', Sanskrit -*dhiti*- 'position'). The law *dheh*$_1$ is a positive law, issued, sanctioned, and supervised by a divine or royal authority.

A different root can be reconstructed for customary law, which governs social relations within the group. The root *deik̂*- 'to show' gives in Greek *deíknumi* 'to show', which correspond in meaning to the Sanskrit root *dís*- and the Avestan *dis*-. Yet the same root has an essentially legal connotation in both Greek and Latin. Thus in Greek we have *díkē* 'judgment, justice, custom' and the Homeric *dikaspólos* 'judge'. Latin *dico* has undergone a semantic extension towards 'to say, to utter', but it initially indicated a formal saying in legal contexts: *multam dicere* 'to impose a sanction', *iudex* (from *ious-dik*) 'judge' is the one who says the law (*ius*), holder of the *iu-dicatio* 'power to judge' and "*iuris-dictio*" 'power to hear a legal case'. How to bridge the gap between the meanings is illustrated by Benveniste (1969) who explains that the "showing" of *deik̂* is a verbal showing of what must be. Benveniste explains that the Latin *dico* and the Greek *díkē* impose the representation of a formulaic law, determining for each particular situation what must be.

Mallory and Adams (1997) argue that it was the *deik̂*- customary laws that actually governed relationship in society at large, and add:

> The underlying concept was the showing or recitation of a legal formula specific to a particular case. It is clear from many of the earliest written Law Codes that we are dealing with earlier oral formulas, memorized by a member of the legal profession and passed on from one generation to another to provide guidance in interpersonal disputes such as those involving compensation (in terms of wealth or blood). Unlike the terms built on *dheh*$_1$- which refer to divinely sanctioned norms, those built on *deik̂*- appear to have been recognized as laws created by society itself. (1997: 346)

Regarding the formulaic nature and the significant practical relevance of customary laws we must observe that, in the Indo-European world, the further back one goes, the greater the emphasis on the importance of the spoken word. For Watkins (1995), the word, the verb, is a living force, a creative power capable of producing concrete effects on the physical world when invoked. Moreover, the formulaic style is the vehicle for the totality of Indo-European ideology, culture, and knowledge.

Formulas are the verbal expression of the entire traditional Indo-European culture. Poets were the custodians of these formulas. It is no coincidence that they, as professionals of the word and keepers of the entire community knowledge embedded in formulaic speech, were tasked with ensuring the well-being and stability of the community—that is, with preserving, enunciating, and applying its laws (Campanile 1987). The Indo-European lexical root of this *munus* (duty) appears to be *mnah*$_2$, which in Greek gives *mémnēmai* 'to remember' but also *mnā́mōn*, the title borne by a Cretan judicial officer. In the *Kauṣītaki Brāhmaṇa* 8.7, we find *yathāmnātam iti tv eva sthitam* 'as it is remembered is the established rule' (Watkins, 1995: 69).

Examining the legal structures of diverse Indo-European civilizations during the formative period following literacy acquisition, such as that of the Hittites, provides a valuable opportunity for comparative study.

Germanic languages, which show signs of significant lexical innovation, display lexical division between positive laws and customary laws. The first category includes Old Norse and Icelandic *lög* and its English equivalent "law", all related to the Old Norse verb *liggja* 'to lie, to arrange' and the English 'to lay (down), to lie'. Tracing these further back, we find they derive from the Indo-European root *legh*- 'to lie', which may also be the origin of the Latin *lex* 'law'. These terms denote a body of legal norms conceived as something established or set down. Customary law, on the other hand, is represented by the Icelandic *réttr* and the German *Recht*, both properly meaning 'right' (English 'law' actually encompasses both the meanings) These terms point to the actual upholding of rights within a community. Furthermore, among the Germanic peoples, there is undeniable evidence of oral transmission of legal norms. At the close of the Edict of Rothari (643 AD), the king allows for the possibility of adding to the written code if the elders recall other laws not included in the initial compilation. Snorri Sturluson, the renowned Icelandic writer and statesman, mentions in the Prose Edda individuals capable of reciting the law. He himself held the office of *lögsögumaður* 'law-man', tasked with the oral recitation (in poetic form) of one-third of the laws during the *Alþingi* assembly of all Icelanders (Zironi, 2022: 159-161).

This pattern also appears in pre-classical Greece. The term *thesmós* (from the root *dheh₁-*) was used for positive, written law, distinct from customs and traditions. *Thesmós* depended on the will of a legislator or authority, and could thus become tyrannical. In contrast, *díkaios* (from *deiḱ-*) represented the concept of good and just, embodied by the *nomoí*. These were laws made legitimate not by the authority of their issuer, but by customary acceptance. *Nómos* started to be used for written law in the 5th century BC, particularly after Athens banned oral laws in 403 BC. This later overlap, where the term for just customs also came to mean positive laws, may have resulted from political manipulation aimed at resolving civic conflicts (Gagarin, 2005).

The situation of Celtic Ireland at the dawn of its Christianization is also quite significant. The king's issuing and implementing of laws were rare events. Justice was administered by the *brithem* 'judge' and the *fili* 'poet'. The judge's fee was called *lóg mbérlai*, or 'price of legal language'. The highest court was presided over by a *brithem filidechta*, that is, an expert in the two main domains of the word, or more precisely, of the verbal formula: law and poetry. The texts collected into the *Corpus iuris Hibernici* sometimes have a legal character, sometimes a wisdom-based one, denoting a strong dependence on oral formulaic style and using obscure, arcane language (Kelly, 2009).

1.3 Traces of Indo-European Tradition within the Hittite Laws

In this section, I advance the hypothesis that the Hittite Laws reflect an underlying Indo-European legal tradition. Evidences which will be presented in Chapter

2. The Hittite Law Code suggest a correspondence between the reconstructed Indo-European legal culture, mainly based on oral customary laws, and the legal systems of the Hittites. I argue that the Hittite Law Code represents a positivistic codification of an earlier Indo-European heritage of formulaic orality. This is supported by their striking differences which contrast them with other Ancient Near Eastern Laws and seem to date back to a segmentary society stage predating the Hittite inclusion within the Cuneiform world. Evidence, as I shall sustain, comes from deliberate syntactic and stylistic peculiarities of the Hittite Laws. The Hittite Laws also possess a specialized legal lexicon, as other ancient Indo-European languages do and Mesopotamian ones do not. However, as the Hittite Law Code also shows several ties to other Near Eastern legal traditions, a nuanced approach is necessary to discern the unique Indo-European elements within the Hittite legal system.

The evidence reviewed in section 1.2 The Legal Tradition of the Indo-Europeans points toward a correspondence between the linguistic reconstruction of Indo-European legal culture, which parts between positive laws and customary laws, and the cultural attitudes found in the early Indo-European civilization, all of which manifest a dependence on a previous oral tradition and reveal a bipartite legal system. On one hand, there are the positive laws derived from the root *dheh₁* (with the meaning of 'established', lat. *positum*), derived from divine authority and upheld by the king or householder. These laws often played a lesser role in everyday life. On the other hand, there is linguistic evidence for customary law stemming from the root *deiḱ*, transmitted orally and formulaically, actively employed to regulate all social relations within the community. Customary laws of Indo-European peoples, when they can be reconstructed or hypothesized, appear deeply intertwined with a cultural heritage of formulaic orality. Indo-European law was perhaps just one facet of the broader domain of the verbal formula, preserved and passed down by professionals skilled in the use of language. This sacred conception of the word is typical of oral societies, but it seems to have developed unique features in the Indo-European context (*cf.* Watkins 1995).

Syntactically and stylistically, the Indo-European verbal formula is characterized by a certain "obscurity" (Watkins, 1995: 179). Van den Hout (2020: 93) speaks of "undermaking" in reference to the Hittite laws: laconicism is, in fact, a constant in their formulations, which often remain ambiguous. This peculiarity struck Friedrich (1959) so much that, in commenting on it, he did not hesitate to offer the only Indo-European direct comparison of comparison to be found in his excellent critical edition:

> “The non-designation of the accusative object 'him, her, it; them' has sufficient parallels in the Hittite Laws (...). This non-setting of the object pronoun belongs in the larger context of the non-designation of persons, who, like the culprit, the injured party, the authorized person, etc., are more or less easily conceivable from the respective context of the individual paragraphs. It has parallels in the laws of other Indo-European peoples. A prime example is 'si in ius vocat, ito' - 'if he (the plaintiff) summons (him) (the defendant) to the court, he shall go' in I.1 of the Roman Twelve Tables, see also in the Law of Gortyn ‘prò díkas mè ágen; ai dè k' ágei, katadikaksáto tò eleúthéro déka statḗrōn’'before the judgment he (the plaintiff) may not take (him) (the defendant) away. If he takes (him) away, however, he (the judge) shall impose a penalty of ten staters against a free man.” (Friedrich, 1959: 89)[2].

As will be seen in section 4.1 4.1 Hittite legal formula: syntactic and lexical analysis, the elliptical syntaxis and obscure style of the Hittite legal formulation point more toward the Indo-European world, than toward the clear-cut Cuneiform formulations of Akkadian and Sumerians laws.

Lexical comparisons can, on occasion, yield valuable insights. Some scholars have observed a tendency for the specialized use of Indo-European roots in legal and ritual contexts to be concentrated in the Anatolian and Italo-Celtic branches, though whether this represents a preservation of older usage or an innovation is unclear (Gamkrelidze & Ivanov, 1995: 708). For instance, the Hittite verb *sarnink-* consistently appears in the Hittite Laws with the specific legal meaning 'to make compensation’. This word is related to the Latin *sarcio*, which has the same meaning. Interestingly,

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[2] “Die Nichtbezeichnung des Akkusativobjekts 'ihn, sie, es; sie' hat in den hethitischen Gesetzen genügend Parallelen (...). Diese Nichtsetzung des Objektspronomens gehört in den größeren Zusammenhang der Nichtbezeichnung von Personen, die, wie der Schuldige, der Geschädigte, der Berechtigte usw., aus dem jeweiligen Zusammenhang der einzelnen Paragraphen mehr oder weniger leicht hinzuzudenken sind. Sie hat Parallelen in den Gesetzen anderer indogermanischer Völker. Musterbeispiel ist ‘si in ius vocat, ito‘ – ‘wenn er (der Kläger) (ihn) (den Beklagten) an die Gerichtsstätte ruft, soll er gehe‘ in I.1 der römischen Zwölftafelgesetze, vgl. auch im Gesetz von Gortyn ‘πρὸ δίκας μὲ ἄγεν· αἰ δὲ κ' ἄγει, καταδικακσάτο τὸ ἐλεύθέρο δέκα στατήρων’ ‘vor dem Urteil darf er (der Kläger) (ihn) (den Beklagten) nicht wegführen. Wenn er (ihn) aber wegführt, soll er (der Richter) gegen einen Freien zehn Stateren als Strafe verhängen‘. “

through this connection, the Hittite term is etymologically related to the Italian verb *risarcire*, still having the same legal meaning ‘to make compensation’. But the most striking lexical peculiarity of the Hittite Laws is that they appear to possess a specialized legal lexicon employed to juridically qualify and categorize actions, establishing their legal significance. In fact, we must observe that the conceptualizations underlying them constitute an exclusive aspect of Hittite Laws, which sets them apart from the other Near Eastern legal traditions (d'Alfonso, 2008: 347). I maintain that they demonstrate the great antiquity of Hittite Laws, since precise legal qualifications must have arisen from long-lasting practice. Indeed, this feature links Hittite law to other Indo-European legal traditions, and notably the Ancient Roman one, which similarly display a highly developed and specialized legal lexicon employed to juridically qualify and categorize actions. Furthermore, the syntactic environment in which they occur, i.e. the nominal sentence, is the same across various Indo-European branches (Dardano, 2004. See more in Chapter 0).

Finally, we may also look at some parallelisms in normative content among most ancient Indo-European laws, in order to retrace a common ancestors. For example, HL §37 deals with the abduction of a woman, probably for marriage purposes: "If anyone runs off with a woman, and a group of supporters goes after them, if 3 men or 2 men are killed, there shall be no compensation: 'you (singular) have become a wolf'."[3]. The last sentence “you have become a wolf” was shouted by the pursuers to the abductors, and had the effect of making them outlaws, that is, reducing them to a state - analogous to that of the Latin *homo sacer* - by virtue of which they could be killed with impunity by members of the community, having lost the protection of the law. Haase (1958) finds a striking parallel to this expression in the Frankish *Lex Salica* from 6th century AD, in which the words *wargus sit* 'become a wolf' are used to condemn someone to exile: we will return on this topic in section 4.3 The normative content: a (doubtful) comparison.

[3] Hittite translations are from Hoffner (1997).

Despite these affinities, it is essential to remember the potential for misleading when comparing legal traditions. We must keep in mind that the Hittite Law Code, despite being positivistic codification of pre-existing oral heritage, shows significant dependence on Near Eastern legal traditions in terms of text, style, and content. Moreover, some provisions may as well be the genuine fruit of autochthone Hittite jurists, imbued of Near Eastern culture. As an example, comparisons with biblical texts often reveals a regional diffusion of some provisions into the Near East and Asia Minor. For instance, Hittite law §197 assigns blame for adultery to the man if it occurs in the mountains, but to the woman if it occurs in the city. This reflects a presumption of rape in rural areas, which does not apply in urban settings where a woman could call for help. This logic, hard to grasp for modern readers, is explained in detail in Deut. 22:23-29, a biblical passage that codifies the same rule (also found in MAL §12). Another example are §§166/7 of the Hittite laws, which prescribe a brutal punishment for sowing on another's field: the culprit is yoked to oxen and pulled apart. While this might seem like an ancient purification rite, a similar prohibition exists in Lev. 19:9 and Deut. 22:9-11 (although the punishment is limited to the consecration of the entire harvest), suggesting a shared Near Eastern origin rather than an Indo-European one.

To conclude, it is best to be very cautious in imagining that the individual provisions of the Hittite Laws can be traced back to the sources of the *Urheimat*. But through a careful analysis, and a contrastive comparison with other Cuneiform Law Codes, it is perhaps possible to glimpse the reflections of a uniquely Indo-European cultural attitude based on a sacred verbal formula endowed with an intrinsic performative power.

1.4 Sketches on Hittite and Indo-European legal history

In this section, I endeavor to of construct a meaningful narrative from the historical data about the Hittite Law Code. The analysis first turns to the attested change over time of Hittite Laws, unique within the cuneiform framework, which links them to other western legal cultures. Flexibility is in fact often associated with oral traditions, rather than early written ones. After that, I take into account the other peculiarities of Hittite Laws, which set them apart from eastern cuneiform laws and contrast them with other Mesopotamian traditions. I eventually suggest that the unique features of Hittite law may be partially attributed to its origins being in a segmentary Indo-European society rather than in a proto-state one.

In an effort to sketch the comparative lines of development of Hittite and Indo-European law, it would be useful to know more about the establishment of the Hittites in their historical seats. Unfortunately, this topic remains largely uncertain. Assyrian commercial tablets of the $20^{th}/19^{th}$ century BCE found in the commercial emporium of Kanesh/Kültepe, contain personal names belonging to the Hittite linguistic heritage and thus prove that in that era, peoples of Indo-European Hittite origin were present in central Anatolia. However, scholars debate whether the Hittites were autochthonous or migrated there. This question is linked to the broader issue of original homeland of the Indo-European. To date, the prevailing view posits that the Indo-Europeans were an intrusive element in Anatolia, superimposed upon populations already residing in that geographical area. Indo Europeans entered the territory most likely from the East, through the Caucasus. The dating of the penetration is placed by scholars at various points during the 3^{rd} millennium BCE (De Martino, 2003) or in the very last centuries of the 4^{th} millennium BCE (Kloekhorst, 2023). An alternative hypothesis maintains that Neolithic Anatolia is the original homeland of the Indo-Europeans (Renfrew, 1987; Gamkrelidze & Ivanov, 1995); however this hypothesis is challenged by the internal linguistic evidence, supported by scholarly consensus, that indicates that Hittite was adopted by a non-Indo-European, perhaps Hattic, substrate. To avoid this issue, either the Proto-Indo-Europeans must be moved to eastern corners of Asia Minor, or the non-Indo-European Hattians must be introduced later, not as the indigenous but as intrusive population. (Mallory & Adams, 2006).

Focusing on the Hittite Law Code peculiarities, a very surprising characteristic of the Hittite Laws, unique within the cuneiform context, is their demonstrable evolution over time (see more in section 2.3 The Hittite Law Code), a phenomenon that has puzzled scholars, as it challenge the conventional understanding of ancient Near East Law as static and immutable.

Camassa (2011), explored the relationship between writing and legal change in the ancient world. In Mesopotamia, the birthplace of written law, Law Codes were not meant to prescribe legal rules, but rather to showcase the refined legal doctrines of the sovereign's court. This meant they were not subject to any alteration, both in their physical form and their content, nor were they actually applied. In the land of Israel, there are signs of changes in the law over time, but these are sharply denied and concealed by the doctrine of the unity of the biblical text. The culture of Israel revolves around the sacralization of law: against the hegemonic powers, the Jews identify with a law given by God that, because of its divine character, is theoretically immutable. The Hittite civilization, on the other hand, is the first to accept, without dissimulation or removal, change as constitutive of written law. Its written law that originally confronts oral customary law, drawing from it. Finally, in Greece, we see a fully developed system grappling with the interplay between writing and legal change. This involved writing down norms to regulate conflict within the community, recognizing the innovative potential of written law to modify existing oral customary law, and acknowledging the resulting transformations. It is likely that the Hellenes adopted the practice of regulating disputes through written norms from other cultures, such as the Hittites and Phoenicians. The Phoenicians also provided the Greeks with their alphabetic script, which facilitated wider literacy. These conditions matured within the polis: the need to resolve internal conflicts, for which oral customary law was no longer sufficient, led to the formalization of law in written form. Early evidence from Crete suggests this written law was also public and monumental. In Greece, we are led to think, Legislation was born and law was structured in written form because behind it there is a very precise subject, new and self-perceived as such: the free community that wanted that law, that recognizes itself in that law.

The civilizations mentioned fall into two groups: the Mesopotamian-Israelite group, which resisted legal change, and the Indo-European group, which embraced it. We know that for societies relying on oral law, the shift to written law is a significant event. Written law constantly needs to reaffirm its universal validity, while oral law, even when transmitted faithfully, possesses a unique vitality due to its inherent flexibility. The keeper of the arcane formula, while adhering to formal traditions, can adapt it to specific circumstances in a way that written law cannot. Perhaps this tension between the perceived flexibility of orality and the fixity of writing gave rise to the distinctive tendency towards legal dynamism and modification seen in the western Indo-European world, whose beginnings may be traced back to the Hittites.

An other kind of observation promises to shed light on Hittite society before the establishment of Labarna's kingdom, and potentially even earlier. Unlike Anatolia, Mesopotamian civilizations were preceded by a proto-state period. While northern Syria and central-southern Anatolia were the site of the first Neolithic revolution and the shift to an agropastoral economy, their geography wasn't conducive to producing large food surpluses needed to sustain large urban centers. In contrast, by the 3rd millennium BCE, population growth and improved organization in Mesopotamia (as well as in Egypt and China) allowed for surplus food production. This supported specialized workers who, though not directly involved in agriculture, provided manufactured goods and services to rural areas. This reciprocal system of redistribution ultimately favored the specialists, who possessed rare skills and knowledge, including early writing, and resided in cities closer to the centers of power. Cities in Lower Mesopotamia became hubs of political, economic, and religious power for the surrounding regions. This led to the consolidation of a social system characterized by inequality and rigid hierarchy. While this early centralization was only partial in its technical and material aspects, it was complete on an ideological level (Liverani, 2011[2]).

Wesel (2001) describes the characteristics of the legal culture of proto-states, wherever they arise: they are governed by muscular figures anthropologically known as Big Men (and Sumerian LU.GAL 'king' literally stands for 'big man'); bearers of the myth of force, they cause the breakdown of intermediate social groups that stood between the central power and the individual (Greek *génos*, Latin *gens*, Celtic *clan*, Germanic *Sippe*). Their legal systems are authoritarian, with a focus on punitive rather than restorative justice, and often imposed harsh conditions on women. These characteristics are all evident in non-Hittite Mesopotamian Law Codes.

This situation contrasts with that of segmentary societies, characterized by a near-mechanical cohesion among their members. Segmentary societies are based on the interaction of homogenous groups with similar values, beliefs, and material possessions. These social organization predates hierarchical societies and are founded on an egalitarianism (even if aristocratic) that is often imagined to be a feature of the male warrior bands rooted in the ancestral memories of Indo-European peoples. These societies emerged during the Neolithic revolution, which transformed humans into producers but did not yet favor the development of large-scale social groups. It is important to note that the Neolithic and urban revolutions are not linked by an inevitable chain of progress. In ancient contexts, we see a variety of strategies adopted by different communities in diverse ecological zones, with a coexistence of communities at different levels of social, technological, and economic development (Liverani, 2011[2]). According to Wesel (2001), segmentary societies –*Gemeinschaft* more than *Gesellschaft* – translate the equality of their members into a legal system that prioritizes amicable dispute resolution to restore internal harmony. The power of any leader is not absolute but must consider the opinions of other prominent individuals. This aligns with the reconstructed social structure of Homeric Greece (Cantarella 1979; Gagarin 1989), and the presence of family-tribal groups that act as intermediaries between the individual and the collective is consistent throughout the ancient Indo-European world (e.g., *génos*, *gens*, *clan*, *Sippe*). Segmentary societies also exhibit a strong tendency to blend religion and law, evident in legal regulations concerning sacrifices, taboos, and magical powers. All these features are present in the Hittite Law Code: the intermingling of sacred and profane permeates the text; animal sacrifices are addressed in §§166/7, 196; taboos appear throughout in all instances of *hurkil* from §186 onwards; magical powers are rarely explicitly mentioned, as in §170 relating to sorcery, but we know the practice was present and codified as a crime among the Hittites. Furthermore, in segmentary societies, punishments are restorative rather than punitive, a characteristic described as typically restricted to Hittites within the broader system of cuneiform law (Haase, 2003: 148), on which we shall return in section 2.4 The exceptionality of Hittite Laws within Cuneiform World. While we must admit that evidence is not conclusive, we may assert that it is not unreasonable to believe that the Hittite Law Code, unlike the other cuneiform Codes, appears as one might expect it, if it were a final manifestation of a customary, formulaic oral culture belonging to Indo-European segmentary societies.

It is then be necessary to scrutinize the Hittite laws, removing elements of clear Mesopotamian derivation, and discarding all those generic and non-genetic affinities with other cultures that arose from comparable circumstances. By comparing the remaining core of Hittite law with early evidence from other Indo-European legal traditions, we may be able to discern traces of an original, shared legal culture. Imparati (1964) and J. Friedrich (1959) and Neufeld (1951), all of which authored critical editions of the Hittite Law Code, compared the Hittite Laws with other Indo-European legal traditions. However, these comparisons have remained somewhat limited and sporadic. We aim to move beyond these initial observations and uncover more comprehensive and systematic connections within the legal frameworks and cultures of Indo-European peoples. To do this, we propose both to compare the Hittite Laws with the Roman Twelve Tables, and to contrast them with other Cuneiform Laws.

1.5 The Romans within the Indo-European Context

In this section I note Early Rome open character, which led to significant social transformations. In fact, it caused a wave of innovation which restructured the social order in unpredictable ways. However, the distinctive role of priestly colleges assured the maintenance of some Indo-European elements of extraordinary antiquity, remarkably linked to the sacred verbal formulas.

Italic languages are considered to be an early offspring of the Indo-European family. Splitting from the main trunk, occurring later than the Anatolian one, likely took place around 3300 BCE or earlier (Anthony, 2007). Penetration into Italy occurred earlier than 2500 BCE. During the 2nd millennium BCE Italic languages diversified and later reapproached during the next millennium, eventually merging into Latin in classical times (Haarmann, 2020). Patterns of differentiation and rapprochement can indeed be thought as characterizing the development of Italic peoples, all of which show a unique blend of inherited and innovative features both linguistically and culturally (Pallottino, 1984[7]).

The earliest archaeological evidences for a stable settlement on the Quirinal Hill date to the Late Bronze Age, but it was not until the Iron Age (10^{th}-9^{th} century BCE) that a proto-urban community emerged, extending between the Quirinal and Palatine hills and encompassing the forum. This marked the beginning of social differentiation, culminating in a stratified society by the 7th century BCE. Synoecism undoubtedly was the key factor in this process. The topography of Rome did not favor a unified settlement, but rather fragmentation into smaller units on the hills. Traces of these lost communities persisted, during historical times, in some feasts and rituals. Since its beginnings, Roman history portrays a multi-ethnic Rome, built by diverse peoples. The Latins, the Sabines, and the Etruscans comprised the three original constituent tribes of Rome, according to classical tradition. It would be therefore hard to identify a single prevailing ethnicity in pre-historical Rome, and the Romans themselves insisted on the notion of Rome being, since its pristine days, an open city, contrasting with the Greek preference for ethnic homogeneity. This favored a precocious exploration of newer institutional, social and legal orders. (Ampolo, 1988).

Amidst these changes, a striking element of persistence is represented by the continued existence of ancient rites and cultic figures. There are some striking correspondences between the Indo-Iranian and Italo-Celtic groups, both in the vocabulary (see section 1.2) and in the fact of having a ‘king’ - Latin *rex*, Sanskrit *rājan,* Old Irish *rí* – who embodies religious functions and is complemented by a large body of priestly colleges: the Celtic druids, the Avestan priests, and the Vedic *brahmani,* whose designation could be etymologically linked with the Italic *flamines* (Dumézil, 1964). The religious rites and terms were zealously retained by these influential priestly colleges, which embodied, in prehistorical times, the concept of sovereignty, declined into two aspects: the magico-religious one, dealing with the sacred and supernatural, and juridical-political one, focused on earthly rules and social order. Sovereignty was associated with the first and foremost function of the tripartite Indo-European social order theorized by Dumézil (1958), the others two being the force function, associated with warriors and protection, and the productivity function, encompassing fertility, prosperity and sustenance. Though Dumézil's hypothesis may not be an exact reflection of historical reality, it serves as a valuable tool for framing and conceptualizing the possible organization and power structures within old Indo-European societies.

Festus provides an account of a priestly hierarchy in ancient Rome, likely dating back to the earliest period of Roman history. This hierarchy places the king at its top, followed by the *flamen Dialis* (priest of Jupiter), the *flamen Martialis* (priest of Mars), the *flamen Quirinalis* (priest of Quirinus), and lastly, the *Pontifex Maximus*, the ultimate arbiter of all matters divine and human[4]. While this account appears authentic, it contrasts with the observed reality of historical times, where the *Pontifex Maximus* wielded considerably greater practical authority than the *flamines*. This shift in power likely stemmed from the political and religious transformations that occurred during the later monarchy (see section 3.1 Early Rome: From Oral Custom to Written Codification). The emergence of the hoplite army and the decline of gentilitial structures engendered a new type of citizen, less bound by traditional kinship ties. Consequently, religion, intrinsically linked to these kinship structures, began to cede its central position in public life to political institutions. The *flamines*, primarily associated with ritual and cultic practices, saw their influence diminish, retaining largely ceremonial roles within the religious domain. Conversely, the *pontifices*, with their expertise in legal matters, ascended to a position of greater prominence. Their knowledge of legal formulas and their role in resolving disputes proved crucial in a society where law was becoming increasingly political and secularized (Schiavone, 2017^2).

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[4] Fest., verb. Sign., sv. 'ordo sacerdotum' (Lindasay^2 p.198-200): *Ordo sacerdotum aestimatur deorum ordine, ut deus maximus quisque. maximus videtur Rex, dein Dialis, post hunc Martialis, quarto loco Quirinalis, quinto pontifex maximus. Itaque in soliis Rex supra omnis accumbat licet; Dialis supra Martialem, et Quirinalem; Martialis supra proximum; omnes item supra pontificem. Rex, quia potentissimus: Dialis, quia universi mundi sacerdos, qui appellatur Dium; Martialis, quod Mars conditoris urbis parens; Quirinalis, socio imperii Romani Curibus ascito Quirino; pontifex maximus, quod iudex atque arbiter habetur rerum divinarum humanarumque.*

During classical times, the *flamines,* as their female counterpart the Vestals, were responsible for maintaining the cults of the gods, ensuring the proper performance of rituals and sacrifices. In contrast, the pontiffs held the crucial role of determining what actions were considered *nefas* 'forbidden and contrary to divine will' and what actions fell within the realm of *fas* 'permissible' , i.e. lawful for humans to undertake or abstain from at their discretion. However, within the broader domain of *fas*, norms of civic conduct emerged within early Roman communities, initially stemming from the traditions of the ancestors (*mores maiorum*). These norms gradually coalesced into a body of law known as *ius*, reflecting the human exercise of the freedom granted to them by the gods (Guarino, 1990[8]). This distinction explains the conceptual contrast between *ius* 'human law' and *fas* 'divine law' provided by classical sources. It is worth nothing that the *ius* was an oral and dynamic body of law. At the same time, the enactment of the Twelve Tables triggered a cultural revolution which ultimately proved to be very fecund.

Legal Latin is strongly characterized by a compresence of archaic and colloquial traits which can be traced into the uncertainty of emerging hypotaxis, the use of ellipsis and symmetrical forms, alliterations and homoioteleuton, the concise structure and the energetic expressiveness of the Twelve Tables; all these traits and are most prominent the Twelve Tables, while in subsequent legislation they will slowly leave room to a verbose, hypotactic structure, but without disappearing entirely (De Meo, 2005[3]: 86. See section 3.3 Linguistic). Based on the linguistic remarks which will be presented, and on the historical context from which the Twelve Tables sprouted, I will reconstruct their textual history and argue that the cultural environment from which they emerged was a typical Indo-European one not dissimilar from the one we can speculate about for the Hittites. Its most prominent feature would be, for the purpose of this study, the performative power of the word and the presence of faithfully transmitted legal formulas. The pontiffs were responsible for the upkeeping and the transmission of legal formulas needed to apply the *ius* 'law': they were the guardians of a fixed orality composed of sacred formulas which we already discussed as part of the Indo-European legal heritage.

On one side, the linguistical conservatism and colloquialism of the Twelve Tables may be a consequence of the great degree of antiquity which the Romans maintained within the inner circles of their priestly colleges, and it may highlight new perspectives on the emergence of syntactical structures and their comparative use in legal language. On the other side, the unique interplay which developed in Rome between written sources and preexisting oral legal heritage, will be proven, shaped a very peculiar attitude of the Western world toward written legal texts which lasts to today.

2. The Hittite Law Code

2.1 Law within the Cuneiform World

In this section I briefly discuss the main features of cuneiform law. To highlight the unique aspects of the Hittite Law Code, within the broader context of cuneiform legal traditions and Law Codes, it is essential to establish a clear understanding of non-Hittite (non-Indo-European) cuneiform law as a comparative framework. Needless to say, a multicultural and multidisciplinary perspective is essential to approach cuneiform texts.

Cuneiform script is the peculiar script of the ancient Near East. It is a method of writing based on the use of a stylus to carve wedges (Lat. *cunei*) into fresh clay. Cuneiform writing gradually developed between the end of the 4th and beginning of the 3rd millennium, BCE evolving from a pictographic system towards a more abstract form in the late 3rd millennium and fading out of use as late as the 1st century AD.

Giusfredi, Matessi and Pisaniello (2023: 160-161) emphasize the intricate nature of cuneiform script's dissemination. Cuneiform was more than a mere writing system; it represented a complex cultural construct. It encompassed not only a set of glyphs with functional and formal evolution but also a system for structuring and conveying knowledge across various domains (religious, literary, scientific, and administrative), and embodied a conception of society centered on preserving human memory through writing. As a consequence, cuneiform adoption entails adapting the script to the specific needs of the adopting culture, including its language, technical vocabulary, and document types. That is to say, using cuneiform implies assimilating the cultural heritage embedded within the writing system itself.

Mora (2008a) points out that a considerable part of the documentation in cuneiform script from the various regions of the ancient Near East has to do, in a more or less direct way, with legal themes and issues. These documents present multiple issues debatable from a linguistic, philological and interpretative point of view. In particular it is difficult to interpret the legal terms preserved in these documents, given our ignorance of the contemporary legal context. We ignore whether common models and forms shared between cultures existed , and which were the religious and sacred implications of rules and sanctions. In addition, there are numerous gaps in the archaeological documentation, we have no theoretical works that can provide information on the framework of the cuneiform legal documentation. A well-established practice distinguishes ancient Near Eastern documents of a legal character on the basis of their textual typology. Mora (2008a) identifies the following categories :

- The Law Codes, or Collection of Law;
- texts for scholastic use, containing passages of a legal character;
- edicts and royal decrees;
- royal acts of donation, granting of immunities, exemptions;
- treaties;
- oaths and texts of instructions;
- reports of trials and judgments;
- private law documents or negotiations;
- other testimonies, contained in non-legal texts.

Commenting on Mesopotamian law, Neumann (2003: 61) [5] states that law is to be intended as a political superstructure phenomenon, belonging to state-organized and socially differentiated societies. However, as argued by Wilcke (2003), forms of dispute settlement must have existed since the emergence of the earliest human groups. Still we assume that for the emergence of a law as we intend it, it is necessary to postulate more complex societies, operating within non-primitive economies and capable of questioning the legitimacy of societal and legal norms (Selz, 1999).

[5] "*es sich bei 'Recht' um eine politische Überbauerscheinung staatlich organisierter und sozial differenzierter Gesellschaften handelt*".

Westbrook (2009a) holds that all the Ancient Near Eastern societies participate in one common, shared legal tradition, a position shared by most scholars, as long as it is referred to the macro-levels of nature, structure and basic approach to law. At the micro-levels, which go all the way down to the specification of the case and the sanction, the shared legal tradition branches out into a wide variety of solutions (Lafont, 1994).

While some scholars (Bottéro, 1982) have speculated that pre-Classical legal tradition was amorphous and informal, with law manifesting through judicial actions reflecting internalized principles of equity and justice, this view is likely overstated. More recent scholarship points to a formal legal tradition composed of a multiplicity of specific and analogically extensible, transferable and cognizable cases (Greengus, 1994). The more general principles of equity and justice would be resorted to only for exceptional situations. Subsidiarity appears to connote the relationship between formal (substitute) and informal (substituted) legal traditions, the former intervening in the absence of a local customary or even individual rule, considered more effective by litigants (Lafont, 2000: 51). In fact, it seems that writing, despite its spread in economic and administrative practice, was not fundamental to the legal practice. Unfortunately this negatively affects our ability to reconstruct the overall legal framework, together with the aforementioned interpretative issues.

2.2 Sumerian and Akkadian Law Codes

In this section, Cuneiform Law Codes originating in Mesopotamia proper are presented. They are first listed, and then general information is provided about their content and structure. After having distinguished them from the contemporary Law Codes, scholarly positions about their possible functions are reviewed. In fact, they may have served an apologetic scope, or academic or even literary purposes, rather than being normative texts.

Seven collections of Law from the Ancient Near East are documented. They include (their acronym as Laws of X in brackets) (Westbrook, 2003):

1. The Code of Ur-Nammu (LU), from the city of Ur in southern Mesopotamia, in the Sumerian language and dated around 2100 BCE.
2. The Code of Lipit-Ishtar (LL), from the city of Isin in southern Mesopotamia, in the Sumerian language and dated around 1900 BCE.
3. The Code of Eshnunna (LE), from the city of Eshnunna in northern Mesopotamia, in the Akkadian language and dated around 1770 BCE.
4. The Code of Hammurabi (LH), from the city of Babylon in central Mesopotamia, in the Akkadian language and dated around 1750 BCE.
5. The Hittite Law Code (HL), from the city of Hattusa in Anatolia, predominantly in the Hittite language and dated between the around 1500 BCE (first version) and 1250 BCE (second version).
6. The Middle Assyrian Laws (MAL), from the city of Assur, in the Akkadian language and dated around the 1400 BCE or, according to others, around 1070 BCE.
7. The Neo-Babylonian Laws (NBL), from the city of Sippar in central Mesopotamia, in the Akkadian language and dated around the 700 BCE.

In addition, we have a few fragmentaryr Codes, are incorporated in the Hebrew Bible, written in Aramaic (former Paleo-Hebrew) script but sharing the heritage of Cuneiform codes. These texts likely originated in the first half of the 1st millennium BC, reaching their final form in the second half.

8. Covenant Code (CC), identifiable in chapters 21 and 22 of the Book of Exodus, in Hebrew.
9. Deuteronomic Code (DC), identifiable between chapters 15 and 25 of Deuteronomy, with a greater concentration of norms in chapters 21 to 25, in Hebrew.
10. Priestly Code (PC), scattered between Leviticus and Numbers, in Hebrew; since the provisions are of a sacred nature, it is not always included among the Law Codes.

It is essential to acknowledge that the term "Code" when applied to Ancient Near Eastern legal corpora does not correspond to the modern juridical understanding of the term. Its usage here is purely conventional, following the practice of early scholars who borrowed the word from current legal language. In fact, modern scholarship often employs synonymous expressions such as "Collection" or "Compilation of Laws" or even just “Laws of”. However, if we consider that "code" derives from the Latin *Codex*, referring to a durable format for preserving fixed texts, its traditional application to the meticulously preserved legal collections of the ancient Near East reasserts its aptness.

The function of the Codes of Law in the Mesopotamian and Near Eastern society is unclear. We have in fact no evidence that these sources had normative, or persuasive, or even descriptive value: we do not even know if they all had the same value (d'Alfonso, 2008: 325). Not one of the thousands of trial accounts mentions an article of the Laws known to us, whereas this happens, albeit sporadically, with edicts. For this reason one can assume that they were rather sources of cognition of the law, rather than sources of production.

As posited by Finkelstein (1961) the lengthy epilogues and prologues of some of the collections indicate that the Codes were to be intended as apologies of the sovereign. Accordingly, they were primarily directed to posterity and future holders of kingship as memory of justice, divine legitimacy, and greatness of their enactor. The particular significance of the prologues is remarkable. They narrate the mythical origins of the sovereign and kingship, along with the grand deeds of the lauded lawgiver. Each deed is introduced by the Sumerian clause UD-BA or the Akkadian *INUMISU*, meaning 'at that time.' This same introductory phrase precedes the list of legal articles. This very clause effectively present the pronouncements as narratives of a bygone era. Furthermore, the surviving epilogues primarily focus on cursing not those who violate the laws, but rather those who remove or replace the sovereign's name from the stele. Only the epilogue of Hammurabi seems to express a desire that the legal content be considered by posterity. However, the lack of any reference to his laws in judiciary practice, and the fact that they were copied without modification for over fifteen hundred years (not even the tariffs for goods where modified), contradicts the possibility of their normative value.

On the other side, Kraus (1960) noted that the alleged laws did not appear to originate from actual cases: this is in accordance with the lack of evidence regarding their application. The Laws appear to be organized in thematically homogeneous groups according to the so-called principle of attraction, not because they are drawn from related events. According to this hypothesis, Law Codes were a typical manifestation of Mesopotamian science, and the Codes should be connected with the other encyclopedic-sapiential collections such as lists of gods, lists of professions, mathematical lists, astrological lists and lists of omens. Unlike the vertical, abstract categorization of modern science, Mesopotamian science was a *Listenwissenschaft* ‘science of lists’, that proceeded horizontally. It accumulated concrete examples to exhaust a topic, resulting in practical but fragmented knowledge, limited in theoretical exploration and universal definitions (Westbrook, 2009b).

The two presented approaches are both still deemed valid by scholars and are not mutually exclusive. As far as we know, that is, according to evidences we possess, the Law Codes had no normative value. They may represent the intellectual exercises of a learned elite, expressing an idealized legal system rather than reflecting actual court practices. But, more likely, the Law Collections were compilation of both actual cases passed in judgment and scholarly discussions, indirectly capturing the law of the time while also serving the political interests of the ruler by projecting justness and fairness upon his reign (d'Alfonso, 2008: 342). Roth (2000) has noted that the Codes look like literary texts, rather than codifications of laws and legal practice. They were among the compositions that were copied and recopied, in order to teach scribes the proper way of writing and phrasing documents. Therefore they held substantial role within the educational system, and nothing prevents us from thinking that they were actually consulted by legal professionals dealing with difficult subjects or by legal students reading them as influential, although not binding, texts. Their presence in the classical scribal curriculum might also explain the transmission of this specific textual type to the peripheral areas of Anatolia and Israel.

2.3 The Hittite Law Code

This section examines the structure, content, and historical development of the Hittite Law Code, outlining the process of reconstructing the text from cuneiform tablets and discussing the organization and classification of normative provisions. I analyze the evidence for the Code's evolution over time, considering various scholarly interpretations regarding its dating and the stages of its development. Finally, I examine the syntactic structure of the Code, highlighting its predominant use of a hypothetical period pattern and noting exceptions.

Excavations at Hattusa, the ancient Hittite capital, unearthed numerous cuneiform tablets containing legal articles. These tablets, varying in age, handwriting style, and clay quality, present the same basic text of the Hittite laws, with minor variations between them. By carefully comparing and combining less damaged tablets with fragments from others, scholars have reconstructed nearly complete versions of two sets of Hittite laws, each comprising roughly one hundred paragraphs. The designations given to each of these two series, 'If a man (acc.)' (*takku* LÚ-*an*) to the first, and 'If a vineyard (acc.)' (*takku* $^{\text{GIŠ}}$GEŠTIN-*an*) to the second, result from their colophons, which correspond to the initial words of the first article of each. The first editor, Hrozný (1922), divided the text into paragraphs based on the horizontal dividing lines visible on the tablets. Sections are presented as articles numbered §1 to §200 in modern editions. Hrozný's numbering is still used, sometimes with the addition of lowercase Roman letters to further divide sections when philology indicates that they were originally separate norms (e.g., §195 is now divided into 195a, 195b, and 195c). One tablet (KBo 6.4), featuring a later form of the language and writing style from the time of a late Hittite king, attests to a revision of the Code, creating a parallel text alongside the initial articles. These parallel sections are indicated by Roman numerals. Friedrich's critical edition (Friedrich, 1959) proposed numbering the articles of the second series *takku* $^{\text{GIŠ}}$GEŠTIN-*an* starting again from 1, but later editions have rejected his proposal. The two mains series are sometimes (Hoffner, 1997) referred to as Series A (§§1-100) and Series B (§§ 101-200).

The order of matter in the Hittite Law Code does not follow modern classificatory principles, as is typical of ancient Law Collections. The so-called principle of attraction seems to govern the distribution of legal provisions: thematic blocks can be identified. In the first tablet, we find blocks of rules concerning murder, injury, feudal tributes, and theft. The second tablet contains norms related to damage to other people's property, damage in general, crimes of impurity, and prices of goods. However, these thematic blocks are not well-defined and are often interspersed internally, or separated from other blocks, by provisions unrelated to any systematic classification. In each area, there are conspicuous gaps (most importantly voluntary manslaughter) that lead one to believe that the written law had a subsidiary and supplementary function to the oral law.

The Hittite collection of laws frequently distinguishes between practices in force before the laws were put in writing (*karu* clauses, 'before, once') and the rules introduced by current legislation (*kinuna* clauses, 'now, presently'). This has often led scholars to emphasize the revolutionary character of the written laws, even using it as a basis for dating the Code to the reign of King Telipinu. Following this approach, Imparati (1964) and Hoffner (1997) argued that the radical changes in the norms align with the sovereign's spirit of reform, evident in his famous Edict. On the other hand, Carruba (1965) Archi (1968) and Singer (2001), argued that philological analysis points to an earlier dating. Crucially, they identify the "father of the king" mentioned in §55 with Hattusili I, who is repeatedly referred to in this way in the Palace Chronicles. This interpretation attributes the earlier, undocumented body of laws reflected in the *karu* clauses to Hattusili I, and the *kinuna* clauses (and thus the attested laws) to his son Mursili I. Van den Hout (2020: 90) offers a compromise between these two positions, suggesting that the Laws reflect the climate of cultural renewal that immediately preceded the major reforms of Telipinu's Edict, while absorbing much from a pre-existent oral tradition stretching's back to Hattusili I's times.

Regarding the internal development of the laws, Korošec (1964) followed by Haase (2003) identifies four/five stages. The first and earliest stage made extensive use of the death penalty, and imposed very severe punishments assessed in cattle. The second introduced sacred substitutions in sacrifices. The third was related to the numerous monetary fines. In the fourth reformed provisions and the reduction of previously established fines appeared. The fifth stage (added by Haase) corresponds to the Parallel Text of the fragment KBo 6.4, which reformulates the first 50 paragraphs of the first series. Hoffner (1997: 5) reduces the stages of the evolution of Hittite Laws to three, whereby the first is indicated by the coordination between the adverbs *karu* 'before' and *kinuna* 'now' and is attested in both series, although more rarely in the latter than in the former. Most Laws of this type show a simple reduction, mostly by half, in the amount of punishment. In a few cases, a corporal punishment is replaced by a fine. The second stage is represented by small differences in form between older and newer manuscripts. The third stage can be identified in the development carried forward by the Parallel Text of the fragment KBo 6.4.

The syntactic structure of the Hittite Law Code predominantly follows a hypothetical period pattern. This pattern consists of a conditional clause by *takku* 'if', outlining a specific case, and a main clause stating the corresponding legal consequence. There are a few exceptions, clustered in sections §48 to §56 (excluding §49 and §53, drawn here by the principle of attraction). These seven deviant articles employ three apodictic formulations (thou shalt / he shall), and three relative sentences. One of seven is actually a parenetic anecdote. All these formulations are consistent with those found in Mesopotamian Law Codes. Some scholars attribute the dissimilarity of §§ 48-56 to a different origin for these articles. Archi (2008: 345) suggests that they derive from royal edicts aimed at regulating specific institutions or granting privileges to cultural centers. Van den Hout (2020: 88) stresses on their casuistic and anecdotal origin, lacking of generality and abstractness.

2.4 The exceptionality of Hittite Laws within Cuneiform World

In this section I analyze the characteristics of Hittite Laws, highlighting their unique features which contrast them with other cuneiform Codes. The Hittite Law Code differ from Mesopotamian archetypes in several aspects: first of all, it lacks a prologue and an epilogue, essential part of most

Akkadian and Sumerian Law Codes. The Hittite Laws content also seem to rely on different principles, as demonstrate by the absence of mirror punishment and talion law. Another truly unique feature of theirs is that they have a specialized legal lexicon used to specifically qualify crimes. Finally, they display an evolution over time with no comparison in the Ancient Near East: this very last fact, together with some other observation that will be exposed, might give hints regarding their *Sitz im Leben* which, I conclude, was primarily a formative, *lato sensu* educational one.

The Hittite Law Code, stands out as the most frequently copied text within the entire *corpus* of Hittite writings. To date there have been at least five critical editions of it accompanied by translation: Hrozný (1922) in French, Neufeld (1951) in English and Hebrew, Friedrich (1959) in German, Imparati (1964) in Italian, and Hoffner (1997) in English.

While a preliminary comparative reading of Hittite laws might suggest some divergence from other Near Eastern legal traditions, Neufeld (1951) offers a deeper insight. His critical edition, notably accompanied by a translation into Hebrew (a Semitic language deeply rooted in the Ancient Near Eastern context and notably employed in some preclassical Law Codes) offers some unique remarks of the similarities and differences between Hittite laws and other Cuneiform Codes. He admits (Neufeld, 1951: 101) that the Hittite Law Collection shows, on the surface, a remarkable degree of uniformity with other Akkadian and Sumerian Law Collections, particularly with regard to the type of their substance, structure, legal scope, technical presentation and arrangement of subject matter. Howbeit, the apparent similarities are due to the frequent interactions between the peoples, which created not only fairly similar material objects of commerce and social institutions, but also a common uniform style of a specific type of literature (*cf.* Roth, 2000). Therefore the similarities themselves should not lead to a conclusion of a complete dependence of the body of Hittite Law on Akkadian and Sumerian Law Codes. Accordingly, the resemblance lies much more in the form than in the substance:

> “Legal dissimilarities between the HittL and the LH and MAL are often more striking than their similarities. The few close parallels are only of a general nature. The general spirit of the HittL is rarely in full harmony with that of the Semitic usage” (Neufeld, 1951: 105).

Lafont (1994) also highlights the importance of distinguishing among the various Mesopotamian, Jewish, and Hittite traditions, emphasizing the variety of the remedies they provide for controversial issues-at-hand. Archi (2008: 282) identifies some very distinct features in Hittite laws, particularly in the selection of topics for regulation, where he sees no Babylonian influence, and in the penalties for crimes, contained into the hypothetical periods apodosis; he even affirms that partly different principles inspired penal legislation in Anatolia and in the Mesopotamian and Syro-Palestinian cultures, as demonstrated by the absence of regulation of contracts for civil law, and the absence of talion law for criminal law, both of which are extensively employed in Mesopotamian Law Codes. D’Alfonso (2008) recognizes the originality of Hittite Code within the cuneiform world, pointing out the uniqueness of the legal classifications they employ. Giusfredi, Matessi, and Pisaniello (2023: 175) also agree, maintaining that Hittite Laws do not derive from an Akkadian archetype.

The first striking discrepancy between Mesopotamian Codes and Hittite Code is the absence, in the latter, of any kind of prologue or epilogue. Given the many recovered tablets containing passages or fragments of the laws, it is unlikely that these texts were simply lost. As we saw, the prologue bore particular significance, as they were an integral part for the sake of canonicity of the Law Code literary genre, insofar that scholarship originating with Finkelstein (1961) regarded them as the true core of Mesopotamian Law Collections, having a weighty and aggrandizing purpose. Van den Hout (2020: 92) further observes, regarding the non-apologetic intent of the Hittite Laws, that there is no evidence of their public display in monumental form. The absence of prologue and epilogue aligns the Hittite Laws to the Middle Assyrian Laws, placing them in an ever-present temporal dimension, and possibly suggesting special normative force. The MAL's distinctive feature is its structure: tablets seem to excerpt single articles from a lost original code, each focusing on a specific theme with repeated provisions for overlapping topics. The discovery of an exact copy of some articles in Nineveh, while the other fragments were found in Assur, suggests the code may have circulated to standardize administration across the kingdom.

Despite this analogy, the principles governing Hittite Laws are different. The MAL may still be used for comparison: although their time of composition and the absence of a prologue and epilogue might recall the Hittite collection, the content of the two legal systems differs significantly. The MAL is a typical Semitic Code, which appears to apply talion law (retribution) to an extreme degree, resulting in what we might consider profound injustice (Saporetti 2008: 461). Ordeals are also frequent in the MAL, contrasting with their rare use in Anatolia (Marazzi 2010a). Importantly, as Saporetti (2008) points out, what appears to us as injustice was actually a desperate attempt to achieve justice. In the Assyrian and broader Semitic mindset (as seen in the Code of Hammurabi and biblical laws), justice was often perceived as a mixture of retribution, retaliation, and divine intervention.

Hoffner (1995) notes the Hittites' proclivity to compensatory, rather than punitive payments. And so Haase (2003: 148) asserts that Mesopotamian mirror punishments (*Spiegelnde Strafen*), did not exist among the Hittites. He claims that revenge proved to be economically ineffective, usually resulting in blood feuds and senseless rage, and so in Hattusa, brute force was replaced by a system of fines, representing a reasonable restitution but avoiding turning into a criminal punishment. As an alternative explanation of this difference, however, I propose to interpret the Semitic legal thought exemplified by the biblical "An eye for an eye, tooth for a tooth, hand for a hand, foot for a foot" (Ex. 21:24) as a more recent development which took place in Mesopotamian Proto-States, compared to the older compensatory approach typical of the HL and largely favored in segmentary societies, as demonstrated by Wesel (2001).

Compensatory fines aim to restore the original situation through reparations: this approach preserves the power balance among group members without further hindrance of the total group power. The only flaw of this rational approach is that monetary compensation for non-monetary torts is to be arbitrarily determined, and therefore lacks inherent legitimacy. What distinguish Hittite and Mesopotamian Law Codes is that the HL had no need to look for legitimization. In Mesopotamian codes, equity pervades every norm: their justice makes them legitimate. Conversely, Hittite Laws do not gain legitimacy either from royal sanction (they lack the royal seal typical of documents given legal force by royal assent (Mora, 2008b)), nor from their self-evident fairness. While other Near Eastern codes presuppose a teleological ethical-religious legitimization, coming from outside divine sphere, Hittite laws have a decidedly secular imprint: their foundation, that is legitimization, rests upon a set of social and economic rules, customs, and traditions, firmly embedded in the collective sentiment and cultural memory of the Hittite community (Marazzi, 2013). I would go further, asserting that the set of customs and traditions backing and legitimizing the Hittite Laws rules was an inherited legal legacy based on supposed and perceived sacredness of the legal formulas, according to Indo-European attitude.

Another truly exceptional peculiarity of the Hittite Code lies in the occurrence of paragraphs which do not establish a sanction. Rather, they qualify a certain behavior as belonging to a specific category. These classifications, and the conceptualizations underlying them, constitute an exclusive aspect of Hittite Laws (d'Alfonso, 2008: 345-347). Their names offer a shortlist of legal concepts, embodied in specific words. Hoffner (1997: 1-2) considers all these words as samples of a specialized legal lexicon including *hurkel* ('abominable act; unpermitted sexual pairing', in Hoffner's translation, *azione esecranda* in Imparati's and *Greuel* in Friedrich's), *haratar* ('offence'; *azione meritevole di pena*; *Ärgernis, Anstoß*) and *alwanzatar* ('sorcery'; *sortilegio*; *Behexung*). Arguably the term *nakkus* 'loss, damage' (§98) shall be added to the list (Melchert, 2014). As I will show in 4.1 Hittite legal formula: syntactic and lexical analysis, these expressions always appear in the same syntactic environment, that is, in apodosis structured as qualifying nominal sentences which do not establish the corresponding punishment. Such syntactic behavior is shared by some other Indo-Europeans normative qualifications (it also appears within the Twelve Tables). It clearly differs from

Mesopotamian codifications which do not display a comparable use of technical legal vocabulary implying underlying qualifications, nor do they have clauses that establish a categorization for an action without expressly specifying the implied punishment. t seems to me that even the Sumerian term ^{LÚ}NÍ-ZU 'thief' undergoes in the Hittite Code a process of categorical abstraction, although it is usually governed by the verb *kis*- 'to become, be considered'. It does not designate the person who committed the theft, but rather the individual *status* that the wrongdoer acquired: *vide* §45 and its late version §XXXV, §71 and §86 'he shall be considered a thief'; §66 'he shall not have (the pen's owner) arrested as a thief'[6] (Hoffner's translation).

Possibly even some highly controversial issues, as the meaning of the verb *arnu*- or the *parnassea suwayezzi* clauses—whose interpretation is forced by the context towards a non-literal meaning— could be better understood if looked at as legal expressions belonging to a technical and esoteric language. Thus Imparati (1964) and Souček (1961) reviewed interpretations provided up to that point for *parnassea suwayezzi*, grouping them according to their legal significance. Regarding this expression, it is worth noting that Hoffner (1997: 168) analyzes it as allative *parna* + the enclitic pronoun -*se* + the conjunction -*a*. He notes that the conjunction shall precede enclitic pronoun according to the rules of particle sequencing in Hittite. The diverging position may be explained as belonging to a special formulaic style. The existence of words implying a abstract normative categorizations, and the occurrence of formulaic expressions, suggest a long development predating the put in writing, and thus having took place in the stages of orality.

Finally, another peculiarity of Hittite Law Code, which we have already noted, consists in the explicit attempts to revise the laws. Revision of laws represents an *unicum* that is difficult to frame in the Near Eastern landscape, and it is operates on grammatic and content level (Westbrook, 1994). The updating of the content in the Parallel text (KBo 6.4) is used by Archi (2008: 280-281) in order to argue that the rules of the Hittite collection indeed served as an effective reference for judicial

[6] HL §66 is actually governed by *ep*- 'to take, grab, arrest)', but this does not disprove -and indeed reaffirms, as Hoffner's translation remarks- the interpretation of ^{LÚ}NÍ-ZU as an abstract category rather than an individual designation.

practice. In fact, their effectiveness is debatable: so d'Alfonso (2008), while admitting the uniqueness of the revision attempts, insists on the lack of normativity of the Hittite Code of Laws, and Marazzi (2015: 86-7), opposing Archi's view on evidence of normativity deriving from the Parallel text, remarks that KBo 6.4 has an erudite character, which is more suitable to scribes and students formation than to actual judiciary practice.

Indeed the text labelled as "Instructions of Arnuwanda I for the frontier post governors" (CTH 261.1) instructs a provincial governor about how to deal with legal cases, but it does not mention the Hittite Laws, which certainly existed at the time. Instead, after designating the governor of the post, the magistrate and the elders as first-instance judges (and the King as the supreme judge for onerous law cases), the Instructions of Arnawanda I for the frontier post governors specify (for *hurkil* 'sexual offences') that the matter is to be treated according to local customs, that is, executing the culprits where such is the custom, and banishing them in towns whose customs mandate banishment. This is consistent with the findings of Lafont (2000) which assumes that across the Ancient Near East the written laws had a subsidiary role with respect to oral customs, emerging only whenever the latter were insufficient. Following Marazzi (2015) suggestion, I intend to review the Hittie Law Code and the parallel text thereof not as a judicial guide, but as a lens to understand how practice, tradition and central laws interacted.

In my opinion, the Hittite Law Code was disposable for consultation by officials of the Royal Court in Hattusa, which acted as the supreme court for most serious crimes, as testified by the Instructions of Arnuwanda I and the Hittite Law Code[7]. Officials educated or working in Hattusa tributed to it an authoritative value, whilst it had not a normative force. Thus it is not to be postulated that judges actually recurred to it when having doubts about a case: more likely, it constituted a formative text, on which literates exerted themselves before ascending to high administrative ranks. Given the orality of court procedures (Hoffner, 1995), it also seems unlikely that the judges could

[7] The king's gate of HL §§71, 187-8, 191 is metonymy for the King's bench (Hoffner, 1997; Imparati, 1964).

consult the text of the Laws. Most provisions were memorized by the students, but there was no need to strictly enact them in actual trials: they acted as nomophylactic models. The confined authority of the Hittite Law Code is consistent with the archeological findings occurring exclusively in the capital, and with the variety of power structures through which was governed the Hittie Empire. I think that the Hittite Code we possess indirectly influenced the law-in-action as much as modern legal textbooks influence legal practice. The Hittite Law Code constituted a model on which the judges would have shaped their mind during the schoolyears, and a formal structure on which they could elaborate their concrete reasonings. The formative (i.e. educational) usage I propose for the Hittite Law Code could also explain its evolution over time: legal textbooks, although often old-fashioned, need to be updated for both content and grammar; legal textbooks often include, for educational and explanatory purposes, norms (*karu* rules) that predate those (*kinuna* rules) currently in force.

2.5 Explicating the Distinctive Features of Hittite Law as Indo-Europeans prehistoric legacies

In this section I review the factors that contrast the Hittite Laws with their Mesopotamian counterparts. I consider the possibility that the Hittite possessed a well-developed oral legal system of Indo-European descent which pre-existed to the written Code, and which was somehow adapted to be carved into clay tablets at a very early stage of Hittite literacy.

Insofar I have endeavored to identify several factors which point to their most ancient origin. Firstly, there is no mention of a single, wise lawgiver who created the legal system through his wisdom. Secondly, the Hittites were not concerned with justifying their Laws through a balanced system of crime and punishment. In order to explain this, I advanced the idea that Laws were accepted by their subjects simply because they were the long-established custom of the people. Thirdly, the Hittites developed abstract legal concepts and a specialized vocabulary to describe them. This sophistication suggests a long period of legal development. Fourthly, the readiness of the Hittites to accept legal change may be derived from a tension between the malleability of pre-existent oral legal heritage, and the Mesopotamian-inspired written form of the law.

For the reasons just set forth, the legal science of the Hittites evidently existed well before their adoption of the cuneiform writing: the fundamental principles and concepts of Hittite law were not shaped by the Mesopotamian legal traditions associated with cuneiform. Indeed we can suppose that not only did the development of Hittite law take place in the realm of orality, but that it actually continued to live in it after the put in writing of the Hittite Law Code. So the Instructions of Arnuwanda I to the post governors attest that there was a *karuili-* 'traditional' way to handle crimes as serious as the *hurkel* related ones (which were of the utmost seriousness). Evidently customs and folk rules played a fundamental role in everyday life and in justice administration, and written laws were modelled after them.

Hittite laws from the Code juxtapose an older, revoked *karu* rule with a newer *kinuna* rule, the latter being in force when the Laws were written down. Neufeld (1951: 95) and Güterbock (1997) argue that the *karu* clauses represent remnants of customary law, not attributed to any specific lawgiver, but stemming from long-held traditions and the ancestral practices of the Hittites. Conversely, the *kinuna* clauses exemplify statute laws, explicitly linked to a particular king and obeyed because they represent the ruler's command. Para-legal Hittite sources offer evidence for customary law, likely originating from an earlier oral tradition. Among such texts, the so-called Palace Chronicles stand out due to their ambiguous character, blending elements of both prescriptive and wisdom literature. This text likely originates from the time of Hattusili I and Mursili I, a period marked by the establishment and strengthening of Hattusa's central authority. As Dardano (1997) reports, the chronicles were transmitted orally over time, and they comprise a collection of anecdotes featuring figures from the royal court. The protagonists of these episodes commit various crimes, violating the king's trust and prompting his punitive response. These narratives carried significant legal weight, indicates by their similarities to ancient edict. Functioning as literary anecdotes with a cautionary purpose, these stories were preserved to showcase the consequences of wrongdoing.

According to Van den Hout (2020: 87-97), articles §§54, 55, and 56 of the Hittite Law Code, with their anecdotal style and reference to the "father of the king," are direct descendants of an archaic and highly case-specific prescriptive tradition stretching back to the first era of Hittite Kingdom (18th or 17th century BCE), to which the Palace Chronicles also belong. These provisions, initially in oral form, were likely embedded within short stories that illustrated various forms of unjust behavior—a format easier to memorize than abstract legal provisions. Other articles within the Hittite code display a highly case-specific nature. For example, §43 addresses the scenario of a man crossing a river who grabs the tail of an ox, displacing its rightful owner and letting him drown. The analogical extension of the moral of the story allowed Hittite legal practitioners to apply the underlying principles to a wide range of cases.

But most of the provisions are not bound to any specific history. Yet they possess a unique style which favors memorization and formulaic recitation. The most important conclusion that we shall drawn is thus that the Hittie Laws possessed an oral pre-history predating to their acquisition of written status.

Van den Hout (2020: 93), arguing for the great antiquity of the Hittite Laws, cites the presence of very ancient toponyms, the lack of any evidence of an Akkadian version, and what he calls the linguistic "undermaking" of the Laws. This last feature, consisting of an expressive underdevelopment resulting in laconicism, is typically associated to early writings in a specific language. Since Van den Hout has lately theorized that literacy skills in Hittite language arose around the turn of the 16th century BCE (just before Telipinu's reign), he associates the written form of the Hittite Laws with that period, while also emphasizing that the must have possessed a long oral and aural (pre)history predating their transcription. Such an extensive oral tradition places the genesis of Hittite Laws beyond the reach of Mesopotamian influence, both temporally and geographically. This lends credence to the observation that

> "Their importance lies in the fact that they deal with the legal system of a state which was subject not only to a vast Babylonian-Assyrian cultural influence, but to a certain extent also to Indo-European influence" (Neufeld, 1951: 94).

In light of the observations made so far, I believe that we can try to identify the source of that distinctive character of the Hittite laws, which sets them apart from other cuneiform legal texts. While the latter are actual rules of justice, the Hittite Laws appear as positivistic codification of a pre-existing, possibly Indo-European, oral legal heritage. This normative system does not emanate from a particular king (and therefore need not a prologue or an epilogue); it need not to recur to the talion law, or to extreme justice, in order to legitimate itself (the legitimization derives from the perceived sacredness of the formula issuing the command); it employs a specific lexicon to juridically qualify and categorize human actions (as other Indo-European legal tradition do and Mesopotamian do not); and it expresses itself through voluntary obscure and elliptical style contributing to its perceived sacredness. Many of these features, as well as the close association of law and religion which is to be found among the first Romans, have been individually associated to the law of segmentary societies: therefore it would be possible for the Hittite legal system to predate the establishment of a formal State, contrary to the Mesopotamian laws clearly belonging to societies organized in States.

3.The Twelve Tables

3.1 Early Rome: From Oral Custom to Written Codification

In this section, I frame the broader social and cultural context from which the Twelve Tables originated, confronting classical sources with modern scholarly interpretation. After sketching the revolutionary shifts which triggered the codification process, I briefly assess the topic of the involvement of pontiffs, noting that their role as guardians of the legal rule was temporarily dismissed during the drafting of the Twelve Tables.

We can dismiss as purely legendary the traditional foundation of Roma by Romulus in year 753 BCE. But less surely can we dub as a myth everything pertaining to the regal period. In fact we can accept the historical existence of some (probably more than just seven) kings, whose rule may have spanned across roughly the same period indicated by classical tradition, i.e. between 8^{th} and 6^{th} century BCE. The traditional dates therefore need not to be revised, and for our purposes it may suffice to sketch the social and institutional order of the archaic period and its main lines of development.

The king was the highest authority of the city. Priest and military leader, the rex was both the head of the army and the guardian of the *pax deorum*. In this latter role, he was also the guardian of the law, knowing and applying the laws by utterance: he was vested with the power of *iuris-dictio* 'jurisdiction' but literally 'law-saying (power)'. The king was appointed by the Senate, which consisted of an assembly of the heads of the *gentes* (clans). At the king's death the powers returned to the senators, and a period of *interregnum* started during which they were to choose a new ruler. The populace was divided into *quasi*-kinship groups called *gentes*, whose origins often predated the foundation of the city. The core of any *gens* consisted of a cluster of families claiming to have a common ancestor. They were surrounded by a larger collection of individuals and families bound to the *gens* by distinctive relationship called *clientela* 'patronage'.

This social organization proved to be particularly effective in pre-monetary and rural society revolving around cultivation of large agricultural lands and very little commercial activity. (Capogrossi Colognesi, 2021[3]).

The institutional order that we just described began to crack the 6th century. By then, Rome had become a thriving city far different from what it used to be. Individual property become of greater importance, trade and craft activities expanded and the circulation of monetary bronze increased. The development of all the activities induced a growing mass of people, including foreigners, to settle the city. They were not organized in the form of *gentes* and were often characterized by a more individualistic lifestyle. This mass of people out of the *gens* system formed the initial nucleus of what would become the *plebs*. A series of king of Etruscan descent were the protagonists of this century. Individual wealth and private property became the new pillars of society, much to the grief of the older *gentes*. One of the main reforms, attributed to Servius Tullius, attained to the military organization: the old Roman *exercitus curiatus*, organized and assembled on the basis of kinship groups, was disbanded in favor of the *exercitus centuriatus,* which, being based on the participation of all individuals according to their personal wealth , severed the link between the *gentes* and the military power. The centuriate system, designed for the military, spilled over into politics, disrupting the traditional all-patrician government. (Capogrossi Colognesi, 2021[3]). This paved the way for so-called Conflict of the Orders, a harsh struggle which would contrasted patricians and plebeians until the first half of the 4th century BCE.

The turning of the 5th century BCE would however prove to be the hardest time of the conflict. Evidence suggests that the expulsion of the (Etruscan) kings was motivated by a reactionary comeback of the patricians, who took advantage of a moment of weakness in the new democratic (*rectius* individualistic) institutional setup. The plebeians, angered by the restored patrician government, resisted the new *status quo* during the entire Conflict of the Orders finally achieving its overthrowing. Key moments of this struggle can be identified in the birth of the Republic in 509 BCE, the first secession of the *plebs* in 494 BCE, and the laying down of the Laws of the Twelve Tables in 451-450 BCE.

According to tradition, in year 462 BCE, the plebeian tribune Terentilius proposed a commission of five to codify the consular powers, aiming to limit the authority of the patrician consuls through written law. This was a significant moment as it marked the first plebeian plebiscite demanding reform, highlighting the urgency felt by the plebeians to establish legal boundaries for the consuls. The patricians resisted these demands with success for a decade, but eventually yielded in year 451 BCE, leading to the creation of the *Decemviri consulari imperio legibus scribundis*, a commission of ten who replaced the consuls for two years to draft a new legal code. Their task was to define the *imperium* of the consuls and praetors in its civil and jurisdictional aspects (Humbert, 2018). The board of ten, composed entirely of patricians and led by Appius Claudius, who though initially a champion of the plebeians was himself a patrician, produced legislation that was approved by the *comitia centuriata* that same year. The normative provisions were inscribed on ten bronze tablets and publicly displayed. There is no reason to doubt the tradition up to this point: it is believable that this legislation was enacted by a specially appointed magistracy in terms quite similar to those transmitted to us (D'ippolito, 2003).

Much more doubtful is indeed the second part of the story, according to which Appius Claudius tried to keep the board in office for year 450 BCE, refusing to relinquish power and enacting two more *tabulae iniquae* 'unjust tables' which contained only unbalanced provisions favoring patricians. The tables became law, but Appius Claudius was deposed and committed suicide in the same year. His downfall, echoing the fate of Tarquinius the Proud, suggests that Appius Claudius may have had ambitions of seizing absolute power.

Similarly, the complex tradition linking the decemviral work with Greece is quite doubtful. According to Pline the Elder and Strabo, the Ephesian philosopher Hermodorus, who was in Italy at that time, assisted the decemvirs by refining the drafting. According to Livy and Dionysius of Halicarnassus, the Romans had sent an embassy in Greece just before the laying down of the Tables, in order to study the Solonian legislation of Athens. The most plausible explanation for these accounts is that the Romans recognized their debt to the Greeks for the concept of written and innovative legislation, a concept that authentically developed in Greece (Gagarin, 1989; Camassa, 2011). The contacts between Rome and Greek cultural areas were already well established in the 5th century BCE. The concept of an extraordinary magistracy and a written codification of law are both Greek notions, as is the recourse to these solutions to resolve a crisis. The Greek written laws provided the Romans with a formal model for the codification of the Twelve Tables, although the normative content remained distinctly Roman (Ducos, 1978).

Before moving on, we still have two points to clarify. First, we have to discuss what we can assume about written law evidences in Rome before the twelve tables, since oral law, not having been passed down to us, cannot be useful for our argumentation. Second, we must briefly assess what role the pontiffs, as guardians of the ancestral customs, (see 1.5 The Romans within the Indo-European Context) played in the drafting of the Twelve Tables.

Regarding the first point, classical authors, particularly Dionysius of Halicarnassus, attested to a body of normative prescriptions attributed to the Roman kings, designated as *leges regiae*. However, most, if not all, of these regulations appear to concern religious matters, such as sacred law or rituals, and thus fall outside the scope of our current inquiry. Furthermore, no extant account claims to reproduce the original wording of these laws; the vast majority seem to have been transmitted through Greek authors who paraphrased them in their own language, while the Romans authors only reproduced their generale content. (Franciosi, 2003). Interestingly, it has been contended that in fact the *leges regiae* were not written laws but rather oral formulations of customary precepts by the king, or rather solemn pronouncements that, by the binding force attributed to words, created situations requiring general observance (Orestano, 1967). Another possible source of early Roman written law is a book called *ius Papirianum*, traditionally attributed to Papirius, a contemporary of Tarquin the Proud, who supposedly compiled some of the laws of the kings. Howbeit, this tradition is largely debunked, since modern scholarship suggests that the *ius Papirianum* was likely compiled by a jurist homonymous to Papirius in the mid-Republic (Laurendi, 2024).

With regard to the second point, we must recognize Rome likely relied on custom to handle everyday legal matters. This customary law, known as *ius Quiritium*, represented the basis of their early legal system and its roots may predate the foundation of Rome, potentially tracing back to the invasion of Italic peninsula by the Indo-Europeans people who would become known as the Italics (Sabbatini, 2014). However, the precise relationship between *ius Quiritium* and later written law, such as the Twelve Tables, is ambiguous. Guarino (1990[8]) contrasts the primal *ius Quiritium*, springing from the *mores maiorum* 'customs of the elders', with what he calls *ius legitimum vetus*, that is, a juridical system founded on formally enacted laws like the Twelve Tables. During the transition from the 6th to the 5th century BCE, *ius Quiritium*, while remaining in effect, began to stagnate. It was only partially compatible with the socioeconomic structure underpinning the patrician-plebeian centuriate army, and it eventually was superseded by a fitter system. This reconstruction implies a distinction between unwritten customary law and codified legislation. The oral, uncodified *Ius Quiritium* was primarily the domain of the pontiffs. This raises questions about the role of the pontiffs in the creation of the Twelve Tables, which D'Ippolito (2003) solves by assessing that the Twelve Tables were intentionally designed to limit pontifical influence. The anti-pontifical sentiment pervading the law explains the absence of interference from the pontiffs, who later regained some of their power by developing sophisticated interpretative techniques. However, at the time of the drafting of the Twelve Tables, they were forced to refrain from interfering with their creation.

3.2 Textual remarks on the Twelve Table

In comparison to the much older Hittite Law Code, the textual tradition of the Twelve Tables is, ironically, far more fragmentary. In this section I try to trace the transmission of the text, examining its manuscript survival over the centuries. Four long processes of transmission separate the Twelve

Tables original text from us. The first extends from their engraving in 451-450 BCE, to the sack of Rome by the Gaul chief Brennus in 387 BCE, who, during the pillage, destroyed the bronze originals. The second goes from that time to our classical sources, mainly dating from the first century BCE to the second century AD. During the second phase it is likely that the edition published by the jurist Sextus Aelius Paeto around 198 BCE had become the standard reference text. The third encompasses the period from those classical sources to the medieval manuscripts that preserved them. The fourth phase encompasses the palingenetic efforts attempted from the modern era up to today in order to reconstruct the text.

The surviving fragments of the Twelve Tables can be categorized into four types (Warmington, 1938): (i) Fragments that appear to be the closest to the original text, as understood by the quoting author. However, they are often very short, sometimes even single words, lacking their original context. (ii) Fragments that are fused with the quoting author's sentences, but show minimal alteration otherwise. (iii) Fragments not only fused with the quoter's text, but also significantly distorted, though they still convey the general meaning of the law in the form a paraphrase. These first three types are considered *ipsissima verba* and are printed in uppercase by modern editors. (iiii) passages that offer interpretations or opinion based on interpretation of the law, or simply a descriptive designation for the law. They are printed in lowercase by modern editors. As a matter of fact, the provisions were informally identified by their key words, which acted as titles. Originally, each individual provision within the Twelve Tables was referred to as an individual *lex*; the use of the phrase *lex duodecim tabularum* to represent the entire code is an anachronism, appearing only in the Imperial period (Crawford, 1996).

References found in Plautus and Naevius have led to the hypothesis that, in the 2nd century BCE, the provisions of the Twelve Tables were to some extent familiar to the general public. Cicero explicitly claims that the Twelve Tables were held in very high esteem at his age – the first half of the 1st century- asserting that in his opinion, all the philosophers' libraries were not worth as much as a small volume containing the Twelve Tables[8]. He is echoed by Livy, who asserts that they constituted the source of all Roman law, both public and private[9]. However, Cicero also attests the diminishing currency of the Twelve Tables during his lifetime. Writing to his friend Titus Pomponius Atticus, he literally quotes a provision from the original Twelve Tables, later adding that his friend knows what follows, since, when they were young, they had to learn them by heart, while, at the moment in which he is writing, almost nobody does it anymore[10]. To define them he uses the expression *carmen necessarium,* which deserves some attention: *carmen* covers a wide semantic range, here probably tied to the concept or rhythmic prose, while *necessarium* should be understood as expressive of a cultural need, pointing a text serving as a civilizational foundation. The erudite Varro, contemporary to Cicero, informs us that already in the preceding century the provisions of the Twelve Tables required the interpretive skills of specialists to be understood. When he or his learned contemporaries dealt with the Twelve Tables, they demonstrate their uncertainty about the meaning of many words, emphasizing their obscurity.. (Romano, 2008).

Thereafter, during the High Empire, the most interested into the Twelve Tables became the jurists with a taste for antiquity, and the antiquarians: outside of this circles, the Twelve Tables attracted no more than generic reference attesting respect, not knowledge (Crawford, 1996: 570). Testimonies up to the 5th or 6th century BCE suggest the circulation, at least among intellectual and political elites, of texts perceived by those consulting them as being the Twelve Tables. After this period, notices regarding the text become rare: the Tables are recorded as evoking a suggestive impression of antiquity, but not as an available text. Thus Isidore of Seville, in his *Etymologies*, categorizes the Twelve Tables within a four-stage schema of the Latin language as written in the ancient *lingua Latina* , supposedly spoken during the times of king Latinus and the Etruscan kings.

[8] "bibliothecas mehercule omnium philosophorum unus mihi videtur xii tabularum libellus [...] superare". (Cicero, de or. I, 195)

[9] "fons omnis publici privatique iuris" (Liv., 3.34.6)

[10] " 'hoc plus' , inquit, 'ne facito. rogum ascea ne polito', nostis quae sequuntur; discebamus enim pueri xii ut carmen necessarium, quas iam nemo discit." (Cicero, de leg. II, 59)

The language would have succeeded to the *lingua prisca* in which the *Carmen Saliare* would have been composed at the time of the mythical ruling of Janus and Saturn, and it would have preceded the *lingua romana* of Classical Latin and the later *lingua mixta* of High Middle Ages. Occasional references to the Twelve Tables during the Middle Ages produced misinterpretations, notably the mistaken belief that the nominative and genitive cases were often exchanged, respectively, with the accusative and dative. These errors reveal the underlying unawareness with the text itself. (Diliberto, 2008).

In the 16th century AD efforts to reconstruct the Twelve Tables began, by recollecting quotations scattered throughout Latin literature (Ferrary, 2008). The first printed edition was published in Valence, France in 1515. Jacques Godefroy published in year 1616 a new reconstruction in Heidelberg, introducing the convention of using uppercase to indicate verbatim quotations from the Tables and lowercase for paraphrases. He attempted to assign each fragment to a specific table, relying on direct attributions when available, but often resorting to arbitrary hypotheses. Heinrich Dirksen's 1824 Leipzig edition reordered the fragments into the hypothesized tables, a structure largely maintained in subsequent editions despite its acknowledged arbitrariness. Notable modern critical editions include those by Schoell (1866), Bruns (1871), Riccobono (1909, 1940[2]), and, for the English-speaking world, Warmington (1938). In the latest years, while generally adhering to Dirksen's order, Crawford (1996) edition and English translation proposed some minor alternative arrangements, while Humbert (2018) edition and French translation has stayed close to the consolidated text, despite his strong criticism of it, not wanting to complicate matters.

The fragments which constitute the current editions of the Twelve Tables originate from legal experts and literary authors. Jurists cited the law for practical and scholarly purposes, while philosophers, orators, and grammarians used it for various ends, from persuasion to historical analysis. Humbert (2018) provided precise *data*: legal experts made 106 explicit references to the Twelve Tables. Literary authors offered slightly more, with approximately 128 reference. Combined, these roughly 230 references allow us to reconstruct as many as one hundred and six provisions. Among jurists, Gaius is the primary source, with 48 references. Ulpian follows with 16, then Paul with 14, and so on. Literary sources provide 128 references. Cicero leads with 37, followed by Aulus Gellius with 24, and Festus with 21, who relied heavily on the Augustan-era scholar Verrius Flaccus. Other notable sources include Pliny the Elder with 9 references, the *Rhetorica ad Herennium* with 5, Livy with 4, Seneca the Elder and Quintilian with 2, Horace, Ovid, Tacitus, Apuleius with 1 each.

In comparison to other statutes known from literary sources, the Twelve Tables have the great advantage, owing to the their massive prestige, of being quoted, not just cited; nonetheless the original form, which for the first clause is presented by modern editors as *si in ius vocat, ito*, might have looked something like *seieniousuokateitod* and be therefore irrecoverable (Crawford, 1996). Most of the classical quotations are believed to have been drawn from the modernized version of the original text included in the *Tripertita* published by Sextus Aelius Paetus during the 2nd century BCE. Scholars hold diverse views on the possibility of reconstructing the original text. A notably critical voice is Guarino (1990[8]), who argues that any reconstruction of the Twelve Tables would be purely conjectural. Conversely Crawford (1996: 556), expressly answering to Guarino's criticism, asserts that the reconstruction of a substantial portion of the text is a reasonable goal. He bases his assessment on the observation that the various sources, coming from different backgrounds, do not show any serious conflict with each other nor with other available Italic inscriptions as the *Tabula Bantina*. Humbert (2018: 37) compromises between the two opinions, arguing that the preserved text more closely resembles the language of Cicero than that of the Tombs of the Scipios epitaphs. It follows the conclusion that, due to its constant use, and its text not being fixed within a single written reference document at least from 387 BCE, the laws were certainly subjected to a continuous process of formal modernization, of which those who quoted it were probably not fully aware.

3.3 Linguistic remarks

In this section I examine the evolution of the language of the existent fragments from the Twelve Tables which, although not dating back to the 5th century, still retains some vestiges of antiquity. I go through its graphic, phonological, morphological and syntactical features, noting their archaic allure but also cautioning against an overestimation of their comparative significance. I deal with the topic of mood usage within the conditional clauses, arguing in favor of the thesis that the "(so-called sigmatic) subjunctive plus future imperative" schema was the original formulation of conditional clauses, and yet it was a deliberate choice rather than an inherited feature. Syntax, which offers the most fruitful comparative insights, will be examined in greater detail in Chapter 4.

Following the conclusion from previous section 3.2 Textual remarks on the Twelve Table, an extensive linguistic change occurring between the first writing of the Twelve Tables and the fragments that we can read is, indeed, to be supposed. A quick comparison with the *Forum Romanum Cippus*, the only Latin legal inscription coeval to the Twelve Tables, reveals striking differences. Non only the orthography diverge dramatically, but the only comparable expression *sacer esto* 'let it be sacred' appears in the significantly different form *sakros esed* (Santoro, 2016). In wake of the 5th century BCE Latin was not only a non-literary language, but it was, in fact, a non-standardized language: the standardization process did not begin earlier than 4^{rt} century BCE, gaining momentum during the next century. Before this time, we have no evidence of a tendency to retain traditional spelling or older grammatical forms, despite the rampant language change which was being triggered by rapid urbanization and geographical expansion. On the other hand, a hallmark of standardizing Latin, as is the case for all languages assuming a central role in law, government and education, must have been a very high level of innovative vitality and functional elaboration (Clackson & Horrocks, 2007).

From an orthographical and phonological perspective it has been observed that there is not a single example fully datable to the time of the enactment of the Twelve Tables (Radke, 1970): nevertheless, some archaisms escaped innovation. We do encounter old variants of classical words in *com*, *aevitas* for later *cum*, *aetas*, archaic vocabulary as *calvitur* '(he) resists', older word meanings as *assiduus* 'wealthy', *tempestas* 'time', and archaic constructions like *sol occasus* 'after sunset' or *pedem struit* '(he) drags (his) foot'. Therefore a more nuanced approach correctly argues that the transmitted text of the Twelve Tables blends genuine archaisms with modernised forms and occasional corruptions or misinterpretations of older forms (Powell, 2011). This perspective has been explored by Mancini (2018) who emphasizes the multiplicity of layers of modernization present within the Twelve Tables. He contends that forms lacking explanation within the synchronic state of archaic Latin (3rd and 2nd centuries BCE), and even late Republican Latin, likely belong to the oldest stratum, potentially dating back to the 5th century BCE.

Orthography generally aligns with late classical standards: archaic spelling convention regarding the writing of the fricative sounds with an 'h' and the distribution of 'k', 'c' and 'q' for the velars were already fading in the 5th century BCE, while the substitution of 'g' to voiced 'c' is complete; the pronoun *qui* is always written as such (Wallace, 2023). Phonetics shows several phenomena which are believed to have developed during the Mid and Late Republican ages. So rhotacism, i.e. the change of an intervocalic /s/ > /r/ , has already taken place in all the quotations available to us (Radke, 1970). And so the final /d/ is lost after final vowel, /o/ > /u/ before consonant clusters, /om/ > /um/ and /os/ > /us/ in final syllables, /ou/> /u/, /ai/ > /ae/, /uors/ > /uers/ everywhere. Mancini (2018) notes that some words lack internal apophony. Since the first syllable accent, which impacted internal vowels, likely occurred after the 5th century BC, he proposes to date these words to the original drafting. As examples of survivals he gives the preposition and preverb *endo* (maintaining /e/ in proclitic position), the noun *subuades* (expected **subvides*), and verbal forms *concapit* (Table 6.8), *incantassit* (8.1) and *excantassit* (8.8), all maintaining the etymological /a/ in the stem.

Nominal morphology does not depart from classical rules, while the pronominal forms retain some oddities as the appearance of the archaic accusative *im* (8.1, 10.8) and its later form *em* (1.1) 'him'. The very old pronoun *sam* (7.7) 'her' appears once - derived from the same demonstrative which would turn out to be the source of the Greek definite article.

Verbal morphology is more variate: next to standard classical verbal forms, earlier phases of the language are represented by subjunctive tenses in -i- like *duit* (4.2) and *duitur* (10.7) , in the light of which, also some forms such as *nocuit* or *rupit*, interpreted respectively as indicatives of the verbs 'to damage' and 'to break', may in fact be optative or subjunctive forms (the Latin subjunctive descending from Indo-European optative). There are also instances of subjunctives or future indicatives formed by a sigmatic suffix -s- like *incantassit* (8.1), *faxit* (2.2). The -s- subjunctives are formally identical to old sigmatic future formations, due to the shortening of their median vowels (Baldi, 2002). Indeed, Powell (2011) argues that both the -i- and -s- subjunctives are remnants of a single, special tense-form characteristic of old Latin. The appropriate name for this tense is debatable; "sigmatic future" is sometimes used but it is misleading because many forms lack the *-s-*. The stem, which may or may not include *-s-* or *-ss-*, likely derives from an Indo-European aorist, and the *-it* ending may be an old optative. In Republican literary texts, this stem differentiates a future and a subjunctive, using the same endings as the future perfect and perfect subjunctive, respectively. Their ambiguity in the Twelve Tables seem to point to a broader, and yet less differentiated mood-tense system in early Latin.

The syntactic structure, despite its gradual revisions, has retained vestiges of the past: for example, *ergo* 'because of' (10.4, 10.7) is used as a postposition, preceded by the genitive; the adverb *quo* in the sense of *ut* is used to introduce a final or consecutive clause; the ablative absolute construction does not appear in the Twelve Tables. Other notably archaic features occurring throughout the text are *escit* '(it)is, will be', which may in fact be a present indicative with an inchoative suffix; *endo* (already seen) as an archaic form of the preposition *in*, also used as a preverb; the conjunctions *ast* 'but if, and if' and *se(d)* 'without', in which we have the reflection of an old instrumental ending. *Nec* is universally used instead of classical negative adverb *non* 'not' without any copulative nuance.

The main introductors of the conditional clauses are *si* 'if' (originally a demonstrative meaning 'thus, so') and the archaic negative *ni* 'if not' (an archaism itself, originally a reinforced negation which assumed proposition value) . Coleman (1996) maintains that this structure is a residue of an original paratactic protasis based on the scheme 'let x be the case: y will follow'. He observes that the existence of a common Indo-European conditional sentence structure is questionable, by pointing out the diverse range of conjunctions used to introduce conditional clauses across the various daughter languages. Yet, he assumes that we can reconstruct a system of paratactic pairs from which conditional sentences eventually developed. In this early system, the clause that would become the protasis naturally preceded its apodosis, much like as what would become a defining relative clause preceded the main clause it modifies. This order stemmed from the fact that the first clause establishes the context or topic, while the following clause provides the commentary or main point. In the original paratactic Indo-European protasis the most natural mood would have been a jussive or postulatory subjunctive, while in the apodosis people would have employed some exponent of command. To be sure Latin, Oscan, and Umbrian typically use a future or future perfect indicative in the protasis and an imperative in the apodosis for general conditional prescriptions, according to the scheme 'if x shall be the case, then y must be done'. However, a few Oscan-Umbrian example of subjunctive in the protasis are to be taken as archaic survivals. The Twelve Tables potentially reveal the older layer. While they primarily use indicative tenses in conditional provisions, this pattern likely reflects the adoption of a more widespread Italic trend that emerged later. Evidence suggests that the original 5th century BCE usage favored subjunctive forms in the protasis, rather than indicatives. This argument is supported by two key observations (Coleman, 1996). Firstly, the Twelve Tables exhibit an unusually wide variety of indicative-mood tenses in conditional clauses, suggesting a later faltering adaptation of the original language. Secondly, the presence of the aforementioned unorthodox subjunctive forms within the text may belong to an older linguistic layer, bridging them to earlier Indo-European scheme. Crawford (1996) objected that present indicative to express future meaning was common in early Indo-European languages and therefore it is possible for our sources to have correctly preserved this usage, but Powell (2011) maintained Coleman's opinion.

Regarding the use of future imperatives in the apodosis, we must notice that it seems to be almost universal within the Twelve Tables. However, in the *Forum Romanum Cippus*, the command is expressed as *sakros esed* and not *sacer esto*. The syncopation of the thematic 'o' in the masculine singular nominative, generalized for Latin themes in -ro through the mid-Republican era and comes as no surprise (Santoro, 2016). But the verbal form from the *Cippus* is more problematic. It has been interpreted as a subjunctive *esed*>*esset* (Baldi, 2002: 204), while Santoro (2016) sustains that it comes from archaic **eso*, an archaic form of subjunctive – as such marked by the voiced secondary ending '-d'- which later become classical Latin (rhotacized) future indicative *erit* 'it will be'. As Clackson (2024) points out, the evidence for an exclusive use of future imperative in legal commands is not straightforward, not even in the Italic context. Many Indo-European languages possess cognates to the Latin future imperative forms, but these forms are neither universally nor exclusively used in Italic legal inscription like the *Tortora stela*, the *Tabula Veliterna* and the *Tabula Bantina* nor in Greek laws. Furthermore, within Latin itself, future imperatives only become strongly associated with legal language in the late Republic. Earlier texts show them appearing in non-legal contexts as well, for example in Plautus' plays. Therefore, future imperative, while common, is not a necessary or characteristic of legal language. This suggests that its presence in early legal texts is not a feature inherited directly from Indo-European legalese, but rather a natural outgrowth of its proper meaning. Future imperative was used for instructions to be carried out not immediately, but whenever appropriate: thus the form naturally imposed itself in laws (Clackson, 2024). Moreover, neutralization of the difference between second and third person, and the impersonal tone thereby obtained, may also have played a role in promoting the diffusion of the verb form we are dealing with. Future imperatives seem in fact to distinguish themselves from present imperatives not primarily by the supposed time of realization of the command, but rather by expressing a very peculiar modality. This modality implies a detachment on the part of the speaker, suggesting either a lack of immediate control over the action's execution, due to its occurrence at a future point in time, or a diminished personal investment in the fulfillment of the command (Poccetti, 2009). This distancing effect may have contributed to the preference for the future imperative in legal contexts.

3.4 The Twelve Tables: an innovated oral tradition

In this section, I highlight the connections between oral language and the language attested in the Twelve Tables to argue that an oral tradition must have been well trenched into the mind of their drafters. Indeed the reliance on orality was not only forced by incipient literacy, but also a deliberated choice originated from a great reverence accorded to the sacred formulas. Eastern Mediterranean model of written law was adapted to the Roman indigenous culture based on orality. The tension between written law and oral tradition, guarded by still powerful priestly colleges of Indo-European descent, shaped Roman legal culture in unforeseeable ways.

Overall the surviving fragments of the Twelve Tables exhibit a concise, epigrammatic style, characterized by elliptical formulations and essential wording (Crawford, 1996). The decemvirs must have operated within a largely oral culture: they probably favored retainable formulations, a practice whose legacy was collected by the pupils memorizing them in school during the late Republic (Courtney, 1999). The preservation of the Twelve Tables text likely run on a double track, written and oral, the latter being held in very high regard. Legal Latin exhibits numerous points of convergence with spoken Latin all through its history: such convergences often arise, though not exclusively, through the retention of archaic, that is to say non-classical, features. This is evident in the sentence structures with multiple paratactic protasis preceding the main apodosis, the repetition of the antecedent alongside the relative pronoun which effectively hybridizes the pronoun into an adjective, and the use of pronominal adverbs instead of pronouns in prepositional phrases (Pascucci, 1970). Among the Latin technical jargons, the propensity of legalese to retain old traces of orality constitutes its most prominent feature (De Meo, 2005[3]): while in classical Greece the introductory plaint was known as *graphē* 'drawing, writing; bill of indictment', in Rome all the judicial aspects were associated to orality not only in procedures, but also in the vocabulary revolving around the idea of *dicere* 'to say' (*dicere ius, causam, sententiam*; also employed to nominate a magistrate *dicere dictatorem, magistrum consulem*) or *fari* 'speak' on which is based the expression *aes confessus* 'recognized debt' (Table 3.1) or *reus confessus* 'confessed criminal.

Religious language is the only technical jargon displaying similar features. In fact, deep bonds exist between legal and religious languages, due to the dependence of legal norms on religious norms, and vice versa, a contractual conception of the relationship between the human and the divine

(Marino, 2017). Despite these similarities, there are also notable differences which set them apart. In legal language, objectivity and comprehensibility must always be kept in sight and thus account for linguistic rejuvenation. On the opposite side, the linguistic immobility of sacred language, unconstrained by the need for widespread comprehension, can reach the point of incomprehensibility even for priests, the sacred rite ending up being governed by artificial style which breaks down semantic units into smaller, symmetrical *cola* and *commata* overly rich of alliterations and etymological figures (Lindholm, 1931).

Legal language thus traces its roots to the oral formulas preserved and transmitted by the priestly colleges (Norden, 1939). But not all the colleges possessed equally useful knowledge: only the formulas for the *ius dicere* guarded by the pontiffs could be useful to the compilers of the Twelve Table. We addressed the question whether the decemvirs drew from these formulas in section 3.1 Early Rome: From Oral Custom to Written Codification and explicated that the pontiffs were forced to refrain from an active participation in the Twelve Tables (D'ippolito, 2003). The Twelve Tables were the self-regulation of an aristocratic society, necessary in the light of the democratic process triggered by the last kins and in vain opposed by the patricians who overthrew the Etruscan kings (Gabba, 2008). However, a full ignorance of the formulas is not to be supposed on the side of the decemvirs. Rather than reflecting a direct borrowing from Greek sources, the style of the Twelve Tables appears to be more deeply rooted in the indigenous Roman legal tradition, specifically the formulas employed by the pontiffs, adapted to fit into written laws in the light of Greek models (Ducos, 1978).

Such models however were not free to follow their own path of development: it is widely acknowledged that the pontiffs successfully reasserted their exclusive authority in legal matters by claiming sole competence in interpreting the norms of the Twelve Tables (Guarino, 1990[8]). The legal pronouncements of the pontiffs took, before and after the enactment of the Twelve Tables, the form of highly distinctive oracular pronouncements: unmotivated verbal formulas, presented as the revelation of a secret and unquestionable truth (Schiavone, 2017[2]). This practice, a hallmark of

Roman jurisprudence throughout its history, was not unique to Rome initially, as priests in many cultures provide prescriptive opinions in an oracular style. There is evidence that these solemn formulas, jealously guarded by priestly colleges, were believed to possess a magical force, capable of influencing events through their mere utterance (De Meo , 2005[3]): the sacred formulas, remodeled over the centuries, formally stemmed from a very ancient religious-legal Indo-European legal heritage, associable with Dumézil's first function. The formulas effectiveness was guaranteed by the performative power of obscure words, a reflection of which is to be found into the epigrammatical colloquialism of the Twelve Tables and later legal Latin. A survival of the lingering belief into the sacred power of the word may be derived from the famous Twelve Tables passage:

> (Table 6.1.) *cum nexum faciet manciupumque, uti lingua nuncupassit, ita ius esto*
>
> 'When he shall perform a nexum or a mancipium [two species of contracts], as the tongue has said, so be the law'.[11]

Alternative normative models to the inherited dependance on sacred formulas guarded by priestly colleges existed in the Mediterranean world of the 5th century BCE, when Rome was on the verge of a new era, and they proved to be more aligned with the new individualistic, census-based Roman order embodied within the hoplitic army, which replaced the older clan-based society and military. Greece offered the example of written law as an expression of political authority and self-regulation. The Romans, as their own legends about the embassy to Athens attest, emulated this model. The Twelve Tables were intended to bring about a revolution, binding the holder of *imperium* to apply the *ius* embodied in a written *lex*, rather than the *ius* obscurely derived from easily manipulated ancestral *mos maiorum* (Humbert, 2018). But in Rome the revolution was ultimately stalled. With

[11] Incidentally, I wish to note that the idea of contractual freedom underlaying to this norm, recalls some typical aspects of Indo-European mentality, where the relationship among men and between the men and the gods often takes the form of a *do ut des* pact. This conception contrasts with views often to be found in Semitic cultures, where relationships tend to exhibit less freedom of negotiation. This limited contractual and negotiation freedom is apparent not only in economic interactions between individuals (*cf.* Liverani, 2011[2] for the uneasiness displayed by Ancient Near Eastern Semites regarding the free alienation of land and properties) but also, and even more significantly, in the relationship with the divine, where submission often overshadows individual liberty.

the reemergence of the pontiffs, the Twelve Tables, were driven back into the existing Roman legal-religious culture of ancestral descent. The elitist pontiffs, guardians of a sacred science of the oral word, acquired the role of sole interpreters of written laws intended to be accessible to the general public.

The subsequent duality had profound and lasting consequences for Roman legal culture: it fostered a tradition of legal interpretation and commentary, which would eventually blossom into the rich jurisprudence of the Roman Republic and Empire; it created a normative system that was both grounded in written codification and enriched by the dynamic interplay of oral tradition and expert knowledge (Schiavone, 2017[2]). But would it have done it, if there had not been an inherited tradition of profound reverence for legal formulas, which seems to be an hallmark of Indo-Europeans, contributing to the birth of Roman law and setting Hittite Law Code apart from all the other Cuneiform traditions? If the answer is negative, we would have to trace into such Indo-European reverence for the formulas the very origin of the so-called Rule of Law, which detaches law from the mutable wills of its sponsor.

4. Analysis of Latin and Hittite the legal formulas. Conclusions

4.1 Hittite legal formula: syntactic and lexical analysis

In this section, I examine the syntactic structure and language of selected provisions of the Hittite Law Code. Initially, I note the recurring fronting, and then I devote my attention to the conditional-clause structure, which appears to be largely asyndetic -something uncommon in mature Hittite writing. I scrutinize the assessed wanting of pronouns of the Hittite Laws, finding that the supposed absence is, in fact, localized within specific syntagms. This may be a standard trait of any technical language, but could also point to a formulaic antiquity. Finally, I consider the specialized Hittite legal vocabulary, nothing that their syntactic behavior clearly differs from Akkadian and Sumerian sources. The resulting parallelism with other Indo-European proves that linguistics provides invaluable insights for reconstructing a common cultural aptitude of Indo-Europeans peoples toward an impersonal, oral and concise legal formulation.

The §§ 1 and 2 of the Laws of the Hittites, first series, exhibit many of the characteristics which can be claimed to descend from them being positivistic codification of an earlier Indo-European heritage of formulaic orality. The two main manuscripts of the first series are A and B, both unearthed by Winckler in 1916. Carruba (1962) argued that manuscript A was created during the reigns of either Hattusili I or Mursili I, whereas manuscript B likely dates to the reign of Suppiluliuma I or earlier, perhaps a copy of a hypothetical archetype *B from the time of Telipinu. Paleography confirms that manuscript A is certainly an Old Hittite text, but its fragmentary state often makes it illegible. Manuscript B, instead, belongs to the Middle Script age or later. Despite being younger, manuscript B (KBo 6.3) is the main source for the first series of the Laws and it is the one which will be presented hereunder, according to transliteration and translation provided by Hoffner (1997)[12] [13].

§1 HL Paragraph 1

(1) [*ták-ku* LÚ-*an n*]*a-aš-ma* MUNUS-*an* [š*u-ul-la-a*]*n-na*[-*a*]*z ku-iš-ki ku-en-zi*

(2) [*a-pu-u-un ar-nu-z*]*i Ù* 4 SAG.DU *pa-a-i* LÚ-*na-ku* MUNUS-*na-ku*

(3) *[pár-na-aš-še-e-a] šu-wa-a-iz-zi*

§1 '[If] anyone kills [a man] or a woman in a [quarr]el, he shall [bring him] (for burial) and shall give 4 persons (lit. heads), male or female respectively, and he shall look [to his house for it].'

§2 HL Paragraph 2

(4) [*ták-ku* ARAD-*an*] *na-a*]š-*ma* GEMÉ-*an šu-ul-la-an-na-az ku-iš-ki ku-en-zi* {*a-pu-u-un*} *ar-nu-zi*

(5) [*Ú* 2 SAG.D]U {*pa-a-i*} LÚ-*na-ku* MUNUS-*na-ku pár-na-aš-še-e-a šu-wa-a-ez-zi*

§2 '[If] anyone kills [a male] or female slave in a quarrel, he shall bring him (for burial) [and] shall give [2] persons (lit. heads), male or female respectively, and he shall look [to his house for it].'

The beginning of the Hittite Laws offers an example of the attraction principle which mostly governs the distribution of provisions. §§1-2 make the case for an intentional, but unpremeditated action[14]. §§ 3-4 specify lighter penalties the unintentional killing of a human being. §5 sets forth heavier penalties for those who kill a merchant. Hattusili III's letter to Kadasman-Enlil (CTH 172) proudly declares that among the Hittites (intentional and premeditated) homicide -referred to as *eshar* 'blood, bloodshed', heteroclite stem cognate to Lat. *sanguen* and Skt. *ásr̥k, asnás-* was usually followed by compensation, rather than capital punishment (*cf*. Haase, 2003), which was only enforced

[12] The grapheme conventionally transliterated "š" is here represented as "s" for orthographic convenience in continuous transcription, but it is kept as "š" in the transliterations. Hittite scribes possessed only one sign for sibilants, and only one sibilant phoneme existed in Hittite. Indeed it is impossible to say whether it was pronounced as dental-alveolar, alveolo-palatal or palatal (Hoffner & Melchert, 2008 §1.92).

[13] Capital letters represent Sumerograms, italicized capital letters represent Akkadograms. Curly brackets indicates graphemes given as partially readable by the editor. Square brackets indicate portions of the text missing from B and reconstructed by the editor. Round brackets indicate translator's additions.

[14] According to Hoffner (1997) *sullatar* denotes a 'quarrel'. Melchert (2005), following Giorgieri (2001) note on a Hurro-Hittite bilingual text, proposed an alternative translation of the noun *sullatar* 'swollenes, wantoness'. Accordingly the ablatival form *sullannaz* appearing in HL §§1-2 should be translated 'out of wantonness' and not 'in a quarrel'.

on request of the victim's brothers. Thus §§1-7 deal with special cases of homicide, and are followed by provisions §§7-18 dealing with personal injuries.

The unmarked word order in Hittite is SOV (Subject-Object-Verb) in both independent and dependent clauses (Hoffner & Melchert, 2008: §30.2). The Hittite Laws consistently place the accusative object first in the clause, after the introductory conditional conjunction and before the indefinite subject *kuiski*. This comes as no surprise, since fronting, i.e. the discourse-induced movement of a constituent other than the subject to initial position in the clause is widespread in Hittite. In bott §1 and §2 the Law begin with accusatives referring to free (§1) and enslaved (§2) males and females. They are written by Sumerograms phonetically complemented by the accusative marker *-an*. Within the Laws we can reasonably affirm that the generalized fronting is due to the topicalization of the object which represents the matter-in-hand for the case judges or legal professionals. We cannot tell whether it was perceived as a feature typically (but surely not exclusively) marking legal language, or it was simply adopted to facilitate tablets consultation.

Almost all Hittite Laws follow a structure consisting of a protasis of the type 'if someone does X' and an apodosis of the type 'he shall/must do/pay Y' (Hoffner, 1997). Verbs in both protasis and apodosis, without exceptions, are in indicative mood, present tense, to which an hypothetical or future meaning is to be attributed in conditional clauses (Hoffner & Melchert, 2008 §22.11). This contrasts with the consistent use of a third-person imperative in the Twelve Tables apodosis, and thus lends credit to Clackson (2024) who first considers and then rejects the idea that third-person imperative be typical trait of proto-Indo-European legislation: its use is most likely a parallel emergence in historical languages. Protases are typically introduced by the conjunction *takku* 'if', an Old Hittite word later replaced by *man* but retained in later manuscripts of the Laws as a consciously archaic feature.

Conditional clauses, both with *takku* and *man* 'if' normally take no introductory conjunction in Old Hittite. While Hittite employs several conjunctions to link clauses (e.g., *nu*, *su*, *ta*, *-a/-ya*, and *-a/-ma*), subordinate conditional clauses in Old Hittite, and sometimes even in later copies of Old Hittite texts, frequently connect to the following main clause without a conjunction - a phenomenon called asyndeton. This means the apodosis is simply juxtaposed with the protasis and it may be difficult to ascertain their borders. Asyndeton is a typical feature of the Hittite Law style, exemplified in §§1-2 above. In fact it is the prevailing pattern in the Laws, at least when the protasis is a single clause, is the asyndetic connection of protasis and apodosis (Friedrich, 1959: 88). The verb *kuen-* marks the right boundary of the protasis sentence, as usual in Hittite, and it is then followed by the accusative object of the apodosis. The lack of a conjunction introducing the apodosis is an Old Hittite feature, completely absent in NH and already vanishing in MH (Hoffner & Melchert, 2008: §29.53). In some cases the older manuscript of the Laws are asyndetic and the newer ones employ the conjuction *nu* to connect the apodosis to is protasis (Hoffner, 1997: 12), but this is far from universal. Overall this is consistent with the diachronic tendency of Hittite to increase the marking of sentence boundaries with some connectives (Luraghi, 1990). Thus, the Laws deliberately preserve an archaic, and somehow encrypting, feature, i.e. asyndeton, all through their existence, which may be quoted as an example of their stylistic "undermaking" (Van den Hout, 2020).

§5 Paragraph 5

(10) {*ták* }*-ku*] ^{LÚ}DAM.GÀR ^{URU}*Ha-at-ti ku-iš-ki ku-en-zi* 1 *ME* MA.[NA] KÙ.BABBAR *pa-a-i*

(11) [*pár*]*-na-aš-še-e-a šu-wa-a-ez-zi ták-ku I-NA* KUR ^{URU}*Lu-u-i-ia na-aš-ma I-NA* KUR ^{URU}*Pa-la-a*

(12) [1 *ME* M]A.NA KÙ.BABBAR *pa-a-i a-aš-šu-še-et-ta šar-ni-ik-zi ma-a-an I-NA* KUR ^{URU}*Ha-at-ti*

(13) *[n]u-za u-na-at-tal-la-an-pát ar-nu-uz-zi*

§5 If anyone kills a Hittite merchant, he shall pay 4.000 shekels (lit. 100 minas)[15] of silver, and he shall look to his house for it. If it is in the lands of Luwiya or Pala, he shall pay the 4.000 shekels of silver and also replace the goods. If it in the land of Hatti, he himself shall also bring the aforementioned merchant (for burial).

Most protases within the Laws are simple units, but some contain both a primary supposition and a secondary one which narrows the circumstances laid down in the protasis. Secondary

[15] The punishment is very high, especially when compared to the economic possibilities of the time: it would equates circa 47kg of silver. Friedrich (1959) argues that it is a scribal mistake to be corrected to a lower quote, but Imparati (1964) and Hoffner (1997) favor the larger amount as *lectio difficilior*.

suppositions, whether or not circumstantial to the primary supposition, are asyndetic most of the times. Sometimes they are introduced by the conjunction *man* contrasting with *takku*, which is reserved for the primary supposition: an example is provided in §5. Sometimes the subordinate secondary supposition is laid down in the revised version of the Laws preserved in fragment KBo 6.4. When complex conditional clauses are laid down, the archaic conjunction *ta* is sporadically employed to connect the last unit of the subordinate protasis to the following main clause (§46), as well to introduce the last provision of complex apodosis (§47a), but its use is not ubiquitous. When the protasis or the apodosis is complex, i.e. it consists of more than one unit, *nu* is sometimes used to connect units among them: it may be the reading of the Akkadogram *Ú* in §1-2, and it appears in §5 at the beginning of the very last clause. Friedrich (1959: 91) suggests that the employ of *ta* and *nu* is a later interpolation of the original text, which must have been largely asyndetic.

An other feature potentially belonging to the obscure and deliberated formulaic style of is what Friedrich (1959: 89) defines as the wanting of pronouns which should be employed to nominate persons who can be identified from the context and who possess a certain legal status as actor, defendant, plaintiff. But the absence of pronouns is not pervasive throughout the Laws, and any resulting ambiguity is easily resolved. We must consider that the Hittite readers already knew who was to be punished and who was expected to perform reparation or other action: the Laws, preserved into the archives, had for sure an esoteric and not an exoteric audience. Therefore, any repetition or overly specific identification of the subjects involved would have been unnatural and unnecessary.

In fact, Friedrich (1959) remark on the wanting of pronouns is referred to a very specific and formulaic construction: *parnassea suwayezzi* (§§1-2). Ther are as many interpretations as translators for this enigmatic expression[16] which Hoffner (1997) renders as 'he (the plaintiff) shall look to his

[16] In fact there are more interpretations than translators, since some translators and editors even changed their mind throughout their career. Hrozný (1922) *ses obligations il remplit* 'he (the defendant) fulfills his obligations'; Neufeld (1951) 'his (the defentant's) estate shall be liable'; Friedrich (1924) *Er darf auch sein Hauswesen gerichtlich belangen* 'He (the plaintiff) can also take legal action against his (the defendant's) household'; Friedrirch (1959) *auch stoesst er ihn zu seinem Hause* 'and he (the defendant) pushes him (the plaintiff) back to his house'; Imparati (1964) *e così allontana la colpa dall'àmbito della sua casa* 'and so he (the defendant) removes the guiltiness from his (defentand's) house ambit'.

(defendant's) house for it'. Hoffner identifies the plaintiff as subject and reads the verb as *suwaye-* 'to look' while other editors and translators identified the defendant as a subject and read the verb as *suwe-* 'to push, shove'. This expression does not appear in all sections of the Laws, and its use is significantly reduced in the Parallel text from KBo 6.4, where it appears only once. Therefore it must have been a crystallized expression that no longer had a specific meaning and for this reason, it was not repeated in the later version (Imparati, 1964: 194). All of the translators of the Hittite Laws, from grammatical and contextual analysis, have concluded that the expression was meant to extend the liability of the offender for the compensation to be made beyond his person, and so to make his entire estate available for payment in case of his failing to pay it. Interestingly enough, Friedrich (1959: 89) and Imparati (1964: 194) explicitly label this expression as a "formula". This label is not to be ignored. I think that the ambiguity derives from the fact that it was a crystallized expression already at the time when the Hittite Law Code was first written. No clarification was needed for that formula by the learned Hittites scribes. The elliptical syntax was not a deliberate choice of the composers, but an unconscious retainment of a formulaic style which was born in the ages of orality.

Last but not least, we have to research possible cognates for the specialized legal lexicon which so strongly characterizes the Hittites among the Ancient Near Eastern cultures. In order to explore the underlying reconstructions we rely on Kloekhorst (2008) etymological dictionary of the Hittite inherited lexicon. We do not know any single Hittite word corresponding to 'law': *saklai-* 'custom' is sometimes employed in similar fashion (Hoffner, 1997: 2); it bears etymological connections with Lat. *sacer* 'sacred' and Old Norse *satt* 'treaty'. Outside the Laws it often appears together with *ishiul-* 'binding, obligation, injunction; statute, treaty', derivative of the verb *ishi-* 'to bind' cognate with Skt. *sā-, si-* and Lith. *siẽti* 'to bind'. Dardano (2004) suggest that *saklai-* belongs to the realm of consuetudinary law governing the social and religious sphere, while *ishiul-* would refer to a more specifically (proto-)juridical sphere. Elaborating on Dardano's insight, I believe it is possible not only to find another evident parallelism between customary law and positive law in ancient Indo-European societies, but also a semantic correspondence with the Roman domains of *fas* and *ius* as defined by Guarino (1990[8]).

The term *handantatar* 'justice, just behavior' does not seem to have any Indo-European etymology, and instead it is often written logographically: the concept may have been of Mesopotamian ascendence. The opposite idea of what must not be done is encoded by *natta ara* 'not right' or rather 'not customary, not allowed'; in fact, the precise meaning and etymology of the adverb *ara* remain unclear. Kloekhorst (2008) links it with Skt. *áram* 'fittingly', *ṛtá-* 'truth, order' etc. from an Indo-European root *h_2*er*- 'to join'. Mallory & Adams (1996: 213) offer a slightly different reconstruction, supposing that it is a derivative of *h_2*eros* 'member of one's own ethnic group, freeman', also reflected in Indo-Iranian 'Aryan'. In this case the semantic development of Hit. *ara* would have begun from the derivative *h_2*ero*- 'fitting' or rather 'appropriate for one own's group', itself coming from the same root *h_2*er* 'to join'. Dardano (2004) observes that *natta ara* meaning as 'not appropriate for one own's group' sociologically fits a well-known perspective which creates cultural boundaries through adherence to group-specific customs, thereby enhancing the group cohesion and sense of otherness with respect to surrounding cultures.

The expression *natta ara* always occurs in a peculiar syntactic environment. It emerges in nominal sentences, characterized by absence of copula when a present indicative form of the verb 'to be' shall be used. This construction is not peculiar to Hittite nor, in fact, to Indo-European languages (Hoffner & Melchert, 2008: §16.6 and §30.22). But, as Dardano (2004) posits, it is likely not a coincidence that nominal sentences is not only the elective syntactic environment of specialized juridical lexicon in the Hittite Law Code, but also the most frequent syntactic environment of legal expressions belonging to other Indo-Europeans groups as Lat. *fas*, *nefas* and *ius* and Grk. *oùch hosía* 'not allowed' (by divine law) and *thémis (estí)* '(it is) lawful' (by human law). Within the Hittite Law Code, nominal sentences are employed in those apodosis which, instead of specifying a punishment, juridically qualify the wrong which has been committed, implying that the penalty was already known by the experts, most likely due to their knowledge of customs. These are the paragraphs in which the legal vocabulary of specific wrongs appear.

Idalu- ‘evil’, *wastai-* or *wastul* ‘sin, *haratar* ‘offence’, the controversial *hurkel* ‘abomination, unpermitted sexual pairing’ and *alwanzatar* ‘sorcery’ are the categorized wrongs which appear within the Law and are grouped together by Hoffner (1997: 1-2). *Nakkus*, appearing in §98, might be added to the list: it is generally translated as ‘damage; loss’, but it has been argued that it could rather mean ‘murder, killing’ and in both case it would act as a legal qualification of an event (Melchert, 2014). Unfortunately Kloekhorst (2008) is not able to endorse a single certain, non-Anatolian Indo-European cognate for any of the legally categorizing but *nakkus*, connected to Lat. *nex* ‘death’ and Greek *nékes* ‘the dead’ from Indo-European root **noḱu-*, **néḱu-* ‘loss, disappearance’. Indeed in the case of *alwanzatar*, based on the presence of a *z* into the stem, he actually excludes that the stem is of Indo-European origin. Therefore, the only viable option to proceed is to analyze the syntactic context where these expressions occur, exemplified by §190, given below as it appears in manuscript p (KBo 6.26) edited by Hoffner (1997)[17]:

§190 Paragraph 190

(29) *ták-ku-uš-ša-an* GIDIM-*it! ti-e-zi* LÚ-*MA* MUNUS-*TUM Ú-UL ha-ra-a-tar*

(30) *ták-ku* LÚ-*aš* MUNUS*an-na-wa-an-na-aš-ša-aš kat-ta wa-aš-ta-i Ú-UL há-ra-tar*

(31) *ták-ku ad-d[a]-aš-ši-iš-ša* TI-*an-za hu-u-ur-ki-il*

§190 If he has sex with a deceased person -be it a man or a woman- it is not an offence. If a man sins (sexually) with his step-mother, it is not an offence. But if his father is (still) living, it is an unpermitted sexual pairing.

In §190 *haratar* and *hurkil* appear in (respectively negative and affirmative) nominal sentences, as they always do in the Hittite Law Code. Broadly speaking, a nominal sentence consists of a nominal predicate, with no verb or copula. The nominal sentence in Indo-European asserts a certain quality that is proper to the subject of the statement, but it does so in a very specific way: the

[17] Exclamation mark indicates a probable scribe’s mistake.

assertion will have the characteristic of being timeless, impersonal, non-modal (Benveniste, 1950). Thus, verbal sentences and nominal sentence are not only stylistic variants, but have different functions. A unique feature of Hittite is its thriving use of nominal sentence, whereas the other Indo-European languages have an opposite tendency to diminish its frequency. The nominal sentence is a very old Indo-European sentence type which -in Hittite and Indo-European languages- originally stood in opposition to expressions with the explicit appearance of *es*- 'to be' as existential verb, but in Hittite only its use expanded beyond the inherited contexts (Cotticelli Kurras, 1992). I believe that the nominal sentence apodosis exemplified in §190 can be explained through Benveniste (1950) remark that the nominal sentence in Indo-European originally asserted a quality of the subject without any temporal nor any other kind of determination and outside any relationship with the speaker. The atemporal and unbound-to-speaker construction represented the perfect way to express customary truth, since no information of mood, time and aspect are needed: and this may be recognized as a key component of Hittite Laws undermaking, as well as a possible element of the Indo-European obscure legal formula.

4.2 The Twelve Tables syntaxis in the light of Hittite Laws

Whitin the Hittite Laws we identified three key factors which may seem proper to oral legal formulas: asyndeton, wanting of personal pronouns, and qualifications occurring in a nominal sentence. In this section I review the Twelve Tables, highlighting the parallelism between them and the Hittite Law Code on the aforementioned points. I am aware that they may as well be deemed to characterize early stages of thought or writing, so none can be assumed to be conclusive evidence of a common origin. But I believe that their emergence can be interpreted as deriving from a common impersonal, oral and concise style, whose appropriateness for law arises from a shared cultural aptitude which regards legal rules not as enactment of a single legislator, but as long-rooted orally transmitted customs.

Although the current state of the Twelve Tables partially reflects later changes, for reasons explained in Chapter 3 I believe that it is possible to consider them as a fairly faithful text whose formulation dates back to a time struck amid incipient writing and vanishing orality, thus corresponding to the relative timing of the Hittite Law Code within the Hittite culture (Van den Hout, 2020). It has been observed that, overall, Roman Law was from the very beginnings a largely indigenous product, as were its language and formulations too (Powell, 2011). Cicero, in his *De Legibus*, delineates the characteristics of ideal legislation by modeling them on the Twelve Tables. He particularly lauds their brevity and their archaism, but he fails to explicate them. Archaism stems from an inherent conservatism within legal language (and not, as Cicero thought, from a choice aimed at giving them greater authority) . Brevity, however, appears counterintuitive, as it hinders the law's ability to encompass all possible cases, creating gaps. Pascucci (1970) observes that brevity was likely necessitated by mnemonic considerations within a context of legal orality. Furthermore, in such an oral context, one can envision the law being supplemented by interpretations provided by those learned individuals who possessed mastery over these concise formulations. Notwithstanding this all, as Cicero himself laments, brevity was eventually substituted by a more verbose and analytic normative prose. But from Cicero's testimony makes evident that the style of the Twelve Tables was perceived in classical times as distinct from subsequent legal language, a distinction corroborated by modern scholarship which considers them to be "strikingly laconic in their formulation" (Spevak, 2023). I now present an excerpt from the Twelve Tables as edited by Humbert (2018)[18] (translations are mine). There follow the first three provisions, often grouped since they seem to represent a single disposition.

1. 1 – SI IN IVS VOCAT [IO], NI IT, ANTESTAMINO. IGITVR IM CAPITO.

1. 2 – SI CALVITVR PEDEMVE STRVIT, MANVM ENDO IACITO.

[18] Round brackets indicate additions to the translation I made (according to common practice) for the sake of clarity. Square brackets indicate portions of text (and relative translations) transmitted by the manuscripts which the editor considers interpolations. Curly brackets indicate portions of text (and relative translations) not present in the manuscripts but added by the editor. The convention of capitalizing literal quotations is observed.

1. 3 – SI MORBVS AEVITASVE [VITIVM] ESCIT, [QVI IN IVS VOCABIT] IVMENTVM DATO. SI NOLET, ARCERAM NE STERNITO.

1.1'If he (plaintiff) summons to court (somebody), [the defendant is to go]; if he does not go, he (the plaintiff) is to call to witness; then he is to take him'.

1.2 'If he (the defendant) resists or drags (his) foot, he (the plaintiff) is to lay hand on him.'

1.3 'If there is illness or age [as an impediment], he [the plaintiff] is to provide an ox-cart; if he (the defendant) shall be unwilling, he is not to prepare a covered carriage.'

As we observe, the typical Twelve Tables sentence structure is conditional, consisting of a protasis and an apodosis. The protasis may comprise multiple clauses, connected asyndetically, and followed by a single apodosis that applies to all. The protasis dictates the conditions, under which the sanction presented in the main clause must be enforced. The protasis clauses are juxtaposed while remaining all on the same syntactic level: the use of this construction, which reminds to simple, unplanned sentence structure, is limited to legal and colloquial Latin. (Pascucci, 1970). Coleman (1996) agrees too, asserting the original parataxis of conditional clauses and noting their asyndetic structuring which links them to oral constructions, or rather, as Courteny (1999) sustains, to early stage of expression.

Asyndetic linkage of clauses has been noted to be a salient feature of Hittite laws, since Hittite usually employs connectives to mark clause linkage and signal both coordination and subordination. However, Latin shows different behaviors in this regard. It is certainly true that parataxis preceded hypotaxis; however (Traina & Perini, 1998[6]: 220) coordination and subordination are not exactly specular to them, since Latin subordination can be signaled implicitly (i.e. paratactically) or explicitly (i.e. hypotactically). The paratactic (implicit) subordination is in fact older, but it is by no means to be equated to coordination: parataxis attains to the exteriority level of syntactic relationships, while subordination is more of a semantic concept which can be expressed explicitly (with specific markers) or implicitly (Traina, *ibid.*). The paratactical connection of clauses, thus, is rooted in a stylistic choice which employs a more unconstrained language, unbound by limitations of subordinative particles and able to compensate with extra-linguistical elements the absence of grammatical markers (Traina & Perini, 1998[6]: 221-2)[19]. In fact, the parataxis of the twelve tables is not even to be overemphasized. Not only it is common, both among subordinate clauses and between protasis and apodosis, all through the history of Latin, but the Twelve Tables actually display a coordinative and subordinative conjuction *ast* 'but if, and if; then, whereupon' whose archaism demonstrates that hypotactic subordination was known and (to some extent) current in pre-classical Rome. Parataxis being a feature of language demanding further explanation, its use within written law can only be explained if we imagine that obscure-worded style of the formulas surreptitiously made its way to legislation. Thus we found a possible hint of a pre-existing orality.

In a more limited way, the term asyndeton can be used to refer specifically to the lack of explicit coordination markers (thereby excluding subordination). Timpanaro (1994) assumed that, as a coordination marker between words, Latin asyndeton was without doubt older than explicit coordinators. But Adams (2021) has demonstrated that, in fact, at least the explicit end-of-list coordinator -*que* (known for having many Indo-Europeans cognate, as Hittite -*ya*) is to be considered as old as asyndetic coordination. So the Twelve Tables provide examples as *cum lance licioque* (8.15) 'with platter and loin-cloth' (a procedure for seizing an accused thief's house) which clearly demonstrate its antiquity, and the predominance of asyndetic lists in Roman Republican legislation from the 3rd BCE on was a later stylistic development (Adams, 2021).

8.12 – SI NOX FVRTVM FAXSIT [AST] IM OCCISIT, IVRE CAESVS ESTO.

8.13 – LVCI {…} SI SE TELO DEFENDIT {…} ENDOQVE PLORATO

8.12 'If (a thief) commits theft by night, [and if] (the owner) killed him, (the thief) is to be held lawfully killed.'

8.13 '(if a thief commits a theft) by day{…} if he (the thief) defended himself with weapon, {…}, he is to call out (for testimonies)

[19] "Tuttavia anche sul piano sincronico resta viva l'importanza stilistica della paratassi come tipo di organizzazione sintattica che caratterizza una lingua più libera e immediata, soprattutto la lingua d'uso e la lingua poetica: quella perché d'origine colloquiale, e quindi in grado di compensare con riferimenti extralinguistici la carenza di indicazioni grammaticali, questa perché volta a oscurare e condensare il messaggio mediante la riduzione degli elementi grammaticali." (Traina & Perini, 1998: 221-2)

Laws 8.12 and 8.13 not only provide us with another example of asyndetic juxtaposition, but they also introduce us to the next feature under analysis, that is, the wanting of personal pronouns, especially third-person subjects. It is also present in laws 1.1, 1.2 and 1.3 reported above. Daube (1956) has investigated abrupt changes of subject in the Twelve Tables, arguing that the third person maintained, at the time of their enactment, a strong impersonal and indefinite value whereas the meaning of *si in ius vocat* (1.1) would be 'if there is a summoning' and *si nox furtum faxsit* 'if there has been stealing by night'. Many scholars of old Indo-European laws (starting with Friedrich: 1959) consider it to be a shared feature of Indo-Europeans legal formulas, and so does Cortney (1999) who assumes that this trait derives to Early Latin prose directly from a previous Indo-European usage. The phenomenon is referred to by Pascucci (1970) as pendular antithesis[20]. He notices that under-specification of pronouns was well alive in spoken Latin and in technical languages as well. Therefore, the wanting of pronouns shall not be considered a hallmark of Indo-European legalese. Its origins lies in the fact that the legal formulas arise within an oral culture, where the lacking subjects could be integrated with extra-linguistic signs and gestures (Pascucci, 1970). Furthermore it should be noted technical jargons consistently show elliptical formulations across various languages and language families, since the lacking elements can be easily integrated by the technicians (De Meo, 2005[3]). We are drawn to the very same conclusion that we reached when studying the phenomenon in Hittite Laws: the elliptical omission of third-person pronouns began as an unconscious retainment of a formulaic orality; no clarification was needed, and so it was not updated, because the written laws were still interpreted as if they were oral laws, i.e., by technicians (be them the pontiffs or the learned scribes) having learned them in largely oral schools. The resulting parallelism does not allow to label the wanting of pronouns as having a remote Indo-European origin, but it suggest a convergent usage which arose from a similar, inherited propensity towards structuring the laws as impersonal commands, orally spoken by learned elites. These elites already knowing all the relevant elements,

[20] "Antitesi con andamento pendolare" (Pascucci, 1968).

they could recur to under-specification of subjects (pronouns) or syntactical ties (asyndeton) for the sake of brevity, memory, or secrecy.

> 6.4- ADVERSVS HOSTEM, AETERNA AVCTORITAS {ESTO}
>
> 8.4 – SI INIVRIA{M} ALTERI FAXSIT, VIGINTI QVINQVE POENAE SVNTO
>
> 8.21- PATRONVS SI CLIENTI FRAVDEM FECERIT, SACER ESTO.
>
> 10.6 -SERVILIS VNCTVRA tollitur, omnisque CIRCVMPOTATIO : ne sumptuosa RESPERSIO, NE LONGAE CORONAE, NE ACERRAE.
>
> 6.4 ‘Against a foreigner, the title of ownership is to be held forever’
>
> 8.4 ‘If he do (any simple) injury to an other (man), 25 (asses) are to be the penalty’
>
> 8.21 ‘If a patron shall have defrauded (his) client, he is to be sacred’
>
> 10.6 ‘The servile unction is abolished, as is any (practice involving) pouring of wine all aroung. No lavish sprinkling, no long wreaths and no incense burners’

Two of these provisions -namely 6.4 and 10.6- have been claimed to represent the only survival of nominal sentences within the Twelve Tables. All other sanctions and penalties follow the future imperative apodosis pattern represented by 8.4 and 8.21. According to Daube (1956) 6.4 and 10.6, if copulas are not added to them, present themselves as the last remnants of a form of law which was gradually disappeared in favor of the more ordinary copulative pattern: the nominal sentence framed them in an exceptionally terse and domineering tone, which the insertion of a copula seems to render tamer. In his own words:

> “here is, however, a more specific consideration regarding the absence of a copula, namely, that its absence confers on a statement the character of absolute validity, of timelessness. As is well known, one of the reasons why the nominal sentence gradually disappeared from everyday language was that it is less precise than the sentence with a copula. The copula ties the matter down to a definite period, past, present or future— a highly desirable thing in daily commerce. But it is exactly the thing that might not be wanted where an idea was to be represented as a final, never-changing truth.” (Daube, 1956: 104).

Benveniste (1950) assertions that nominal sentences in ancient language had the characteristic of being timeless, impersonal, non-modal were presented in section 4.14.1 Hittite legal formula:

syntactic and lexical analysis when discussing the presence of nominal sentences within the Hittite Laws. Daube's conclusions (perhaps linguistically flawed) bear considerable similarity to Benveniste's lesson, but I ignore whether they were or not dependent on it. At any rate, the two scholars from different fields argued in favor of the idea of Hittite and Roman laws be originally timeless, impersonal statements representing a never-changing truth. It can be said that they saw these ancient Indo-European laws as statement possessing a force of their own: this conception would put them apart from the Mesopotamian culture which saw laws as a collection of just judgments or fair rulings. Modern editors (something of which Daube was already aware) usually insert a verb in 6.4 to cope with a tendency to analogy which must have been present among the composers of the Twelve Tables, and regard 10.6 as incomplete, i.e. lacking the final verb. But there is another option, explored by Poccetti (2009), to reconnect the formulation of the Twelve Tables with an impersonal and timeless phrasing, connecting future imperative with direct commands, and subjunctive mood with indirect commands. He observes that in Latin Republican texts, the subjunctive mood is used, in *senatus consulta* and decrees, when a normative text has been sanctioned and approved by an entity authorized to do so; the future imperative, instead, emerges when the normative text has not been approved by a competent organ, but it has a force on its own. The future imperative projects itself beyond the spatiotemporal coordinates of the utterance and, at the same time, it eschews from the necessary presence of the speaker in order to claim obedience to its commandment (Poccetti, 2009). The laws from the Twelve Tables therefore were written as if they possessed an absolute and timeless force on their own, independent from their enactors. This ideology does not fit the innovative Greek idea of laws being sanctioned by the community to discipline internal rules, nor the Mesopotamian one of laws as word of the sovereign. Instead, it appears consistent with a timeless truth impersonally uttered by its custodians, who, in the Roman context, would have been the priestly colleges. The ideology implied by impersonal wording is the one stemming from authoritative, secretive, long-established oral formulas endowed with an intrinsic performative power dealt theorized in section 1.3 Traces of Indo-European Tradition within the Hittite Laws.

4.3 The normative content: a (doubtful) comparison.

In this section I examine previous attempts to compare single Hittite and Roman legal customs, after a brief discussion of their shared conditional sentence pattern. I first focus on Roman institutions of *res* mancipi, *usus* marriage, and noxal compensation. Regarding the *res mancipi* and the marriage by *usus* I favor the idea of generic similarity due to chance. Regarding the noxal system I find persuasive enough the arguments for establishing a genetic relationship between Roman and Hittite customs. After that, I propose to look at the Roman institution of *sacertas* in order to discover more parallelisms, though these appear to be primarily cultural rather than linguistic. Finally, I review some other features of the Hittite Laws (regarding the treatment of special trees and animals) which may be deemed to be connected to an Indo-European heritage.

Any comparative analysis of language or laws must address the fundamental problem of identifying the source of similarities: borrowing or diffusion, common ancestry, or independent development (whether due to universal principles or mere chance). The identification of each is, however, highly problematic in any given instance.

Within the Twelve Tables Marino (2017) observed that laws following a conditional pattern outnumber laws following a relative pattern (ex. 8.8 *Qui fruges excantassit* 'Person who enchanted crops away…') by a ratio of two to one. There is an evident a parallelism between Hittite Laws and the Twelve Table Code in this regard, since they both predominantly employ conditional sentences. The parallelism could be extended by etymological considerations. The Hittite scheme is introduced by subordinating conjunction *takku* 'if', that is, deriving from Indo-European demonstrative pronoun **to* plus conjunction **kwe*. The Roman Code employs the subordinating conjuction *si* 'if' derived from the locative singular of Indo-European demonstrative pronoun **so* (and outside from the Twelve Tables *si* is attested in an extended form *sic* from **so* plus **kwe*). However, typology proves that demonstratives and anaphorics are the source of subordinators more often than not outside the Indo-

European family as well. So Poccetti (2009: 206) correctly notices that this elementary scheme is the basis for the organization of prescriptive statements in laws across various linguistic families, in accordance with the diverse semantic-syntactic strategies of each language. For instance, it recurs often in Akkadian and Sumerian Law Codes. Accordingly, we must interpret the coincidence as an independent development.

Over the years, there have been attempts to establish differences in meaning between the relative clause -prevalent within the Twelve Tables- and the conditional clause, which predominates in later Roman legislation. Daube (1956: 6) argued that the if-form is somehow more ancient, and less abstract, than the relative. The conditional clause would offer an answer to a certain emergency, dictated by contingency, while the relative clause would presuppose a more advanced refinement in which the protagonists of the contingent emergency have been transformed into abstract categories. Accordingly, the Twelve Tables' adoption of the conditional pattern would have been influenced by Mesopotamian legislation, itself connected to *Listenwissenschaft* thought, which is primarily expressed through conditional sentences (Westbrook, 2009b). Conversely Yaron (1988^2) theorized that it was the conditional clause (Akk. *šumma awilum* 'if a man') which lacked in urgency, being too abstract and academical, while the relative sentence (Akk. *awilum ša*) would be more concrete and low to earth. Furthermore Yaron convincingly showed that the two forms do not reflect any advancement in legal thought, since one finds relative and conditional formulations side by side as early as Ebla in the middle of the 3rd millennium BCE. In sum, I believe that no conclusion can be drawn from the parallel usage of conditional clauses in the most ancient Roman Laws and in the Hittite Code. The parallelism is no evidence of genetic relationship (*cf.* Poccetti, 2009) nor of an early organization of thought contrasting with later relative clauses (Yaron, 1988^2). Its near-exclusive use in both texts likely emerged from compilers' pursue of consistency and standardization in writing.

I shall now review the attempted parallelism between the normative content of Hittite Code and Roman law. The matter is of the utmost importance, because if we found any truly significant parallelism, we would be able to attribute a specific custom to the Indo-European society of the 5th millennium BCE. Someone may argue that the terms of comparison are uneven: but while the Hittite Law Code is all we possess in regard to Hittite Law, it would make no point to ignore the larger body of knowledge regarding pre-classical and classical Roman law. The order of comparison, as stated above, will be: (i) *res mancipi* grouping (ii) marriage by *usus* (iii) noxality, i.e. compensatory punishments (iv) Roman *sacertas* and Hittite wolf-marriage. At the end I will also review possibilities for Indo-European tracing of Hittite rules regarding horse-marriage, *eya* tree, beekeeping and pig-raising.

Haudry (1981: 91) posited, almost forty-five years ago, that is was beyond doubt that the Indo-Europeans possessed some unwritten law, transmitted through traditional formulas and articulated according to fixed schemata, a view I largely concur. However, I am unable to endorse his subsequent analysis of this oral law as being entirely structured according to dumézilian trifunctional schemata. Haudry's observatons regarding patrilineality, nation-clan-village relationships, and legal-religious rules, represent widely attested anthropological phenomena which do not prove genetic relationships; his linkage of three different kind of Roman marriages (*confarreatio* / *usus* / *coemptio*), or testament (*calatis comitiis* / *in procinctu* / *per aes et libram*), to priest, warriors and producers castes looks weak to me and to Watkins (1994b: 719) who dubs it as "a characteristically French exaggeration".

However Watkins itself engages in daring comparisons: thus he suggests to find Indo-European roots for the well-known Roman division of things in *res mancipi* (slaves, beasts of burden or draught, praedial servitudes, and Italic land lots, subjected to a highly formalized transfer process) and *res nec mancipi* (all other goods, whose title of ownership was easily transferable). The negative conjunction *nec* dates the distinction, in force until post-classical times, to the pristine antiquity of Rome. Watkins (1994b) proposes a parallelism with the *Gauthama-dharma-sutra*, the most ancient Hindu Juridical text from around 400 BCE, and Avestan texts dealing with civil law. Indo-Iranian laws would possess similar classifications of things, i.e., a category comprising equines and bovines, slaves, land and land rights. But I think that it is more cautious to explain these similarities from an economic point of view: in ancient agropastoral societies the mentioned kind of goods where the means of production, that is, the most precious goods. Any classification grouping them together (*cf.* Sabbatini, 2014), unless otherwise proofed, is to be deemed an independent development. Thus the high compensation required by Hittite Laws for injuries or damages to slaves, cows, bulls and usurped land boundaries are not to be linked to an Indo-European *res mancipi* unitary category.

Marriage by *usus,* by which the wife came under the power of her husband through a continuous cohabitation for a year, unless the cohabitation was interrupted for three consecutive nights, is one of the possible marriages types according to Roman law. It is already attested in the Twelve Tables in 6.5. Articles §35 and §175 of the Hittite Laws seem to establish a similar form of marriage through prolonged cohabitation. However, comparable practices existed among the Assyrians (MAL §34) and Egyptians, making this a typological resemblance rather than a uniquely Indo-European feature (Imparati, 1964: 218).

With regard to noxal system, an in-depth study conducted by Watkins (1994a) is noteworthy. A prominent feature of Roman law throughout the pre-classical and classical periods was the noxal action. This institution addressed situations wherein damage or theft was perpetrated by an animal or a person subjected to the authority of the *paterfamilias* 'family chief' (and so lacking legal capacity, such as a slave, son, or, likely originally, wife). The noxal action initially required the *paterfamilias* to surrender the offender to the aggrieved party (*noxae deditio*). However, the *paterfamilias* could avert this by offering compensation for the damage (*noxiam sarcire*). This alternative appears to be of considerable antiquity, potentially contemporaneous with the development of alternative penalties to private vengeance. In the Twelve tables it appears twice in identical formulation, as follows:

8.6 SI QVADRVPES PAVPERIEM FAXSIT, AVT NOXAE DEDITO (AVT) NOXIAM {SARCITO}

12.2 SI SERVVS FVRTVM FAXSIT NOXIAMVE NOXIT, aut noxae dedito aut NOXIAM SARCITO.

8.6 'If a four-legged beast causes loss, he (the responsible) is to surrender it for damage, or to repair the damage.

12.2 'If a slave committed theft or did damage, he (the owner) is to surrender it for damage, or to repair the damage'

These are to be compared with two Hittite articles from the Code, regarding the compensation for theft:

§95

(42*) [t]ák-[k]u*] ARAD-*is* É-*er ta-a-i-ez-zi ša-a-ku-wa-aš-šar-pát [pa-a-i ta-ia-zi-la-aš]*

(43) [6 GÍN KÙ.BAB]BAR *pa-a-i* ARAD-*ša* KIR14-*ŠU iš-ta-a-ma-nu-uš [šu-uš ku-uk-kur-iš-ki-iz-zi]*

(44) [na-a]n a-ap-pa iš-hi-iš-si pí-an-zi ták-ku me-ek-ki [ta-a-i-ez-zi]

(45) [me-ek-k]i-še is-hi-ia-an-zi ták-ku te-pu ta-a-i-ez-z[i te-pu-uš-ši iš-hi-ia-an-zi]

(46) [ták-k]u BE-EL-*ŠU te-ez-zi še-er-wa-aš-ši šar-ni-ik-m[i nu šar-ni-ik-zi)]*

(47) [ták-ku m]i-im-ma-i-ma nu ARAD-*an-pát [šu-ú-iz-zi]*

§95 ‘ If a slave burglarizes a house, he shall give (back the stole items) precisely in full value. He shall pay six shekels of silver for the theft. He shall cut/cut off the nose and ears of the slave, and they will give him back to his owner. If he steals much, they will impose much upon him; if he steals little, they will impose little upon him [If] his owner says “I will make compensation for him”, then he shall make it. But [if] he refuses, he shall lose that slave.

§99

(55) *ták-ku* ARAD-*iš* É-*er lu-uk-ke-ez-zi iš-ha-aš-še-ša še-rr šar-ni-ik-zi*

(56) ARAD-*na* KIR14-*ŠU UZ.NA.A. ŠU ku-ug-gur-aš-kan-zi*

(57) *[n]a-an* EGIR-*pa iš-hi-iš-ši pí-[an]-zi ták-ku Ú.UL-ma šar-ni-ik-zi*

(58) nu a-pu-u-un-pát šu-ú-iz-zi

§99 ‘If a slave sets fire to a house, his owner shall make compensation for him, and they shall cut/cut off the slave’s nose and ears and return him to his owner. But if (the owner) does not make compensation, he shall forfeit that very slave.

Watkins is aware that the system of noxality is not confined to Indo-European societies, but he sustains that the shared inherited lexical entry *sarcire/sarnikzi* is something more than a mere fortuity, since the coincidence is grounded on both linguistic and normative evidence. He formally equates Lat. *nocere* ‘to damage’ *: sarcire / dedere* ‘to give, forfeit’ to Hitt. *taizzi* ’to steal’[21]*: sarnikzi / suizzi* ‘to forfeit, lose’ and states that verbs Lat. *sarcire* and Hit. *sarnikzi* embedded not a generic

[21]In the Hittite Laws, the word *sarnikzi* is specifically used in connection with compensation for theft.

expression for repairing losses from damages or thefts, but a specific expression for 'making restitution' "PRECISELY IN THE LEGAL SYSTEM OF NOXALITY" (Watkins' capitalization) . Consequently:

> "It should be unnecessary, but is perhaps still worthwhile, to point out explicitly that a necessary consequence of the preceding discussion is that Hittite law is at least in part inherited from Indo-European customary law. This means that·, the culture area notion of 'cuneiform law' can no longer be considered as a wholly adequate frame of reference within which to discuss Hittite law, synchronically or diachronically" (Watkins, 1994a: 434).

Neufeld (1951: 172), Haase (1961) and Souček (1961) argue in favor of the parallelism between Hittite and Roman noxality, which according to the latter author would find parallelisms also in Greek and Germanic customs. Imparati (1964: 270) rejects it, as she interprets the noxal giving of the slave as mere expulsion from the owner's ambit, that is, as if the owner waived his responsibility. Yet, I see no factual contradiction between Imparati's interpretation and the noxal system: the practical consequences of the owner's waiving his responsibility for the slave are the same of his noxal surrender. Hoffner (1997) makes no comment on the topic, and translates differently the final clauses of §95 and §99. I am incline to connect Indo-European societies with a system of noxality, that is, a specific type of legal liability where the family chief could be held responsible for the delicts (wrongful acts) of someone under their authority, being given the choice either to surrender the wrong-doer to the damaged family chief or to pay a fine in exchange for it. In fact, the reliance on noxality (i.e. compensatory rather than punitive punishments) is considered by Hoffner (1995) and Haase (2003) one of the most peculiar features of Hittite Laws contrasting them with other cuneiform laws. Furthermore, noxality fits better to small and close communities, as the Indo-Europeans migrating through Europe are supposed to have been, than ideologized and State-centered societies as were the Mesopotamian cultures (Wesel, 2001).

Watkins (1994a) observations regarding the utility of a double evidence, coming both from the exteriority of linguistic form and the materiality of normative content, can be useful employed in order to advance newer comparisons. In section 1.3 Traces of Indo-European Tradition within the

Hittite Laws we noted the peculiarity of a formula shouted by pursuers to a girl's kidnappers "you have become a wolf!" (Hl §37), which had the effect of "outlawing" the kidnappers and making it possible for the pursuers to kill them without the need to make any kind of compensation. The wolf-crime association is for Mallory and Adams (2006: 277) and Gamkrelidze and Ivanov (1995: 415) a typical Indo-European feature: from *$h_{2/3}$wergh-* 'to commit a crime' they derive the Old Norse *vargr* 'guilty party, criminal, wolf', the Old Prussian *wargs* 'evil', the Russian *vórog* 'enemy, devil' and also, in a debated way, the Hittite *hurkil* 'abominable act, unpermitted sexual pairing, execrable action'. However, it is not on this etymological evidence that I want to leverage; instead, I want to focus on the concept of "outlawing". The *sacertas* (cf. Twelve Tables 8.21 and the *Forum Cippus*) is among the oldest sanctions in Roman context, and it was poorly understood already by classical times. Modern scholarship has come to the conclusion that its very nature is the one of "outlawing" somebody, that is, to place him or her out of the tutelage of the law, available for everybody to be freely killed. Thus the sole effect of *sacratio* was to remove the *homo sacer* 'sacred man' from human society, consecrating him, that is, dedicating him to the divine realm (Cantarella, 2004: 599). By this effect he was cast out from the civilization, into the much feared and untamed wilderness (Sabbatini, 2014). According to Fiori (1996)[22]:

> " 'Sacertas' appears to be the result of pontifical reworking of an ancient sanction, common to several Indo-European populations. Unlike capital punishment, executed by the authority, 'sacertas' did not necessarily involve the actual killing of the wrongdoer, but it entailed his exclusion from the group. This exclusion stripped him of all legal standing and made him a potential target for anyone's violence." (Fiori, 1996: 518).

Wolves are wild animals, who unrepentantly kill livestock and are killed with impunity: they are "outlaws" with respect to both the animal and the human society. Hence the parallelism, which consists in a reflection of the very same institution, which I would call "outlawness", assuming

[22] "La *sacertas* sembra essere il risultato della rielaborazione pontificale di un'antica sanzione, comune a diverse popolazioni indoeuropee. A differenza della pena di morte, che veniva eseguita per mano dell'autorità, la *sacertas* non comportava necessariamente l'uccisione del reo, ma la sua esclusione dal gruppo sociale. Questa esclusione lo privava di ogni esistenza giuridica e lo rendeva un potenziale bersaglio di violenza per chiunque." (Fiori, 1996: 518).

different names in Anatolia and in Rome, where the designation shifted away from the animal world[23]. By all means, its nature seems more akin to a nomadic society as were the prehistoric Indo-Europeans (Haarmann, 2020), wandering across a dreadful wilderness roamed by wolves, than to State and Proto-State civilizations which came to dominate and control their natural surroundings. Therefore not only can we can attempt to reconstruct it based on Roman-Hittite evidence, but we may indirectly suggest an early dating for it, preceding the adoption of the State model which, in turn, favors punishment carried out by legitimated authority internal to the State apparatus.

For the sake of completeness, I cannot omit to cursorily review some salient features of the Hittite Law which, although absent from Roman Law, seem to point toward an Indo-European archaicity. First and foremost stands HL §200a 'if a man sins (sexually) with either a horse or a mule, it is not an offence […]'. The previous articles of the Hittite Code explicitly criminalize intercourse committed with one own's relatives, with a deceased person or with such animals as cows (§187), sheep (§188), pigs or dogs (§199). Horses occupied a very special in Indo-European societies (Anthony, 2007), likely originating from the close relationship which nomadic herders and warriors established with these animals when domesticating them; the traditional importance of the horse, which unfolded over thousand of years within the Steppes, was retained in later languages and cultures (Haarman, 2020). Leaving aside the bedazzlement which article §200a may trigger in the modern reader, the provision can be better understood keeping in mind that there are evidences from the Celtic, the Scythian and the Vedic worlds of symbolic marriages with horses. They were often combined with a subsequent sacrifice of the animal alone or the couple (tombs with women and horses have been found in the Altai mountains and in Scandinavia). Thus the very idea of devoting a special regulation to sexual relationships between a man or a woman and a horse (or a donkey) may be regarded as a unique Indo-European feature (Gamkrelidze & Ivanov, 1995: 403-4). In Rome the sexual dimension of the relationship was lost, but the sacrifice of a horse during the *Equus October*

[23] Wolves are sometimes subject to taboo naming due to their peculiar cultic and ritual status in various Indo-Europeans groups (Gamkrelidze and Ivanov, 1995: 415).

was still considered in classical times as one of the oldest religious customs (Dumézil, 1964). I reckon that HL §200a can be used as a smoking gun to prove some degree of Indo-European influence within the Twelve Tables.

The planting of a ^{GIS}*eya* '(some kind of) evergreen tree' in front of a house represented, according to HL §50, the sign of some kind of tax exemption in the priestly city of Arinna. In Celtic and Germanic traditions the yew tree, etymologically linkable to the ^{GIS}*eya* in both languages, was a symbol of privilege and a revered tree. However, the larger occurrence of ^{GIS}*eya* in Hittite rituals, as well as its areal connections and appearances in myths (Bobokhyan, 2016) and the doubtful nature of the item (was it a tree or a pole?) discourage a linguistic and juridical analysis.

Pigs and bees are both mentioned within the Hittite Laws in §§81-91: these animals consistently appear in Indo-European cultures, thus representing a possible reflection of Indo-European customs within the Hittite Laws (Gamkrelidze & Ivanov, 1995). Words for 'domesticated pigs' and 'honey' are indeed present within the reconstructed vocabulary of Indo-Europeans, suggesting familiarity with the correspondent animals. However, it is difficult to readily assign bees and pigs regulations to inherited tradition, rather than to regional interaction: Indo-Europeans were not the only folks to practice pig-raising and beekeeping in Ancient Near Eastern nor in the coeval Mediterranean area.

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