7. ON CIVIL DISOBEDIENCE, JURISPRUDENCE, FEMINISM, AND THE LAW IN THE ANTIGONES OF SOPHOCLES AND ANOUILH

Antigone’s star has shone brightly through the millenia. The archetype for civil disobedience has claimed a constellation of first magnitude emulators.
—Robert M. Cover

I. INTRODUCTION

Antigone is one of the first great heroines of civil disobedience and the inspiration of resistance movements against tyranny. This heroic woman is also the symbolic representation of the feminist. Feminism is the discourse of resistance against tyranny and the oppression of women. By her civil disobedience and resistance to what she considers to be an unjust law, Antigone is the prototype of the Other.

The myth, the character, and the play Antigone have inspired more than one hundred recreations and interpretations by writers of stature and prominence in the legal and literary communities. Scholars of law, literature, and feminism continue to analyze the play to better understand its jurisprudential

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3. Definition provided publicly at the annual meeting of the American Society of International Law held in Washington on March 24, 1999 by the well-known feminist and activist Professor Annie Snitow of the New School for Social Research.
underpinnings\(^5\) and, in particular, the difference between natural law and legal positivism as well as the effectiveness of civil disobedience for legal reform. Thoreau, noting that people live with “too passive a regard for the moral laws,” cited Antigone as a stirring example of civil disobedience.\(^6\) By comparing Sophocles’ \textit{Antigone},\(^7\) written in Athens in fifth century B.C., and Jean Anouilh’s \textit{Antigone},\(^8\) written and performed in France in 1944 during the tyranny of the German Occupation, this chapter will focus on the connection between civil disobedience, jurisprudence, and feminism in ancient and modern comparative legal systems as viewed from a postmodernist\(^9\) perspective.

In Sophocles’ \textit{Antigone}, civil disobedience is represented by the tension between two different characters, Antigone and Creon. The most dramatic form of tension in the play is Antigone’s act of civil disobedience that effectively causes legal reform in Thebes. Despite the obvious similarities between Antigone and Creon, Sophocles stresses the differences between their opposing jurisprudential positions on natural law and legal positivism. Sophocles espouses the argument that illegal protest can accomplish legal reform, but Jean Anouilh does not appear to agree. In Sophocles’ \textit{Antigone}, the mind-set of the ruler and the hegemonic political system that produced an unjust law are ultimately reformed by virtue of the insight that tragedy naturally produces.\(^10\) Creon is eventually enlightened by Antigone’s nonviolent protest, and his new understanding has the positive effect of suggesting a move away from a hegemonic to a pluralistic conception of the law. In contrast to the Sophoclean tragedy, Anouilh’s melodrama does not propose civil disobedience as an effective force for legal or political reform. The two plays are in fact very different in form and substance. In this chapter I shall try to tease out the underlying causes for Anouilh’s radical change from his Sophoclean source.

\(^{5}\) See Robin West, \textit{Jurisprudence and Gender}, in \textit{Feminist Legal Theory: Foundations} 75, 86–87 (D. Kelly Weisberg ed., 1993), especially her argument that modern jurisprudence is “masculine” and the rule of law neither recognizes nor values intimacy nor individuation, which is what women long for.


\(^{9}\) For a discussion of the difficulty in defining the term \textit{postmodernism}, see Dennis Patterson’s \textit{Introduction} to \textit{Postmodernism and Law XI} (Dennis Patterson ed., 1994).

\(^{10}\) Postmodernist thought is based on arguments for pluralism and for a cultural turning away from hegemonic to pluralistic conceptions of justice, politics, ethics, and aesthetics. \textit{See Peter Murphy, Postmodern Perspectives and Justice}, in \textit{Postmodernism and Law}, supra note 9, at 125.
II. WHAT IS CIVIL DISOBEDIENCE?

A. The Purpose of Civil Disobedience
Throughout history civil disobedience has played an important role in political, social, and cultural debates.11 There is no doubt that civil disobedience has been instrumental in changing the conventional laws of society,12 and Sophocles’ Antigone underlines that message quite dramatically in a classical style of writing. According to Ronald Dworkin, civil disobedience has “a legitimate if informal place in the political culture of our community.”13 In the past, civil disobedience was practiced effectively by such leading national and international figures as Henry David Thoreau,14 Mohatma Gandhi,15 Susan B. Anthony,16 and Martin Luther King, Jr.17 Civil disobedience continues to be practiced today. For example, just a few years ago the Reverend Al Sharpton, Kweisi Mfume (the then-president of the National Association for the Advancement of Colored People), and many people in New York City were arrested for protesting the shooting death of an unarmed African immigrant, Amadou Diallo, by four white New York City police officers.18

B. Is Civil Disobedience Merely Protest?
Despite its historical acceptance, civil disobedience is nonetheless an illegal form of protest. Like terrorism, civil disobedience is a confusing concept with no universally accepted definition.19 John Rawls defined civil disobedience as acts that are “public, nonviolent, conscientious yet political . . . done with the aim of

14. See generally Henry David Thoreau, Civil Disobedience, supra note 6.
19. See DeForrest, supra note 11, at 654.
bringing about a change in the law or policies of government.”

Mere dissent, protest, or disobedience of the law is not enough to qualify as civil disobedience. Several elements have been generally recognized as necessary for a particular act of protest to qualify as civil disobedience. The act must be nonviolent, open and visible, illegal, performed for a moral purpose to protest an unjust law or to object to the status quo, and performed with the expectation by the actor that the illegal act will result in punishment. These are the structural elements of the definition of civil disobedience.

C. Arguments Against Civil Disobedience

Persuasive arguments against civil disobedience as a means of effectively correcting the legal system have been presented on numerous occasions whenever protest movements start to organize. The arguments are as follows: (1) Civil disobedience is an illegal act and, therefore, shows contempt for the law. If allowed to continue, civil disobedience will undermine the legal system; (2) The purpose of civil disobedience is to satisfy selfish interests, and the act cannot be morally justified; (3) Civil disobedients are anarchists who take the law into their own hands; (4) Civil disobedients show disrespect for the law by their unlawful acts and bring society near social chaos in the name of defending a vague and nebulous “natural” or higher law; (5) Civil disobedience is self-defeating because even if its objectives are worthy, the deliberate unlawfulness it requires creates resentment in the minds of legislators and the general public; (6) Lawlessness is not justified if lawful ways to correct the situation are still available; and (7) Civil disobedience is not justified because it subverts the democratic process. These arguments, which are easily refuted by systematic application of the definition of civil disobedience proposed above, are articulated literarily in the Antigones of Sophocles and Jean Anouilh by Creon who is staunchly opposed to civil disobedience.

D. Arguments For Civil Disobedience

Arguments in favor of civil disobedience are imprudent to propose because this line of reasoning would be tantamount to justifying every act of civil disobedience.

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21. See Abe Fortas, Concerning Dissent and Civil Disobedience (1968) for a distinction between legal dissent and illegal civil disobedience.
22. DeForrest, supra note 11, at 655.
24. DeForrest, supra note 11, at 656.
25. See generally, id., et passim.
Each act of civil disobedience is committed in response to a particular law, and each act is undertaken in a particular social context that must be taken into consideration before it can be determined whether that particular act of civil disobedience can be justified. Although civil disobedience is distinguishable from revolution and from the desire to overthrow the Constitution or the existing system of laws, it necessarily involves an illegal act and, therefore, cannot be given a legal justification.

The legal system cannot support arguments for civil disobedience except in the unusual cases of grossly immoral tyranny producing cruel and oppressive laws, such as the racial laws passed in Nuremberg, Germany or in Vichy, France. Some argue that civil disobedience is justified by the principles developed at the Nuremberg Tribunals in 1945, which ultimately determined that the individual German officers, not the German government, must be held responsible for their acts. The Nuremberg Tribunals made it clear that individuals could not justifiably claim they were merely obeying the law when their acts, in compliance with evil and oppressive laws, resulted in cruel and inhuman treatment of prisoners and civilians during World War II. On these grounds some persons—notably some Americans during the war in Vietnam—refused to obey certain apparently lawful orders that would have resulted in cruelty to civilians. In fact, those who failed to disobey the orders that were likely to produce cruel and inhuman treatment of civilians or war prisoners were convicted for the unlawful acts they committed during the My Lai massacre. Nuremberg, then, justifies military disobedience for wrongs that are blatant and horrific, but it is debatable whether Nuremberg justifies civil disobedience for laws whose compliance might result in humanly intolerable pain and suffering. Applying the Nuremberg principles to Antigone, we should ask if Creon’s decree prohibiting the burial of the dead rises to the level of a law so pernicious that compliance with it would result in intolerable human pain and suffering, thereby justifying Antigone’s act of civil disobedience and the tragic effects which her act ultimately caused.

27. Id. at 93.

28. Id. at 94.


32. See Cohen, supra note 23, at 200–10 for the analysis of the defense of civil disobedience and the Nuremberg judgments.
Arguably, the Nuremberg principles are not applicable to acts of civil disobedience that are customarily undertaken in response to local ordinances. Civil disobedience is more typically committed in democratic societies rather than in totalitarian regimes, even though tyrannical leaders in totalitarian regimes often promulgate oppressive laws. Civil disobedience is simply not tolerated under tyranny, as is clearly expressed by Creon’s immediate and cruel punishment of Antigone. In fact, one of the features of civil disobedience is that it is a by-product of democratic government that tolerates dissent and welcomes legal protest. But civil disobedience is illegal protest. Therefore, since justification for the concept of civil disobedience cannot be found in the legal system per se, defense of civil disobedience must come from outside the legal system.

E. Civil Disobedience and a Conflict-of-Law Argument

Civil disobedients may attempt to justify their acts on the basis of a conflict of laws argument, claiming a moral obligation to perform the illegal acts or, as Antigone claimed, an obligation to obey a higher, natural, or divine law whose authority preempts man-made laws. Thus, the civil disobedient recognizes a conflict between a man-made law and a “higher” law, referred to by names such as “natural law,” “moral law,” “unwritten law,” “God’s law,” etc. This line of reasoning has deep roots in the history of Western thought and is shared by Cicero, Aquinas, Grotius, Locke, and even Thomas Jefferson who inscribed on the Great Seal of the United States: “Rebellion against tyrants is obedience to God.” St. Thomas Aquinas declared that “human law does not bind a man in conscience, and if it conflicts with the higher law, human law should not be obeyed.” In his Letter from Birmingham Jail, Martin Luther King wrote that “an unjust law is a code that is out of harmony with the moral law.” King made frequent references in that Letter to a conflict between moral law (or natural law) and man-made law. King believed moral law preempted human law and justified his act of civil disobedience in order to protest and draw attention to a bad man-made law.

The difficulty inherent in the conflict of laws argument that civil disobedience is obedience to a higher law stems from the vagueness of natural law. It is impossible to codify natural law or to determine with any degree of reliability what that law actually commands or forbids. As it is difficult to determine if these higher laws are part of a legal system at all, it is also difficult to determine how they would even apply to concrete cases. Some argue that the legal system itself needs people who are willing to break the law for political reasons.

33. See infra text accompanying notes 48–101 for a discussion of the history of natural law.
34. See infra Rommen, at note 92 discussing Thomistic philosophy. See infra text accompanying notes 88–97 for a discussion of the legal theory of St. Thomas Aquinas.
35. King, supra note 17, at 84–85.
“The legitimacy of the system itself requires confrontation with disobedience defended by individuals who view compliance as immoral or by individuals seeking to persuade lawful officials to change.”

F. Civil Disobedience and a Free Speech Argument
Some may attempt to adduce a free-speech argument that civil disobedience is a form of protected political speech. John Rawls compared civil disobedience to public speech. The issue in such an argument is to determine how far the protection of free speech really goes and whether the form of illegal protest in question is like other protected forms of communication: gestures, symbolic responses, certain conventional patterns of conduct and other nonverbal acts that are protected under the First Amendment of the U.S. Constitution. Open and uninhibited political criticism is of such fundamental importance in a democracy that conduct that falls into this category will be protected even when it may appear to fall also into categories otherwise rightly unlawful.

G. Civil Disobedience and Postmodernism
The practice of civil disobedience is both an ancient and modern form of illegal dissent that reflects the essence of postmodernist thought. The postmodern perspective in critical legal studies began to make its presence felt in the academic community in the early 1990s and has been identified as incorporating hermeneutics, post-structuralism, deconstruction, and semiotics. Postmodernists question many of the key concepts incorporated in formal law, which they identify with manipulation and control.

Civil disobedients and postmodernists both seek reform. The perpetration of an illegal act by a civil disobedient is designed not to destroy the social order, but

40. Cohen, supra note 23, at 179, citing New York Times Co. v. Sullivan, 376 U.S. 254 (1964) (protecting the “proud national commitment to the principle that debate on public issues should be uninhibited, robust, and wide open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials”).
to reform it by challenging a particular law or action promulgated by the government.\textsuperscript{43} “The motivation of civil disobedience is the dissonance caused by an alleged injustice, and the goal is justice . . .”\textsuperscript{44} not anarchy or revolution. Like the postmodernist, the civil disobedient intends to debunk certain premises of the legal system and to call into question the bases of certain laws that offend human dignity.\textsuperscript{45}

Despite their mutually moral intentions, both postmodernists and civil disobedients are perceived by some as dangerous anarchists whose shared goal is to undermine the legitimacy of the legal system. The argument against civil disobedience is that nonviolent protest may lead to violence and revolution, which the State has a legitimate right to prevent.\textsuperscript{46} In Sophocles’ tragedy, Creon vigorously opposes Antigone’s act of defiance because it threatens to decenter the order and destabilize the discipline required to preserve the State. Therefore, for civil disobedience to be effective, it must be predominantly nonviolent.\textsuperscript{47}

\section*{III. CIVIL DISOBEDIENCE AND JURISPRUDENCE}

The question that both Sophocles and Anouilh ask literarily but answer very differently is whether civil disobedience is truly effective in changing an unjust law and in reforming the legal system that created it. To answer this question, we must posit the existence of an objective moral standard beyond or implicit in the man-made laws. This objective moral standard, which is referred to in different ways as natural law, divine law, the law of God, revelation, or universal law, is often compared and contrasted to human law, which is otherwise referred to as legal positivism.

\subsection*{A. Natural Law versus Legal Positivism: What is Natural Law?}

Natural law, like civil disobedience or terrorism, is a concept that is difficult to define. Blackstone defined natural law as “the eternal, immutable laws of good and evil, to which the creator himself in all his dispensations conforms; and which he has enabled human reason to discover so far as they are necessary for

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\item \textsuperscript{43} Richard A. Vachon, \textit{The Relevance of St. Thomas More}, 13 Cath. Law. 145, 147 (1967).
\item \textsuperscript{44} Paul J. Weber, \textit{Toward a Theory of Civil Disobedience}, 13 Cath. Law. 198, 202 (1967).
\item \textsuperscript{45} “An unjust law is a human law that is not rooted in eternal law and natural law . . . Any law that uplifts human personality is just. Any law that degrades human personality is unjust.” \textit{King}, supra note 17, at 84.
\item \textsuperscript{46} Weber, \textit{supra} note 44, at 201–02.
\item \textsuperscript{47} DeForrest, \textit{supra} note 11, at 657.
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the conduct of human actions.”

According to John Locke in his second treatise, natural law is understood to be the law of reason. It is the eternal, immutable, universal law which is in opposition to the relative “positive, existing law” that varies according to time and place. Natural law is based upon unchanging fundamental principles that provide norms for justice. Our revolutionary Declaration of Independence, unlike our Constitution, is permeated with natural law concepts that deny the validity of the British law of its time. The Declaration of Independence distinguishes true “law” from the commands of the existing sovereign or of the existing State and defines the former as a transcendent quality that can only be freed by revolutionary action.

Natural law is often contrasted to legal positivism. Since the fundamental credo of legal positivism is that “no law can be unjust,” many legal scholars (notably the utilitarians such as Jeremy Bentham and John Austin) draw attention to an inherent and disturbing separation between law and morality in legal positivism. Positivists perceive the law as a command of the sovereign requiring obedience to what law “is” and not necessarily to what law “ought” to be.

B. History of Natural Law: Homer and Ancient Greece
The philosophical conception of the natural law made its first appearance in a literary form in the Homeric epics in Western culture among the ancient


50. Ernst Bloch, Natural Law and Human Dignity XIV (Dennis J. Schmidt trans., 1986).


52. See West, supra note 5, at 162: “As narrative, the [Declaration of Independence] tells the romantic story of the ‘birth of a hero’, a tumultuous ending and a new apocalyptic beginning. The American Rule of Law is the hero that triumphs over English monarchic authority.”


54. See H.L.A. Hart, Positivism and the Separation of Law and Morals, 71, 4 Harv. L. Rev. 593, 617 (2/1958). “Thus, the insistence on the separation of law as it is from law as it ought to be powerfully contributed to horrors.” Hart explains how Nazis exploited subservience to mere law, that is, law as law (Gesetz als Gesetz) and the failure of the German legal profession to protest against the injustice they were required to perpetrate in the name of law. See also Kelsen, General Theory of Law and State 58–61, 143–44 (1945) for an elaboration of pure formalism and legal positivism which extols the virtues of law as a science.

55. Weinreb, supra note 2, at 16.
Greeks before the fifth century B.C. The relationships in Homer between human and divine agency, the interventions of the gods, and the will of Zeus have been the subject of endless scholarly debates through the ages. The classical example of the conflict between natural law and human law was written in fifth century B.C. by Sophocles in the tragedy Antigone, which reflects debates that were very much in the air in Greece at that time.

The Greeks distinguished two conceptions of natural law. One espouses the basic doctrine of a state of nature and the State as a social unit resting upon a free contract, which is arbitrary, artificial, and determined by utility. The other Greek conception of natural law is grounded in metaphysics. According to that view, natural law is a mythical state of nature that existed before laws were created and is intricately connected to the notion of God as supreme lawgiver.

C. Natural Law at the Time of Heraclitus, Plato, and Aristotle

Both of these conceptions of natural law were dominant in the Greek era of the first Sophists and at the time of Heraclitus. Heraclitean dicta, which appeared around 500 B.C., entered into later Stoic philosophy and offered the proposal of one universal and rational law: “For all human laws are nourished by one, which is divine. For it governs as far as it will, and is sufficient for all, and more than enough.” Building upon Plato’s theory of Ideas, which sought to elevate “nature” from the sphere of contingent facts to the realm of immutable Forms, Aristotle advanced the concept of “natural justice” in his Ethics. Aristotle quoted Antigone arguing that “an unjust law is not a law.” For centuries Aristotle passed as the “father of natural law,” and St. Thomas repeatedly appealed to Aristotle as the Philosopher, par excellence. But Aristotle had as little to say about the content

57. See Weinreb, supra note 2, at 17.
58. See id. at 21 for an analysis of Sophocles’ Antigone as an example of civil disobedience to the law of the State and as an example of the conflict between obedience to the law of the State and to another, higher obligation. “Antigone is represented as the first great heroine of civil resistance, almost the leader or inspirator of a resistance movement against tyranny.” Id.
59. Rommen, supra note 56, at 5.
60. Id.
61. See The Presocratics, 75 Section 81, Fragment No. DK 22B114 (Philip Wheelwright ed., 1960), cited in Beres, supra note 48, at 120.
62. See Beres, supra note 48, at 212.
63. Rommen, supra note 56, at 16.
of natural law as Plato, who defined the law as the “discovery of true reality.” It was not Aristotle or Plato but rather the Sophists (the revolutionaries of ancient Greece) who, like today’s postmodernists, made many reform proposals and placed demands on the natural law.

D. Legal Positivism and Natural Law under the Sophists and the Birth of Athenian Democracy

In an era in which laws were considered the pride of the citizens of the Greek polis, the Sophists were considered foreigners, rationalistic revolutionaries, and enemies of the law. Sophocles’ Antigone reflects these radical Sophists’ views. Sophocles wrote Antigone in the midst of a rapidly changing world in 440 B.C., and his play mirrors the transition between the old and the new world in Greece. Sophocles elucidated the idea of true law as an act of discovery challenging the superiority of human rulemaking.

The birth of Athenian democracy in the fifth century B.C. created a demand for a new education system—and the professional educators were the Sophists. They asked the proverbial questions: Is morality merely convention—nomos—or is there a higher sanction to be found in nature—physis? Nomos is the establishment of the rule of law and the product of the fifth and sixth century B.C. Nomos became the laws, the codified customs of the State, and the rules created for rational and prudent State regulation. Physis and nomos, nature and convention, were the pillars of a great debate at that time, and one which continues today. Sophists brought out a sharp contrast between the prevailing order of the city-state and the natural law, as they preached it.

Sophists ridiculed Socrates who looked upon the laws of Athens as purely and simply just. Sophists contrasted what they considered to be naturally right with what is legally right, believing that the unwritten laws were eternal, unalterable, and emanating from a higher source than the changing decrees of men.

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64. See Weinreb, supra note 2, at 31–35 for a discussion of the role of Plato and Aristotle in the development of a natural law theory.

65. See West, supra note 5, at 152, at n.22 (“The natural law tradition begins with Plato, who defines law as the ‘discovery of true reality.’ Plato, Meno, at 73rd (M. Brown ed. 1971). Other natural lawyers have claimed that law must, in order to qualify as true ‘law’ accord with moral norms derived from God’s law (Augustine), human nature (Aquinas), rights (Dworkin), procedural fairness (Fuller), generality (Wechsler), neutrality (Ackerman), the human good (Finnis), or the community good (Aquinas and Aristotle) . . .”).


69. Rommen, supra note 56, at 8.

70. Id. at 9.
Antigone’s objection to Creon’s decree seems to reflect the Sophists’ adherence to natural law. Originally, the Sophists established an opposition between *physis* and *nomos,* but later the Sophists sharpened the distinction between man-made laws (*thesis*) and natural laws (*physis*). The Sophists established the principle that there is a unity between what is right and what is the highest expression of nature. Physis or natural law was defined as the constant value in the changes of human laws. Soon *nomos* became equated with the law of the universe, and *physis* became a synonym for *nomos.*

Pericles believed that laws held a city together and that the individual and the *polis* will be destroyed if this union is broken. To enforce the rule of law, Pericles espoused legal, rule-based formalism for the Athenian city-state. This view constitutes a shift from a communally based conception of the State to one that gives primacy to the individual. In Periclean Athens, the customary principle of the collective health of the community (*physis*) was replaced by laws based on the paradigm of individuality. At this point in time, legal rule formalism was the State-sanctioned code of conduct, like the decree espoused in *Antigone* by Creon. Customs, such as the burial of the dead, were not codified into the rules and regulations of the city-state. The prevailing laws were internal rationalizations or systemizations of the dominant principles of the Athenian city-state.

During the transition from the ancient world to democracy, a competition developed between the varying forms of newly established man-made laws (such as Creon’s decree) and the preexisting customary practices (such as Antigone’s burial of Polyneices) that evolved from *physis* or nature. The conflict between new laws and preexisting customs is represented in the bitter opposition between Creon and Antigone, with the aim of Sophocles’ literary representation being to determine the supremacy of divine law/*physis* over human law/*nomos*.

E. Sophocles, the Sophists, and Natural Law

In fifth-century B.C. Athens, the marginalization of natural law was expressed in edicts or decrees criminalizing behavior that complied with natural law. Thus, State law became legal, natural law became illegal, and those faithful to natural law became outlaws. Antigone’s defiance of Creon’s decree represents an example of this new form of criminal deviance. Sophocles’ tragedy does not conclude that either natural law (the right of the family) or human law (the right of the State) is supreme. The fact that the play has elicited more than one hundred different interpretations since its performance in ancient Greece is a sign of Sophoclean ambiguity and the author’s muted refusal to advocate for one or the

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72. Id. at xiv.
73. Id. at 11.
74. Id. at 13.
other forms of legal system. Antigone and Creon both come to realize that rigid adherence to either system of law has led them to err. Sophocles’ ambiguity marks an interesting impasse in the jurisprudential debate and invites scholars to consider a more balanced view of law that encompasses features of both natural and human law. What is clear from the Sophoclean tragedy is that civil disobedience does produce positive effects for legal and political reform. In Greek tragedy, the central conflict in which one protagonist is pitted against the other reflects the basically contradictory nature of law itself which was said to be incommensurate with justice or morality.

F. Stoics, Natural Law, and Rome

The Stoics, whose legal philosophy arose on the threshold of the Greek and Roman worlds, viewed nature itself as the supreme legislator in the moral order. They applied Platonic and Aristotelian thought and defined the emerging *cosmopolis* as one in which humankind, through its divinely granted capacity to reason, can commune with the gods. Although Stoicism was founded in Greece as a school of philosophy by Zeno (340–265 B.C.), Stoicism ultimately came to fruition in Rome in the imperial age in 106–43 B.C. with the advent of Cicero, who interpreted and transmitted the Stoic doctrine of natural law. Cicero’s writings in *De Republica* contain the first clear statements of natural law as a distinct philosophical doctrine. Cicero said, “True law is right reason, harmonious with nature, diffused among all, constant, eternal; a law which calls to duty by its commands and restrains from evil by its prohibitions . . . It is sacred obligation not to attempt to legislate in contradiction to this law; . . . Nor is it one law at Rome and another at Athens; one now and another at a later time; but one eternal and unchangeable law binding all nations through all time.”

Cicero was the great popularizer of natural law, and Stoicism greatly influenced the various schools of Roman jurisprudence that adopted Stoic natural law traditions. Two pillars support the true Stoic doctrine of natural law: the concept of common notions, *koinai ennoiai*, and the postulate of a life in harmony with nature, *homologoumenos te physei zen*. Man has an inborn notion of

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76. *Id.* at 593.
77. *Id.* at 152 (“Since the tragic poets present a view of law as divided in itself and as never fully positioned to be commensurate with justice, they expose the institutions as a fiction rather than a simple unconflicted act of reason”).
78. *See* Beres, *supra* note 48, at 121.
right and wrong, and law in its very essence rests not upon the arbitrary will of a ruler such as Creon or Hitler, or upon the decree of a multitude, but upon nature and upon innate ideas. Obedience to the eternal law in a life lived according to reason and embraced with religious fervor is the ethical principle of Stoicism, which prepared the way for Christianity.

G. Christianity, St. Augustine, and Natural Law
When Christian faith entered into the ancient world, the Christian philosophers adopted the Stoic natural law traditions. St. Augustine, writing at the beginning of the fifth century A.D. (430 A.D.), reaffirmed the principle that temporal law must conform to the unchangeable eternal law. St. Augustine believed that the substantial ideas were the thoughts of God and His eternal law. Augustine identified the course of all global problems in the human potential for evil, attributing the trials of humankind to the taint of original sin. St. Thomas Aquinas recalled St. Augustine as saying, “There is no law unless it be just. So the validity of law depends upon its justice. But in human affairs a thing is said to be just when it accords a right with the rule of reason: and as we have already seen, the first rule of reason is the Natural Law. Thus, all humanly enacted laws are in accord with reason to the extent that they derive from the Natural Law. And if a human law is at variance in any particular with the Natural Law, it is no longer legal, but rather a corruption of law.”

H. Scholasticism, Thomas Aquinas, and Natural Law
As Scholasticism reached its peak in the Middle Ages, the natural law doctrine attained its most masterly expression, especially in the writings of St. Thomas Aquinas who identified four kinds of law: eternal law, natural law, human law, and divine law. Aquinas believed that eternal law was clearly the core form of law from which all other forms derive. According to Aquinas, natural law is not a set of rules but an inclination, a way man participates in eternal law. Natural law needs discovery of self-evident truths. To go against natural law is to go against the human good, and according to Aquinas, “civil laws, which are not

84. Rommen, supra note 56, at 22.
85. Id. at 38.
86. See Summa Theologica, 1A 2AE, 95, 2, cited in D’Entreves, supra note 81, at 42–43.
88. See Pamela M. Hall, Narrative and the Natural Law: An Interpretation of Thomistic Ethics 27 (1994).
89. Id. at 28.
90. Id. at 37.
ordered to the human good, are more like ‘violence rather than laws.’” Aquinas also believed that positive law must not conflict with natural law, and “so far as it is in conflict with the natural law and with the unchangeable norms, positive law is not law at all and cannot bind man in conscience.” This principle is the bedrock of justification for civil disobedience.

Some scholars believe that natural law is knowable to the unassisted human mind which is not illumined by divine revelation. Natural law is simply a set of exceptionless rules prescribing or constraining action. Others contend that as divine law completes natural law according to Thomas Aquinas, natural law is practically inseparable from theology which is based on belief in biblical revelation. This connection between natural law and divine revelation renders questionable the efficacy of natural law as a standard for a legal system.

I. Grotius, the Father of Natural Law
Despite the long history of natural law that goes back to the Greeks, some believe that the doctrine of natural law began with the Dutch scholar Hugo Grotius (1583–1645), often called the “Father of Natural Law.” Grotius marked the transition from a metaphysical conception of natural law to a more rationalist one. In the seventeenth and eighteenth centuries, Grotius strengthened the idea of a universally valid natural law transcending in obligation all human law, including the law of the sovereign State. Unlike Machiavelli and Hobbes, Grotius did not reduce law to the will of the prince or of the State. He understood that human edicts must be derived from the overriding totality of natural imperatives. Grotius rejected “raison d’état” as a just cause for war. Thus, he did not agree with Creon, who reduced law to the will of the State.

J. Hobbes, Locke, and Jean-Jacques Rousseau on Natural Law
In contrast to Grotius, Thomas Hobbes (1588–1679) denied natural law. Like the Epicureans before him, Hobbes pictured the state of nature as a lawless condition of war, a conflict of all against all, of chaos. Hobbes saw natural law as

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92. *See Rommen, supra* note 56, at 55.
95. *See Hall, supra* note 88, at 3.
96. *Id*.
98. *See Beres,* *supra* note 48, at 124 (discussing Grotius).
the basis for the institution of positive law which, once instituted, would make natural law disappear. John Locke (1632–1704) was as individualistic in his social philosophy as Hobbes, but Locke saw the state of nature as idyllic and espoused the idea of natural law in order to establish the inalienable rights of the individual. Like Locke, Jean-Jacques Rousseau (1712–78) stood almost diametrically opposed to Hobbes and to Hobbes’ conception of the natural law. Rousseau preached a state of nature that resembled “the biblical paradise.”

K. Immanuel Kant and the Age of Natural Law
In the eighteenth century, a new era arose called the age of natural law that was dominated by the philosophy of Immanuel Kant (1724–1804), who exhibited the individualist natural law in its highest form. During this period a newer natural law developed that was distinguishable from the natural law of the Scholastics. This newer natural law had three distinct features: the predominance of the doctrine of the state of nature as the proper place to find the natural law; the nominalist attitude that espoused the belief in the separation of eternal law and natural law, of God’s essence and existence, of morality and law; and the doctrine of the autonomy of human reason.

L. Critics of Natural Law
Although natural law enjoyed a long reign, attacks upon it were launched mainly from two camps: the sceptics and the agnostics such as David Hume and the utilitarians such as Jeremy Bentham (1748–1832) and their disciples. Criticism of natural law also came from leaders of the romantic movement who were basically antirationalist and antirevolutionary. Common to both groups was a basic distrust of the power of human reason to govern man.

M. The Rise of Legal Positivism
In reaction to this skepticism, legal positivism soon supplanted natural law as the dominant philosophy of law. Rejecting the natural law as to its form and content, legal positivism claims that the natural law doctrine is vague, threatens legal security, and substitutes subjective opinions for fixed objective norms. Positivism regards the natural law as a non-law.

When the horrific crimes of the Nazi regime were revealed and punished by the rule of law at the Nuremberg trials, the weaknesses of the legal positivist system of law were also exposed, which resulted in a revival of natural law theory. This

individuals, in whom is found no natural tendency to live in society; and man’s life is ‘solitary, poore, nasty, brutish, and short.’” Hobbes, Leviathan, Part I. Chap. 13.
100. Rommen, supra note 56, at 91.
101. Id. at 247.
revival is seen especially in the work of Germain Grisez and John Finnis. The Nuremberg Tribunal left its legacy in the Nuremberg Charter, specifically Article 8, which provided justification for military disobedience: “The fact that the defendant acted pursuant to an order of this government or of a superior shall not free him from responsibility.” Article 8 is a rejection of the positivist excuse for atrocious official acts that were said to be licensed by German law.

N. Positive Law

It is widely accepted that natural law is difficult to codify, and too general, too diffuse, and too inchoate to be, by itself, a wholly adequate standard for a legal system. As Justice Oliver Wendell Holmes put it, “The jurists who believe in natural law seem to me to be in that naive state of mind that accepts what has been familiar and accepted by them and their neighbors as something that must be accepted by all men everywhere.” Legal positivism offers codified rules and claims to be a science of the law that supplants the vague principles of natural law. Hans Kelsen objected to natural law because he considered it to be politically motivated. In its place, he advocated legal positivism as an apolitical pure theory of law. Positive law is a regulating, schematizing, and generalizing reality that produces interconnection, security, safety, and predictability among men. By bringing uniformity to human behavior, legal positivism safeguards the individual's security. Despite its advantages over natural law, positivism does impose itself in a compelling way, and natural law advocates are cautious about its obligatory and coercive power.

105. Luban et al., supra note 102, at 2351.
106. Hall, supra note 88, at 46.
108. Hans Kelsen, Was ist die Reine Rechtslehre?, in Demokratie und rechtsstaat. Festgabe Zum 60. Geburtstag Von Zaccaria Giacometti 145, 153 (1953) (“As a science of positive law, it is a doctrine of actual rights, of rights and duties as they have actually been created by custom, legislation and the administration of justice and are at work in social reality, regardless of whether such positive law is considered good or bad, just or unjust, from any value-standpoint, that is, from any political standpoint.”).
109. See William A. Luijpen, Phenomenology of Natural Law 22–23 (1967) for a discussion of Kelsen’s theories and objections to natural law, which he saw as politically motivated and based on subjective value judgments.
110. Id. at 13.
111. Id. at 12.
According to Robin West, the broad appeal of legal positivism as a jurisprudential method is based on its separation of law and morality. As Jeremy Bentham, Oliver Wendell Holmes, the legal realists, and more recently the critical legal scholars have reiterated, “A realistic insistence on the separation of what ‘is’ from what ‘ought to be’ is essential to meaningful progress toward fulfilling our dreams. The positivist separation of law and morality—of what is from what ought to be and what could be—is indeed a prerequisite of legal reform, whether that reform be radical, liberal, individualist, or communitarian.”

Ironically, the very same separation of law and morality and the identification of right with the legal order (which positivists see as its advantage over natural law) constitute the source of arguments against legal positivism. To make justice rule in a purely legal positivist system, power is required and often exalted not for its own sake, but as the only and last means to prevent chaos. This view is clearly expressed in Sophocles’ Antigone and espoused by Creon, the tyrant who passes an offensive decree merely to affirm his authority in his newly established reign, which by its rigidity and brutality foreshadows a reign of terror.

H.L.A. Hart presented a more balanced view of positivism than the pure legal positivism of Kelsen and others. He cautioned the legal community about the possibility that a system of legal positivism might create morally evil laws that would result in the duty to disobey them. “If laws reach a certain degree of iniquity, then there would be a plain moral obligation to resist them and to withhold obedience.” Pure legal positivism would deny the right to civil disobedience.

Scholars such as Martha Nussbaum argue strongly for a more balanced system of law, and they oppose a mere rule-based standard. Nussbaum adopts practical wisdom as an alternative to any set of rule-governed precepts and prohibitions. Opponents of positivism argue that its laws are man-made and changeable whereas natural law (which is universal, eternal, immutable, and stable) is a means of holding together the social order. This argument of stability will be proposed by Antigone when she attempts to defend her illegal act in defiance of Creon’s man-made law. Creon also makes the very same argument of

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112. See West, supra note 5, at 182.
113. Id.
114. See Luijpen, supra note 109, at 28–35, for arguments against legal positivism.
115. Id. at 209.
118. Hall, supra note 88, at 14.
stability in his defense of man-made laws that he believes must be obeyed if the State is to survive.

Nussbaum's more balanced view of the law is in consonance with Sophocles' view. In his depiction of Antigone and Creon as both dogmatic in their adherence to either natural or made-made laws, Sophocles seems to adopt the view that a legal system should be a more flexible synthesis of both natural law and legal positivism. Nussbaum argues that Greek tragedy is about conflict resolution in a world that is full of change and that is not governed by reason alone. She demonstrates that both Creon and Antigone provide solutions to conflict resolution that are inadequate and oversimplified. Creon's solution is to adopt pure legal positivism, and he advocates the primacy of civic duty and unflinching obedience to man-made laws. Antigone's solution is to adopt natural law, and she advocates duty to family, blood ties, and the eternal law of the gods of the underworld. The conflict between Antigone and Creon is not just between natural law and legal positivism, but between higher law and human law, between nature and civilization, between emotion and reason, and between woman and man. According to Nussbaum, both Antigone's and Creon's solutions for conflict resolution are too radical, and she argues for a more balanced view, like the one proposed by Hegel, whose incisive reading of Sophocles' Antigone constitutes the traditional interpretation of the play adopted by many literary critics and law scholars including Richard Posner.

IV. HEGEL’S READING OF SOPHOCLES’ ANTIGONE

Hegel's favorite Greek drama was Antigone, and he saw in Antigone's defiance of the king's commands a quality basic to the Hellenic ethical ideal. According to Hegel, Antigone obeys a higher order, even if it means losing her own life. Her obedience to one legal order means disobedience to another legal order, the one established by the State that issues the decree she violates. Whether or not

120. See Timoll, supra note 67, at 599–611 for a very interesting discussion of Irigaray’s views on Hegel’s interpretation of Antigone, the dialectic of sexual difference established in the play, and a feminine critique of the play.
Antigone “chooses” of her own free will to violate the natural law or she is actually fated to commit this transgression by virtue of her tragic family ties, the fact is that she violates a law and will be punished. However, at the same time Antigone disobeys one law, she also dutifully obeys “the immutable laws of Heaven” that “were not born today nor yesterday; they die not; and none knoweth whence they sprang.”

Antigone’s conflict is not easy to resolve. The law she feels compelled to obey is a good law, not an unjust law, unlike the SS officers who felt compelled to obey patently racist laws that resulted in human suffering on a grand scale. Creon’s law is an unjust law that is self-serving, but it is not one that will result in human suffering on a grand scale. Creon represents the other side of Hellenic ethical consciousness, which is duty to State authority. Thus, according to Hegel, Creon and Antigone both epitomize essentially ethical values.

A brief analysis of the Hegelian interpretation of Sophocles’ Antigone establishes the dialectical oppositions supporting arguments for and against civil disobedience. These arguments are at the heart of this controversial play. Sophocles’ ambiguity and the many questions left unanswered in the Greek tragedy invite interpretation and explain why more than one hundred Antigones have been produced in translation, revision, and recreation since Sophocles first wrote his personal interpretation of the myth in the fifth century B.C.

Hegel, who greatly admired both the play and the character Antigone, saw this drama as the struggle between human and divine law in the early polis. The conflict is represented in a paradigmatic form called tragedy, which Hegel believed to be a genre that would evoke enlightenment and positive knowledge on the part of the tragic hero. The inevitable failure to honor both human and divine laws in this tragedy results in a fateful suffering by both Creon and Antigone. This suffering is intended to produce awareness of the need for a new kind of wisdom based on synthesis. Hegel saw this new wisdom as the unity of natural law and legal positivism, which are fundamentally in opposition to each other.

A. Hegel and the Plot of Antigone
The play begins at a very dramatic moment: the day after the siege of Thebes that was brought about by Polyneices, Antigone’s brother, and one of the two sons of the fated former king, Oedipus. The battle resulted in the death of both brothers, Eteocles and Polyneices, and the rise to power of a new king of Thebes.

123. J. Glenn Gray, Hegel and Greek Thought 55 (1941), citing F. Storr’s translation of Antigone.
125. Steiner, supra note 4, at 121.
Creon, Antigone’s uncle and the new king of Thebes, orders Polynices, the traitor, to remain unburied in Thebes. While it was legal for Creon to forbid burial in the city that the traitor betrayed, it was not legal for Creon to forbid family members to bury their dead outside of Thebes. Creon justifies his harsh decree on the need to preserve the authority of the State and the sanctity of its laws. His decree is also a show of force for a newly crowned king. Creon proclaims that any violation of the foundational and final laws of the *polis* can bring death and destruction to the State. He believes his decree is justified because the city possesses the authority to withhold burial from a traitor. The penalty for disobedience of Creon’s decree is stoning to death.

Antigone claims an obligation to bury her brother based on divine law to which the netherworld gods demand absolute obedience. As Polynices’ sister, she cannot resist this demand for obedience based on kinship, blood ties, and an ethical bond. Antigone defies Creon’s decree and twice goes out to bury her brother, without the help of her sister, Ismene, who does not think women should defy men in the *polis*.

Hegel points out that neither Antigone nor Creon ever sees the other’s point of view, with both characters demonstrating a basic one-sidedness. In the course of the play, each character comes to know that the other is partially right and partially wrong, and each acknowledges his/her own guilt. After her incarceration by Creon in an underground cave and just before her suicide by hanging, Antigone acknowledges that her great suffering proves her error. But the main epiphany comes to Creon after suffering the tragic loss of his son, Haemon, and the death of his grief-stricken wife, Eurydice. Unlike the typical unswerving classical hero, Creon listens to the message of the Chorus and Tiresias; he realizes his mistakes; and he changes. The foreshadowing of this change is seen in Creon’s early commutation of Antigone’s sentence from stoning to imprisonment in an underground tomb where she can “pray to Death for life.” Creon realizes his mistake is in not respecting customary laws and in excluding laws of the old tradition where the dead are buried in the earth: “I’ve come to fear it’s best to hold the laws of old tradition to the end of life” (1112–13). Having learned the error of his ways and the unjustness of his laws, Creon finally admits guilt and decides, too late, to free Antigone and to change the law. Even though Creon is one of the few who remains alive at the end of the play, his life ends

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126. Weinreb, supra note 2, at 271–72 (1987). Thebans did not permit the burial of the enemy dead, and this was a common theme in Greek literature (Aeschyles, *Seven Against Thebes*, Euripedes, *The Suppliant Women*). Polynices was a traitor, and the law of Athens prohibited the burial of traitors in Attica. But even traitors were not denied burial altogether. See Robert Coleman, *The Role of the Chorus in Sophocles’ Antigone*, 198 Proceedings of the Cambridge Philological Society 7–8 (1972), cited in Weinreb, id. at 272.

127. All references from Sophocles’ *Antigone* are from the David Grene and Richmond Lattimore edition, supra note 7. Verses will be cited in the body of the chapter.
tragically, as he is reduced to “nothing more than nothing now” (1320), walking alone in Thebes. At the end of the play, Creon is a wailing wreck of a man stripped of dignity and longing for death.

V. ANTIGONE AND FEMINISM

Although Hegel was a statist who believed in preserving the polis, he nevertheless extolled the virtues of the heroine Antigone, calling her the “noblest of figures that ever appeared on earth.” Hegel believed that Antigone’s act of defiance was an ethical one (Sittlichkeit) based not on personal desire but on a belief that she had a higher duty to bury her brother who was of her own blood. Hegel saw the play as representing the conflict between Antigone’s obedience to the private imperatives of kinship (which Hegel reminds us is the domain relegated to women) and Creon’s obedience to the public loyalties of the State (which is traditionally the domain of men).

Hegel’s condescending opinion of women results in his relegating women to family matters and men to more important political matters in a discriminatory system based on gender difference. Sophocles shared Hegel’s view of gender difference and politics, but Jean Anouilh apparently did not. Anouilh contrasted more distinctly than Sophocles two different types of women (Antigone and Ismene) and transformed Antigone into a more masculine female with nontraditional qualities of inner beauty based on heroic and virtuous deeds that were nonetheless futile. Anouilh’s recreation of Antigone established the foundation for a new doctrine of feminist esthetics.

Although Hegel admired Antigone and her devotion to natural law, he clearly preferred Creon and his loyalty to legal positivism and to civic duty of the polis. Hegel reflected his preference for Creon when he said that Antigone’s loyalty is to “inferior” authorities, to natural law, and to the “underworld gods of Hades . . . the inner gods of feeling, love and kinship, not the daylight gods of free, and self-conscious, social and political life.”

Antigone’s fascination with death and the underworld has been misinterpreted by many critics. Her attachment to the gods of Hades and the underworld is not at all due to her “love” of Polynieces, or her “death wish,” but rather constitutes the symbolic and literary representation of her reverence for the immutable and eternal natural law, which is associated logically with everlasting death rather than with fleeting and temporal life.


129. See Allen W. Wood, Hegel’s Ethical Thought 244–246 (1990), for Hegel’s views on man and woman.

Like Hegel, who believed that both Creon and Antigone held ethical but inadequate views of the law, the Chorus, the Messenger, and the Seer, Tiresias, all point out that both Creon and Antigone fail to judge with wisdom. According to Hegel, this play is about the conflict between basic aspects of ethical consciousness, between two laws each of which is universal but incomplete in itself, and each law is in conflict with the other. Creon’s law embodies the human law of the polis and is represented by the male, the rational, the voice of reason. Haemon shares a belief in his father’s man-made law. Haemon’s diplomatic appeal to his father is an appeal to reason, not to sentiment, and it is for this reason that Haemon never once mentions his heartfelt passion for Antigone. Antigone’s law is divine law, which is associated with emotion, not reason, and by extension Antigone herself becomes the symbol of emotion. Thus, the entire domain of womanhood represented by Antigone becomes intricately allied with emotion rather than rationality.

According to Luce Irigaray, a French feminist scholar, Creon’s human laws deny blood ties of matrilineal society and denigrate the significance of birth, thereby advocating patriarchal dominance and the degradation of women. Irigaray believes that Hegel perpetuated the classical devaluation of women represented by the views of Creon, who so much feared losing to a woman. Creon said, “So I must guard the men who yield to order, not let myself be beaten by a woman . . . I won’t be called weaker than womankind.” (677–80) In Creon’s patriarchal world women are associated with disorder, madness, and chaos, and they must be punished: “I am no man and she [is] the man instead if she can have this conquest without pain.” (484–85). Antigone is a challenge to Creon’s self image as a man: “No woman rules me while I live.” (527) Creon’s worst fear is that his son “is firmly on the woman’s side” (740), and he accuses Haemon of becoming “a woman’s slave” (755). Antigone’s sister, Ismene, fears the male-dominated universe, recognizes her female inferiority, and refuses to challenge the laws and authority of the male leader by engaging in civil disobedience:

And now look at the two of us alone.  
We’ll perish terribly if we force law  
and try to cross the royal vote and power.  
We must remember that we two are women  
so not to fight with men.

As a result of Hegel’s designation of women as keepers of the private sphere, women were relegated to an unrecognized, invisible status, which is the primary source of their gender discrimination.

131. Luce Irigaray, Speculum of the Other Woman (Gillian Gill trans., 1985).  
132. See Timoll, supra note 67, at 607 for a discussion of the degradation of women in Hegel and by Creon in Sophocles’ Antigone.  
133. Id. at 583.
A. Sophocles’ Antigone and Feminism

Law and gender are clearly allied in the idiom of Sophocles. The law Antigone advocates is embodied in the universal and eternal law of the family that according to Creon and Hegel is represented by the female. Antigone acts publicly to honor divine law and suffers human, not divine, punishment. Her fate simultaneously affirms the claims of divine law and the authority of human law. Creon refuses to recognize the legitimacy of family law, preferring to establish the authority of human law, his law, which is the law of men. As a result, Creon is punished by the gods, not by humans. His fate affirms both the claims of human law and the authority of divine law. The judgment called for by the Chorus, the Messenger, and the Seer is governed by male-dominated reason and articulates the synthesis of divine and human law.

B. Anouilh’s Antigone and Feminism

Unlike Sophocles, Anouilh in his theatre of revolt criticizes Creon’s disrespect for women by depicting a Creon who is utterly indifferent to human suffering, inappropriately holding a five o’clock cabinet meeting as soon as he learns of his wife’s tragic suicide. Anouilh parodies gender discrimination.

VI. CIVIL DISOBEDIENCE IN SOPHOCLES’ ANTIGONE

In Sophocles’ Antigone, civil disobedience is represented by the tension between two different characters (Creon and Antigone) who are the pillars of multiple bipolar oppositions established in the play: man/woman; old/young; public need/private vision; the living/the dead; human law/divine law; temporal/eternal; Olympian gods/chthonic gods; manipulative rationality/emotionality; patriarchal lineage/matrilinier kinship, etc. These oppositions reflect tensions in the law and in the society of Athens in fifth century B.C. The most dramatic form of tension is Antigone’s act of civil disobedience.

Antigone is a true civil disobedient who espouses a belief in natural law; the importance of private, family ties; and the efficacy of resistance against man-made laws that are unjust. Her action in defiance of Creon’s decree prohibiting the burial of her brother is nonviolent, public, and committed for the moral purpose of protesting Creon’s unjust law. Antigone willingly accepts her cruel punishment, which is to be buried alive in a cave with only enough food to prolong her agony. Like the true tragic heroine she is, Antigone’s act is fated, doomed, and less intentional than we assume. Antigone fears dying “with a lack of grace” (97), and like all tragic heroines, her goal is to die with honor. Her act of civil disobedience accords her that honor.

In a sense, Creon is also a civil disobedient who violates natural law requiring burial of the dead. Charles Maurras called Creon “a rebel” and saw Creon, not Antigone, as the main protagonist in the play: “The rebel against civil law and
order is not Antigone. It is Creon. Creon has against him the gods of religion, the fundamental laws of the polis, and the feelings of the living polis. What Sophocles sets out to show is the punishment of the tyrant who has sought to free himself from divine laws.”

Creon stands for the principles of law and order, allegiance to the public order and to the State, and the superiority of men over women in a universe governed by gender difference. However, Creon is not a true civil disobedient because he is the law. Although Creon's decree is public and visible, the motive for Creon's act is neither ethical nor generalizable, but rather stubbornly personal. Creon professes a firm belief in the need for power (“... now it comes that I hold all the power and the royal throne”) (172–73) to maintain discipline and to enforce obedience to law and order in a stable polis (“There is no greater wrong than disobedience. This ruins cities, this tears down our homes, this breaks the battle-front in panic-rout. If men live decently it is because discipline saves their very lives for them.”) (672–77). In fifth century B.C., loyalty to the polis was not just an abstract cause—it was a necessity. Wars between one city-state and another were the normal condition. Defeat in a war meant enslavement for the people. The only way to preserve individual freedom was by the constant efforts and sacrifice of the citizen body as a whole. Moreover, Creon does not expect punishment for his act, which is the sine qua non of civil disobedience. Therefore, Creon is not a true example of civil disobedience.

Notwithstanding the sincerity of Creon's belief in discipline to keep the ship of State upright, afloat, and “sailing straight” (189), we cannot help fearing Creon's intransigence, and the emergence of the Leviathan of State power encroaching on individual liberty. Although Pericles gloriied in the individual liberty that Athens gave its citizens, he also reminded the people that the polis is more important than the individual. Creon's form of government requires power and results in the rise of dictatorship; Creon's rule includes tyranny, oppression, paranoia, and intimidation of innocent victims falsely accused of conspiring against the government Decree: (“These are the people—oh it's clear to me—who have bribed these men and brought about the deed.”) (294–96) and (“I charge Ismene too”). This decree flies in the face of custom and natural law, and it is less an expression of Creon's political philosophy and more a show of his force and fearlessness (“For I believe that who controls the State and does not hold to the best plans of all, but locks his tongue up through some kind of fear, that he is worst of all who are or were.”) (179–181). His decree is a display of

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136. Id. at 86.
raison d’état, the willful establishment of his absolute authority in a new legal order that must rule by example and by the unfair victimization of scapegoats.

Antigone’s act of civil disobedience has both positive and negative effects. Her illegal act of protest is necessary, though she is doomed by her tragic fate that is linked to her family ties with Oedipus. Antigone’s act, perpetrated not by freedom of choice but by force of fate, causes tragedy for Creon and his family. Nevertheless, her act of civil disobedience proves to be effective in changing the mind-set of the tyrant and the hegemonic political system that produced the unjust law. Through his tragic suffering, Creon is enlightened by the actions of Antigone, and his insight has a direct effect on reforming the flawed legal system.

Robin West reminds us that Antigone does not commit the act for the purpose of reforming the legal system. According to West, Antigone’s motivation for civil disobedience is merely to follow her tragic fate. “Unlike the romantic, the classical tragedian perceives her illegal conduct not as a freely chosen means of dramatizing and ultimately correcting a flawed legal order, but as the sole moral alternative; for her, there is no truly human choice. The tragedian is not engaging in a free political act, thereby affirming the reformed future of the flawed system within which the act occurs. She is engaging in a necessary moral, human act and thereby affirming a higher morality and her own obedience to it.” Although I agree with West, I believe it is important to recognize that the by-product of Antigone’s action is legal reform. To insist too strongly on Antigone’s lack of freedom is to nullify the very act of Antigone’s civil disobedience, which is defined as an action committed for the moral purpose of upholding a belief in a higher good.

A. Similarities between Antigone and Creon

Many readers of Antigone have observed the profound similarities between Creon and Antigone. Creon seems at first to be the hero of the play. “Creon is a commensurate counterpoise to Antigone, each reads himself in the other, and the language of the play points to this fatal symmetry.” The parallel between Antigone and Creon reflects the basic nature of classical symmetry and mirrors the underlying message of balance that is proposed by Sophocles as a preferable legal philosophy. Antigone’s treatment of her sister, Ismene, is analogous to Creon’s treatment both of his son, Haemon, and of Antigone. Neither Creon nor Antigone is flexible. Both are dogmatic in their respective beliefs in either human law or divine law, and Sophocles’ message is a plea for synthesis, moderation, and unity of the two types of law into a more balanced system. That balance is represented literally by the proposed marriage between Haemon, Creon’s son,

137. West, supra note 5, at 201.
139. Steiner, supra note 4, at 184.
and Antigone, a marriage that is never consummated de facto but is consummated symbolically by their mutual suicides in the dark cave. Haemon urges his father to be flexible, like “a tree that bends and survives the torrent” (712–18), like the natural world which is the paradigm for yielding to change and time. Creon and Antigone each represents, respectively, “the laws of the earth” and “the oath-bound justice of the gods” (365–75). By the constant juxtaposition of Antigone and Creon, like a symphony of similarity and difference, Sophocles achieves a “dialectic of kindred opposites”140 and an understated plea for balance in the legal system.

Both Creon and Antigone are avid supporters of human and natural law, respectively; both are in protest of one or the other type of law; both are in a deadlocked conflict of values.141 Neither is supported in his or her views by their respective family members, Haemon and Ismene. Both will ultimately come to realize their flaws through the tragic suffering their protest necessarily causes them. However, in the end only Creon will change his plan, pardon Antigone, and revoke his “royal law” (382) that ultimately causes his destruction, pollutes the city, offends the gods of the underworld, and reduces man to beasts.

By his decree, which denies the customary rituals of purification, burial, and sacrifice to Polynieces, Creon causes pollution in the polis. Creon is like Oedipus, a ruler charged with removing a pollution of which he is in fact the cause. Not only does Creon discount the possibility that the unburied corpse may spread pollution, but he uses a legalistic expedient to avoid the further pollution of the polis that killing Antigone would entail. He immures her with just enough food “to eat as clears the city from the guilt of death” (776). Creon’s tyrannical rule, prophetic of the Nazi regime and of all totalitarian regimes to come, is characterized by the systematic use of scapegoating that informs the action of the whole play. Antigone serves in part as a human sacrifice who would cleanse the city of its polluted past.142

Creon is the aggressive, manipulative rationalist represented in the memorable first stasimon, the Ode to Man (332–75), which paints a radiant image of human intelligence and highlights the achievements of civilization. Man’s invention of the law is seen in this Ode as the ultimate civilizing agent of the city:

When he honors the laws of the land and the gods
sworn right
high indeed is his city (369–70)
Creon embodies reason and the view of secular rationalism espoused by the Sophists during their Enlightenment. He identifies the law (nomos) with his decrees and with his own personal voice, which is represented stylistically by the predominance of the first person singular (“I”) in his speeches on political philosophy (184, 111, 173, 178). Despite Creon’s identification with reason and the Rule of Law, his justice (dike) becomes less impartial, more personal, and more emotional as his rigidity and stubbornness get the best of him (400, 1059). In Creon’s conception of the Rule of Law, the earth is an extension of the laws of the State, the “earth of the fatherland” (199, 110, 113). Normally in Greek tragedy justice belongs to the realm of the Olympian gods, the lofty throne of Dike (853–55), but Creon encounters another kind of justice, the “law” of the gods of the lower world, the Erinys (613–14), and he has to yield in fear to these established laws (1113–14).

B. Greek Terms for the Law
Several Greek terms related to law appear in the Sophoclean tragedy and are intertwined with hard to grasp concepts of the supernatural. The terms right, justice, and law occur with frequency in Antigone and need some explanation. Right refers to individual rights as well as the right order of things. Justice is represented by Dike, a fierce virginal woman on a funeral urn who is an intimate of Hades and concerned with the just treatment of the dead. Law is a more secular term, but not unrelated to the divine. Nomos means “institution,” “custom,” “universal norm,” and the laws of the State. Antigone’s nomos is personal, familial, emanating from the gods, and eternal (450, 519, 905–08, 913–14). Creon’s nomos is secular and civic, demanding absolute obedience and discipline in order to preserve the State (175–191).

C. Antigone versus Creon or the War of the Laws: The Ancients versus the Moderns
Antigone and Creon represent the war of the Ancients and the Moderns in fifth-century Athens that was a city in transition and bent on establishing democracy. The central dispute in Sophocles’ play is between the “archaic, familial usage and codes of sentiment,” represented by Antigone, and the “new public rationality of the Periclean moment,” represented by Creon. Ironically, the youthful Antigone represents the views of the Ancients, who revered the eternal gods, blood ties, family bonds, and natural law. She represents emotion and nature, the “mother bird” lamenting her empty nest (423–25), the hunted animal (433), Niobe, who clings like close winding ivy on a rock (826–27). Antigone’s justice is associated with the universal, the immutable, the gods below (94, 451, 459–60),

143. Id. at 152.
144. STEINER, supra note 4, at 182.
145. Id. at 182.
death, and Hades. When asked by Creon why she dares disobey his law, Antigone responds in a famous speech describing the “unwritten laws” and the elements of the natural law she passionately defends:

For me it was not Zeus who made that order.  
Nor did that Justice who lives with the gods below  
mark out such laws to hold among mankind.  
Nor did I think your orders were so strong  
that you, a mortal man, could over-run  
the gods’ unwritten and unfailing laws.  
Not now, nor yesterday’s they always live,  
and no one knows their origin in time. (450–57)

Creon is older than Antigone, but he represents the Moderns in a characteristically ironic idiom that identifies Sophocles’ particular style. Creon shows admiration for Zeus (487, 1040–41) and Olympian justice that presides over the civic order. Creon mocks Antigone’s “reverence of Hades” (777, 780), and Antigone, who rejects Olympian justice, is referred to scornfully as the “bride of Hades,” the “bride of death.” Creon resides comfortably with the Olympian gods, whereas Antigone is associated with the chthonic deities of the underworld. Creon rejects Antigone’s belief in the sanctity of blood ties, kinship, and family bonds (38, 45–46, 80–81, 466–68, 511) that Antigone defends by reveling in the glory of burying her brother in defiance of Creon’s decree (502).

D. The Role of Greek Tragedy in Debating the Law

Greek tragedy dramatized the dissonance between State law (which was public) and divine law (which protected the intimate private life of the family). In ancient Athens, tragedy mirrored the dialectic of public and private law, which became intricately associated with gender difference. The female was identified with the family and with blood ties whereas the male was associated with the demands of civic duty. For Athenians, the performance of tragedies such as Sophocles’ Antigone was not a matter of entertainment or mere aesthetic enjoyment. Tragedy provided an arena for the serious examination of contemporary legal and political issues that were the subject of live debate in the recently formed Athenian democracy. New notions of crime and punishment and criminal procedure developed in democratic Athens. Divine justice was no longer considered the sole authority of the law. The emerging democratic community became the new grounds of the legal system.146 Thus, the debate between natural and human law was the central axis around which many of the most significant works of Greek tragedy turned, reflecting the preoccupations of the day.

146. Schmidt, supra note 41, at 147.
E. Greek History, the Law, and Sophocles’ Antigone

The juxtaposition of Antigone and Creon, the Ancients and the Moderns, reflects developments in Greek history at the time Sophocles was writing his tragedy. Antigone’s definition of kinship is *homos planchmos sebein* (“reverence for those of the same womb”) (511). Her definition of kinship reaches deeply into the conflict of values in fifth-century Greece during the establishment of Athenian democracy which depended on breaking down the power of the clan and rejecting blood ties. In earlier times, the tie of blood relationships was stronger even than the *polis*. This view, based on the continued use of power, was a threat to the establishment of democracy in a new Athens. The substitution of the *deme* for the clan meant the transition from a principle of kinship to that of locality. Thus, Athens was no longer a federation of kindreds after the reforms of Cleisthenes.147

In Greek history, political reformers in Athens viewed old loyalties to family as a threat to the new democratic institutions. Primitive justice of the old family organization was personal justice administered for revenge by the murdered man’s family. This old system of personal justice was supplanted by the creation of a new system of justice in which the State assumed the responsibility of the blood relative.148

Antigone is a Greek citizen and a woman in defiance of the *polis* (79, 90), in disrespect of the leader, and in devotion to a blood relative. Creon is a Greek ruler and a man who proclaims the right of the *polis* to demand loyalty of its citizens to the State, even if this right means betrayal of the age-old, sacred duty to bury a blood relative.149

Ismene, Antigone’s own sister, recognizes Antigone’s claim of the validity of blood relationships and defies the *polis* to protect that claim. Ismene’s position is explained in two ways: She lacks courage. She also represents the Greeks of fifth-century Athens who considered Polyneices’ treachery as the most heinous crime imaginable and worthy of the most savage punishment.150

The distinction between paternal and maternal lineage was a live issue for audiences of mid-fifth century Athens, and Creon stands for patriarchal lineage and authority (639–47, 635), a position that works well with his antifeminine and anti-maternal attitude (569). There is no doubt Creon is concerned with family, which is shown in his love for his son, Haemon, but he undervalues the blood ties that Antigone overvalues. Antigone’s punishment is to be thrown in a cave. The dark forces it contains is a place of tragic isolation that resolves the tension between her devotion to her loved ones and her death-bent heroism.151

147. Id. at 76.
148. Id. at 77.
149. Id. at 79.
150. Id. at 84.
151. Segal, *supra* note 141, at 183.
Thus, neither Creon nor Antigone embodies a law or a system of justice that is fully satisfactory as a civilizing principle.  

VII. CIVIL DISOBEDIENCE AND JEAN ANOUILH’S ANTIGONE: A PARODY

We think of Jean Anouilh as a playwright of rebellion. Yet, this keen observer of the world around him was actually first a law student who enrolled at the University of Paris and spent eighteen months in law school before he took up writing as a career. His fascination with the law and jurisprudence is clearly reflected in his admiration of Sophocles’ play Antigone. However, after reading Jean Anouilh’s Antigone, we are immediately struck by its difference from the Sophoclean tragedy. Anouilh himself said: “Sophocles’ Antigone, which I read and reread and knew by heart forever, was a sudden shock for me during the war . . . and I rewrote it in my way, with the resonance of the tragedy we were living.”

Jean Anouilh’s Antigone, which is based on—but very different from—Sophocles’ Greek tragedy, reflects the horrific events of the second World War, the pervasiveness of existentialist philosophy, and its expression in a theatre of revolt in the medium of the absurd. Anouilh’s Antigone is a play-within-a-play, written in a more modern, more colloquial, less laconic style than Sophocles’ tragedy. It was performed first in 1944 in German-occupied France and many times thereafter during the Occupation. From 1939–45, the progress of the theatre was completely disrupted by the war, which shattered civilized life throughout the world. Nevertheless, under the German Occupation the French stage was somehow kept alive. The French theatre of this period was marked by revivals of classical works, and Anouilh’s play is a recreation of Sophocles’ classical tragedy.

Sophocles’ Antigone is a dark tragedy with no comic relief, and it contains, in a disguised and literary form, a surprisingly optimistic message about the effectiveness of civil disobedience for legal reform. Although Anouilh’s play is melodramatic with several light passages added for comic relief (such as the colorful conversations of Creon’s guards), Anouilh’s message about the effectiveness of civil disobedience is pessimistic, negative, and representative of the tone

152. Id. at 169.
155. Allarkyce Nicoll, World Drama from Aeschylus to Anouilh 897 (n.d).
156. “Humor is unknown to Greek tragedy.” See Marc Eli Blanchard, The Reverse View: Greece and Greek Myths in Modern French Theater, 29 Modern Drama 41, 42 (1986).
of the theatre of the absurd that was prevalent at the time this play was performed.

Anouilh knew Sophoclean dramaturgy, even admitted knowing Antigone by heart, but his play is dramatically different in form, content, and language from Sophocles’ play. Anouilh’s literary changes are significant and reflect the nature of parody that attacks vice and folly by satire and irony in order to mask the author’s subversive message. When Anouilh’s protagonist, Antigone, momentarily assumes the lyric tone of the Greek theatre and cries out: “O tombeau! O lit nuptial! O ma demeure souterraine . . . ,” this rich heroic language draws the reader’s attention to Anouilh’s different portrayal of the well-known Sophoclean classical tragedy. His use of heroic language, which every French reader identifies with the beginning of a classical stance containing all the poetic power that anaphora and evocation possess, is out of place when it appears in a comic scene of a modern drama. This heroic verse, like a parody of classical poetry, is pronounced inappropriately when a guard complains to his prisoner, Antigone, about the mundane concerns of his rank, advancement, and salary. In Anouilh’s Antigone, mediocrity is represented by the guards Jonas, Boudousse, and Durand. It is absurd for Antigone to be uttering these heroic lines to such lowly characters. In contrast to Anouilh’s contextual mediocrity, Sophocles placed this heightened, noble, and heroic discourse in the heroine’s last moments of life, in the dark cave where she languishes briefly with the hope that she will join her loved one in Hades: “O tomb, O marriage-chamber, hollowed out house that will watch forever, where I go.” (891)

By its difference, Anouilh’s recreation of Sophocles’ Antigone rejects the very myth of Antigone on which the Greek tragedy was built. Anouilh’s melodrama also rejects the genre of tragedy and produces instead a metatragedy that lacks conventional Aristotelian drama and tension. The typical audience involvement associated with Sophoclean tragedy, like the jury in a trial, is supplanted by the Prologue’s and the Chorus’ direct address to the audience at the beginning of the play. In Anouilh, the Prologue and Chorus are mere actors in a play, and Anouilh’s Antigone is a play about a play. Anouilh is a French postmodernist who debunks the tragic heroine, calls into question tragedy itself, and raises serious doubts about the effectiveness of civil disobedience. He recreates the Antigone of Sophocles in very different terms not of the heroic, but of the absurd.

157. Lenski, supra note 153, at 35.


159. Gary S. Meltzer, Subversive Comedy in the Antigones of Sophocles and Anouilh, 12 Classical and Modern Literature: A Quarterly 343, 345 (1992): “Anouilh’s use of comic relief is to call into question the dignity of his heroine and the meaning of her tragic gesture.”
Anouilh's radical change from the original Sophoclean source play is troublesome. We are tempted to ask why Anouilh even bothered to rewrite Sophocles' *Antigone* in his own idiom if he disagreed with Sophocles' basic premise about the effectiveness of civil disobedience. This kind of literary disparity invites the reader to think about the effects of the political and cultural context on the author who had to contend with the German censors in order to produce his play.

Structurally, Anouilh adds new characters to the myth of Antigone. By juxtaposition to Puff the dog and to the nurse, Anouilh's Antigone appears to be even younger, more family-oriented, more maternal, more protective of her sister and brother, and more human than Sophocles' tragic heroine. Anouilh's Antigone is also more vulnerable, weaker, and more self-doubting. At one point, Anouilh's Antigone even renounces her decision to protest the king's decree by covering the body of her brother. Anouilh's Antigone is not a philosopher bent on proving the superiority of divine law over human law. Rather she is an impassioned, youthful, maternal protectrice who must, by her act of defiance, simply protect her dead brother.

A. The Nature of Parody in Anouilh's *Antigone*

The difficulty we face in determining the real motivation behind Antigone's act of civil disobedience in Anouilh's *Antigone* (whether her act is based on personal desire or on a more universal ethical principle) stems from the form of the play, which is a parody of civil disobedience and of Sophoclean tragedy. Parody is a means by which the author can hide his true feelings and the object of his attack. Couching the hidden message in the form of parody is Anouilh's defense against the censors.

To parody a play, the author must change the original source discreetly but effectively so as to mask the author's real message and create ambiguity and doubt in the reader's mind. Anouilh makes sharp as well as discrete changes from the original. For example, he omits certain characters such as Tiresias, the Seer, who represents the people's opinions. In Anouilh's play, the Creon–Antigone agon is the central experience on which the playwright focuses the reader's attention by tightening the plot and omitting the character Tiresias.

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160. Pol Vandromme, Jean Anouilh, Un Auteur et ses Personnages 95 (La Table Ronde, 1965) (“Le charme d'Antigone, dans la pièce d'Anouilh, c'est le charme de l'enfance.” “Antigone's charm in Anouilh’s play is the charm of youth.”) (translation by Tiefenbrun).

161. Id. at 97 (“... il y a chez Antigone une aspiration invincible à la maternité.” “Antigone has an invincible aspiration of being maternal”) (translation by Tiefenbrun).

162. Cf. Lenski, supra note 153, at 43 (“Antigone's and Joan's rebellions are based on exalted heroic will rather than private feelings.”).

Anouilh also adds new scenes, such as the romantic ball, Antigone’s arrest, a love scene between Antigone and Haemon, and Antigone’s dictation to the guard of a farewell letter to her betrothed Haemon. In the Sophoclean tragedy, the poignant scene between Haemon and Creon is brief and pits an excessively obedient, admiring, immensely diplomatic son against his autocratic father, the king of Thebes, who cannot bear the thought of his son being reduced to the low level of womanhood. In Anouilh’s play, the scene between Creon and Haemon is longer, presenting the picture of a more rebellious young Haemon who is desperately in love with Antigone and deeply disappointed in his father whom he sees (for the first time) as an unyielding tyrant.

Anouilh revives Sophocles’ guards and rewrites them into a new symbol of “numbing conformity and moral apathy.” Anouilh’s guards represent the indifferent political henchmen who are employed by the tyrant who resorts to power to enforce the letter of the law. Anouilh’s guards are smug, self-righteous, and unfailingly tranquil as they arrest Antigone. Jonas, Creon’s scapegoat, is a reluctant spokesman, cringing, sweating, and stammering as he fearfully approaches Creon the tyrant. The guards play a more significant role in the plot of Anouilh’s play, and their comic depiction makes it difficult but not impossible to identify their indifference and brutality with the excessively “civilized” Nazi SS officers who were carrying out Hitler’s political philosophy with savage brutality and impunity within the German political and legal system. Anouilh’s guards represent blind obedience to duty, obsession with honors and promotion, lack of imagination, and absence of any sense of culpability. They are oblivious to tragic suffering. In Anouilh’s Antigone, Jonas, the guard, needs to consider his “own safety” before anything else. He is a comic character like Falstaff, a caricature who is sympathetic to Antigone’s plight but afraid to speak up in her defense. In the arrest scene Anouilh reveals the darker side of the guards’ unthinking obedience, conformity, and allegiance to the status quo. The guards accuse Antigone of being a prostitute, an exhibitionist, and a madwoman, and they insult her, comparing her to an animal or a demon. The guards marginalize Antigone, reducing her to the status of the perverted, criminal, female Other. In Anouilh’s play, it is not Creon but the guards who represent evil, the creatures of the herd, the ultimate survivors, and the “tranquil inheritors of the earth.”

Although parody has universal appeal, it is often a temporal, political response to a particular event. Thus, it is very tempting to interpret Anouilh’s play as a dramatization of France’s political problems of the 1940s. The pragmatic

164. Meltzer, supra note 159, at 330.
165. Id. at 353.
166. Id. at 358.
167. Id. at 349.
168. Id. at 354.
collaborationist policies of the Vichy regime are exemplified in Creon, who can be contrasted to the idealistic intransigence of De Gaulle’s Free French forces and the Resistance movement, which are embodied in Antigone. Rather than reduce the universal quality of Anouilh’s play by this local interpretation, it seems more useful to consider the role contemporary political irony and satire play in the author’s attempt to escape censorship. Anouilh encoded his politically subversive message in the form of parody to speak indirectly and thereby to disguise his personal attack on the vices and follies of totalitarian regimes. The writer, then, is a variant of the civil disobedient who unwilling to accept punishment seeks protection in literary disguise. Anouilh understood that the tyrant, too, masks his own obsession with power by calling this evil a civilizing principle of the Rule of Law.

Parody, like law, engages in the play of similarity and difference. Despite their obvious differences, Antigone and the guards have certain similarities. Both Jonas and Antigone are scapegoats for Creon, but Jonas fears execution and Antigone does not. The guard is lowborn, and his colloquial speech, strewn with French slang, is distinctly different from Antigone’s noble status and discourse. While the guard fears death, Antigone seems to “yearn for death.” The guard’s intervention offers an ironic counterpoint to the tragic action “which reveals the folly behind Creon’s reasoning and the sense behind Antigone’s apparent folly.” Thus, by juxtaposing the guards with Antigone and by comparing Anouilh’s and Sophocles’ plays, the reader may gain insight into Anouilh’s hidden message about the role of civil disobedience in achieving legal reform.

B. Anouilh and Existentialism
Like Sophocles’ main character, Antigone, Anouilh’s Antigone is a rebel. But Anouilh’s Antigone is in existential revolt. This female rebel is a Neo-Romantic raging against existence, ashamed of being human, and revolted by the body itself. One of the strongest identifying features of the existential drama is its attitude toward the flesh. Polyneices’ rotting carcass is the symbol of existential rot that is the microcosm of the world in 1944. Antigone’s own body approaches this dark view of the world. In Anouilh’s play, Antigone is dark, skinny, and not physically “beautiful” in the traditional sense. According to Anouilh, Antigone’s beauty comes from within, by virtue of her deed, which is seen as nonetheless absurd in this theatre of the absurd. Antigone’s link to her fated father, Oedipus, is stressed throughout Anouilh’s play, and her stubborn pride (seen by Creon as insubordination and insolence) is explained by her fate and her relation to Oedipus: “la fille d’Oedipe.”

170. Meltzer, supra note 159, at 351.
172. Id. at 28.
In contrast to the not-so-beautiful Antigone is Ismene, to whom Haemon is initially but not ultimately attracted during the newly created ball scene. Ismene is depicted as the woman of sensuous beauty incarnate, but a woman who (in contrast to her rebellious sister) is unwilling to do an insubordinate act even if its purpose is to protest an unjust law. Ismene plays a more important role in Anouilh’s play than in Sophocles’ tragedy. In drawing the reader’s attention to the competition between the two sisters, Anouilh reinforces the view that Antigone’s act of civil disobedience is undertaken for reasons of personal desire and not for adherence to a philosophical belief in the moral exigencies of natural law.

Nevertheless, the motivation of Antigone’s act is not based on a mediocre personal desire for her own happiness. Antigone in fact spurns the “happiness” sought by Ismene and Creon, and she considers the quest for happiness as immeasurably inferior to the satisfaction she will gain from being true to herself. The motivation of Antigone’s act is based on a refusal to compromise, and in that refusal she sees herself as different from Ismene, from Creon, and from the guards—all survivors who compromise. Antigone, like no one else in the play, is the Other, the one who is unwilling to compromise her principles. The compromisers in Anouilh’s theatre are those who say “Yes,” those who are governed by self-interest in the political kitchen in which compromisers are cast as chief cooks. Their existence is threatened by the insolent people who, like Antigone, say “No” to that which they believe to be unfair or unjust. The more autocratic the regime, the more frequent are accusations of insolence and insubordination.

Anouilh adds small but significant details to clarify interpretive gaps left open by Sophocles, such as the role of the gods in the mysterious second attempt to bury Polynoeices. By adding a small but significant detail of Polynoeices’ shovel, Anouilh makes it clear that Antigone alone performed that second act of civil disobedience.

A parody is always based on a source that the parodist must change just enough to maintain the similarity but establish the difference between the two literary works. One of the most important differences between Sophocles’ and Anouilh’s Antigone is the character portrayal of Creon. Anouilh paints the picture of a new Creon, a leader in an ambiguous role, a leader without freedom in a State governed by the Rule of Law. Creon both obeys and disobeys certain laws, and the social order based on the Rule of Law he describes in the “ship of state” speech is a dehumanizing regime. Creon’s view of the world is utterly meaningless; he denies his own edict; his vision of the world is one of chaos that can only be saved (but is actually perpetuated) by absolute authority. But in Anouilh’s

173. See Lenski, supra note 153, at 37 for a discussion of the theme of compromise in Anouilh’s theatre.
parody, Creon does not like power, which is an indignity that overwhelms him. Creon’s regime, which is supposed to be one of Reason, is based instead on absurdity, meaninglessness, and deceit. The putrid carcass, which Creon’s edict causes to rot, symbolizes Creon’s absurd universe in which law does not equate with justice.175

In Anouilh’s play, Creon is more human; he complains that he has a hard job and feels sorry for himself because he often has to do what he does not want to do. He is also a man willing to make special deals with Antigone, willing to forgive and forget, if only she would agree to save the leader’s face. It appears that the only reason Creon kills Antigone is to save his image of absolute authority. Anouilh’s Creon is totally lacking in dignity and adherence to a particular philosophy. He mocks “natural law” unabashedly, calling it “absurd” (72). This charged and politically motivated adjective reminds the reader that Anouilh’s play is the product of an existentialist era and was written and performed in the tradition of the theatre of the absurd.

Creon is a practical man, and the only reason he has been kind to Eteocles is that he needs to create a hero (89) for his people. Anouilh’s Creon is a far cry from Sophocles’ committed leader who stands firmly for the principles of human law and the sanctity of the polis. Anouilh’s Creon actually considers himself to be like Antigone and ironically calls himself “a young Antigone at 20” (91). Creon’s lack of self-awareness is at the heart of the play’s irony. He is fundamentally quite different from the passionate and sensitive Antigone, as his shocking reaction to his own wife’s death is one of cold indifference. He anachronistically, inappropriately (and therefore comically) holds a 5 o’clock cabinet meeting (122) right after learning of Eurydice’s tragic suicide. Unlike Sophocles’ Creon, Anouilh’s Creon never gains insight into the unjustness of his totalitarian regime, never changes the unjust law he decrees, and never learns about himself from Antigone’s act of civil disobedience. Creon remains Creon and carries on business as usual until the end of the play.

In Anouilh’s parody, it is Antigone and not Creon who admits that she has erred when she apologizes for her verbal and physical acts of defiance (the constant recurrence of the exclamation “Non” and her burial of Polyneices). “I’m sorry,” she says. In Anouilh’s play, it is not Creon who is enlightened but Antigone, who in the end realizes how much damage she has caused by her act of civil disobedience. In his remarks on the tragic futility of events in Belfast, Dr. Conor Cruise O’Brien stressed the evil effects of civil disobedience and cited Antigone as a perfect example of this dangerous practice: “The act of non-violent civil disobedience, whereby Antigone sets out to inter Polyneices, breeds utmost violence: it brings on her own suicide, Haemon’s attempt to slay his father and

his suicide, the suicide of Eurydice, and the devastation of Creon’s personal existence and political authority . . . a stiff price for that handful of dust on Polyneices.”

Thus, Anouilh’s pessimistic message about the ineffectiveness of civil disobedience is entirely different from Sophocles’ more optimistic view. In Anouilh’s Antigone, Creon wins and turns the world of civil disobedience topsy-turvy!

Anouilh’s pessimistic view of the absurd world is reminiscent of the existentialist philosophy, which Anouilh adopted in his own plays several years before Sartre. Anouilh’s allegiance to existentialist philosophy helps to explain why Antigone must perform her “absurd” act, even if by this act she accomplishes nothing to change the hegemonic political and unjust legal system. Antigone acts not from a desire to satisfy the divine law for she feels it is meaningless. Hers is an inner compulsion, a desire to be true to herself. The only way Antigone can be true to herself is by refusing the compromise of life represented by the policy of Creon. Antigone’s absurd act is a symbol of her liberty. In compliance with existentialist doctrine, Antigone must perform the futile act, like Sisyphus, in order to live with dignity and self-worth and to die with honor.

VIII. CONCLUSION

Anouilh’s play is a parody of classical Greek tragedy, of civil disobedience and its effectiveness, and of absolute rule. Although Anouilh’s drama is less weighty than Sophocles’ classical tragedy, Anouilh’s absurdist view is nonetheless more negative with respect to the effectiveness of civil disobedience to reform the legal system. Anouilh’s Antigone is encoded in an existentialist discourse representative of the particular moment in legal and political history in which the play was written and performed. Anouilh’s play also reflects the indomitable presence of the German censors whom he cleverly escaped by disguising his subversive message in the cloak of parody. Sophocles accomplished the same task of hiding his true beliefs behind a mask of irony and ambiguity.


179. Philip Thody refuses to classify Anouilh’s play as a tragedy, and many literary critics have discussed the question of its classification as tragedy or melodrama. See Hunwick, supra note 154, at 291–93.

180. Hunwick, supra note 154, at 291: “The greatness of the Greek tragedy is reduced in Anouilh to a (‘tragedy of the absurd’).”
of an ineffectual civil disobedient and a flexible but strong leader managed to please and pass the censors so they would let the play go on.

Many have criticized Anouilh’s negativity and radically different portrayal of the character of Antigone, whom Sophocles painted as a tragic heroine. Critics claim that Anouilh invalidated the myth of Antigone by marginalizing her and calling her names: “un sale caractère.” Some say Anouilh substituted a “hysterical adolescent” for a Greek tragic heroine.181 Anouilh’s Antigone persists in an “absurd and vain revolt, even though she has a choice.”182 Anouilh’s Antigone is not tragic at all. Her act is absurd and committed not in the name of personal happiness, but for questionable motivations associated with egotism and individualism. Antigone is a mere actress playing the role of the tragic heroine and reducing the heroine’s heavy responsibility to an absurd self-involved search for self-worth.

Although these critical views have validity, they do not take into account the repressive political context in which Anouilh’s play was written and the liberating influence of parody on the writer’s freedom of speech. Anouilh’s intentional and literary distortion of the original Greek myth and his parody of Sophocles’ tragedy enable the writer to escape censorship and allow the public to revisit recurrent jurisprudential debates of legal positivism and natural law in the light of the tragic events of the first half of the twentieth century that unfortunately appear to be recurring despite the legacy of Nuremburg. By this recreation of the classical Greek tragedy, the modern play allows the public to rethink the underlying issues of civil disobedience and its ability to reform the law and influence changes in a legal system that is intricately connected to its political environment.

181. Philip Thody, cited in Hunwick, id. at 309.
182. Hunwick, id. at 296.