Encountering Antigone:
Personal and Civic Duties and the Art of the Advocate[1]

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1. Introduction: Who is Antigone?[2]

Antigone is the ANTIGONE of Sophocles[3] for most of us. There are, of course, other Antigones – shrouded in myth,[4] each altering her shape and intentions at the will of her author or playwright.[5] As she is depicted by Sophocles, her story is a tragic one that has had special resonance for students of law and literature.[6]

2. Encountering many Antigones

There is a wide variety of Antigones to which the legal and literary scholars are responding. In this section, we have the opportunity to look at some of the typical characterizations of Antigone. As to each, we must ask ourselves whether it offers an explanation of the character of Antigone and the motivation of her actions. In addition, we can hope that such an explanation adds to our understanding of the impact of the law on the life of the citizen, and as well that the explanation will enhance our appreciation of the responsibilities of those of us who profess the life of the law.

a. ANTIGONE and Civil Disobedience

Is Sophocles' drama "the earliest literary expression of civil disobedience"?[7] This is a popular mode for analysis,[8] but one might question whether the character Antigone is

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 I wish to thank my seminar collaborator, Hon. Anthony M. Kennedy, who introduced me to *Law and Literature*, and inspired the seminar we conducted together for two summers.

[2] For the convenience of the reader, whenever I refer to Antigone the character, I shall use the name in ordinary typeface. Whenever I refer to ANTIGONE the play, I shall put the name in capitals.

[3] 2 SOPHOCLES (ed. & trans. Hugh Lloyd-Jones), WORKS: ANTIGONE 1-127 (Cambridge: Harvard University Press, 1994). Throughout this article, quotations or references to the Sophocles play will refer to the numbered lines of this edition of the play.

[4] *See* 2 ROBERT GRAVES, THE GREEK MYTHS 380 (London: Penguin Books, 1955) (discussing myth).

[5] For a partial list of literary Antigones, see Appendix, *infra*.

[6] For an historical account of the "law and literature" movement, see Richard H. Weisberg, *Wigmore and the Law and Literature Movement*, 21 LAW & LITERATURE 129 (2009).

[7] Daniel T. Ostas, *Civil Disobedience in a Business Context: Examining the Social Obligation to Obey Inane Laws*, 47 AM. BUS. L.J. 291, 292 (2010).

[8] *See, e.g.*, Robert P. Lawry, *Ethics in the Shadow of Law: The Political Obligation of a Citizen*, 52 CASE W. RES. L. REV. 655, 681-98 (2002) (treating Antigone's action as defiance of law); Su-

properly understood as someone motivated by the principles of civil disobedience.[1] If civil disobedience is broadly conceived as "the intentional violation of a law for reasons of principle, conscience or social change,"[2] then Antigone's decision to perform a burial ceremony for her brother Polynices in the face of Creon's decree that the slain brother be left exposed as he fell in battle, is certainly a species of civil disobedience. Yet in some respects her act seems at variance with civil disobedience as usually understood. As Hall explains,

> The philosophy of civil disobedience embodies the recognition that obligations beyond those of the law might compel law breaking, but the doctrine steers that impulse toward a tightly-cabined form of illegal protest nevertheless consistent with respect for the rule of law.[3]

Civil disobedience in this sense becomes a matter of intentional protest against a perceived injustice or immorality in the law that ought to be addressed and changed, and this is the objective of the disobedience. Antigone's intentions are ambivalent in this regard. She is almost indifferent to the claims of the law, and intends not to change it but to ignore it, in the service of a higher *and more personal* principle. She explains to her sister, Ismene,

> It is honourable for me to do this and die. I am [my brother's] own and I shall lie with him who is my own, having committed a crime that is holy, for there will be a longer span of time for me to please those below than there will be to please those here.[4]

Her decision to defy the law is very selective. After being formally condemned by Creon, she makes it clear that she would not have defied the law to bury her own child or her husband if she had had either. "[N]ever, had children of whom I was the mother or had my husband perished and been mouldering there, would I have taken on myself this task, in defiance of the citizens."[5] It is the irreplaceable loss of her brother, for whom she grieves so poignantly, that drives her to defiance of the law.

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san W. Tiefenbrun, *On Civil Disobedience, Jurisprudence, Feminism and Law in the Antigones of Sophocles and Anouilh*, 11 CARDOZO STUD. L. & LIT. 35 (1999) (comparing and contrasting civil disobedience in two dramatic representations of Antigone). *See also* William P. Quigley, *The Necessity Defense in Civil Disobedience Cases: Bring in the Jury*, 38 NEW ENG. L. REV. 3 (2003) (discussing historical examples of civil disobedience).

[1] For a useful analysis of the varying connotations of the concept of civil disobedience, see Matthew R. Hall, *Guilty But Civilly Disobedient: Reconciling Civil Disobedience and the Rule of Law*, 28 CARDOZO L. REV. 2083, 2083-96 (2007).

[2] Quigley, *supra*, at 15.

[3] Hall, *supra*, at 2083-2096.

[4] ANTIGONE, 69-75.

[5] *Id*., 904-907.

b. Positive Law and Natural Law

Maritain famously asserted that "Antigone is the heroine of natural law."[1] Indeed, an alternative understanding of ANTIGONE might emphasize the confrontation between positive law – the decree of Creon that the slain Polynices not be buried – and natural law – the imperative that Antigone follows.[2] Yet this neat dichotomy ignores the subtleties of Creon's position in the state. It is true that, in his first speech in the play, a "major policy statement," as political commentators might characterize it today, Creon does offer pragmatic, political justifications for his decree: he must reestablish the security of the polity; he must restore civic greatness after a bitter period of civil war; he must clearly enforce incentives for good behavior among the citizens.[3] But this is less a matter of the dictates of positive law than it is a matter of family responsibility – "I hold the power and the throne by reason of my kinship with the dead"[4] – and the design of the gods. "[T]he gods . . . have set [the city's fortunes] right in safety."[5] In contrast, it is the terrible offense of the slain Polynices – "meaning to burn to the ground his native city and the gods of his race"[6] – that brings Creon's proclamation down upon him. Though it may seem that the play polarizes positive law and natural law, each side actually claims a natural law justification for their positions.

c. The *Tragedy of Hubris*

What this means, then, is that *both* Creon *and* Antigone might argue that they are vindicating the dictates of natural law. Can they both be right? A competing intuition might be that they are both wrong. Contrary to Maritain's consensus-driven approach, willfulness in the defense of their respective positions leads to disaster for all concerned. Should we perhaps view Antigone to be, "like innumerable characters in Greek or Shakespearean tragedies, '. . . burned by hubris'"?[7] This may not seem to be a very sympathetic reading of her character, and yet there are certainly textual details that corroborate this approach. Indeed, Robson suggests that "Sophocles' Antigone is a conflict be-

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[1] JACQUES MARITAIN, MAN AND THE STATE 85 (1951). For an insightful examination of the application of Maritain's natural law concepts to the search for consensus in fundamental issues of civic society, see C.M.A. Mc Cauliff, *Cognition and Consensus in the Natural Law Tradition and in Neuroscience: Jacques Maritain and the Universal Declaration of Human Rights*, 54 VILL. L. REV. 435 (2009).

[2] *See, e.g.*, RICHARD A. POSNER, LAW AND LITERATURE: A MISUNDERSTOOD RELATION 111-12 (1988). Unfortunately, Posner's view is somewhat simplistic, and does not necessarily capture the nuances in the conflicting obligations perceived by the characters. Posner's views on law and literature have come under attack for these and related reasons. *See, e.g.*, Robin West, *Authority, Autonomy, and Choice: the Role of Consent in the Moral and Political Vision of Franz Kafka and Richard Posner*, 99 HARV. L. REV. 384 (1985) (arguing against economic analysis presented by Posner). *See generally* Weisberg, *supra*, at 132, 138-139 (discussing Posner and criticism).

[3] ANTIGONE, 184-210.

[4] *Id*., 173-174.

[5] *Id*., 162-163.

[6] *Id*., 198-199.

[7] Jeffrey Ward, *One Student's Thoughts on Law School Clinics*, 16 CLINICAL L. REV. 489, 499 (2010).

tween the hubris of Antigone and that of Creon."[1] Under the circumstances, it may not be surprising that there are critics who have wearied of commentary on ANTIGONE.[2]

3. Dialogue in Whispers

I would suspect that these weary critics have been distracted by conventional approaches to the drama, and are no longer encountering the rich and provocative text itself. Beyond the typical political, jurisprudential, and psychological explanations of the tragedy, however, lie other layers to the drama. I would suggest that two other dialogues with the audience proceed in whispers beneath the larger themes.

a. Family *as Obligation*

The first is the dialogue of the family, and it may illustrate the ways in which law affects, or even skews, familial relationships and interactions. This is an understandable theme when once you consider the extent to which Antigone is "[m]otivated by an urgent sense of familial duty."[3] Changing our focus on ANTIGONE to see it as a dialogue of the family may also change our understanding of the merits of each character's position. Ostas, for example, views the drama as an examination of the consequences of civil disobedience, and he insists that although "Antigone defied the king's decree, her motives were pure."[4] But viewed as an examination of the obligations of family, is it so clear that her motives are pure?

On the strength the drama's language alone, one could make a case for the proposition that Antigone's actions are prompted by visceral familial attitudes, and that her stated justifications are rationalizations after the fact. This is especially suggested by her interaction with her sister, Ismene. While she expresses awareness of the extent to which family is destiny,[5] Antigone nevertheless harshly and abruptly forces on her sister a dire choice, before even explaining what she is asking her sister to choose: "[Y]ou will soon show whether your nature is noble or you are the cowardly descendant of valiant ancestors."[6] Antigone then explains to her sister her plan to perform a burial ritual for their brother Polynices, and Ismene understandably expresses distress at the thought that they would be not only defying the proclamation but also literally tempting fate:

> Think, sister, of how our father perished hated and ill-famed. . . . And now consider how much worse will be the fate of us two, who are left alone, if in despite of the law we flout the decision of the ruler or his power. . . . I shall beg those beneath the earth to be understanding, since

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[1] Ruthann Robson, *Sexual Justice, Student Scholarship and the So-called Seven Sins*, 19 LAW & SEXUALITY 31, 38 (2010).
[2] *See, e.g.*, Jeanne L. Schroeder, *Review Essay: The People's Court*, 22 LAW & LITERATURE 180, 181 (2010) (complimenting book that "mercifully spares us yet another discussion of Antigone").
[3] Ostas, *supra*, at 292.
[4] *Id.*
[5] *See, e.g.*, ANTIGONE, 2-3 ("which of the evils that come from Oedipus is [Zeus] not accomplishing while we still live?").
[6] *Id*., 37-38.

> I act under constraint, but I shall obey those in authority, for there is no sense in actions that exceed our powers.[1]

The argument that follows between the two sisters is visceral, and quite contemporary, though written by Sophocles almost 2,500 years ago:

> *Antigone*: I would not tell you to do it, and even if you were willing to act after all I would not be content for you to act with me! Do you be the kind of person you have decided to be, but I shall bury him! It is honourable for me to do this and die. . . . As for you, if it is your pleasure, dishonour what the gods honour!
> *Ismene*: I am not dishonouring them, but I do not have it in me to act against the will of the people of the city.
> *Antigone*: You may offer that excuse; but I shall go to heap up a tomb for my dearest brother!
> *Ismene*: Alas, how I fear for you, poor creature!
> *Antigone*: Have no fears for me! Make your own course go straight! . . .
> *Ismene*: But to begin with[,] it is wrong to hunt for what is impossible.
> *Antigone*: If you say that, you will be hated by me, and you will justly incur the hatred of the dead man. . . .[2]

How harsh, how quick to condemn, is Antigone in her reaction to Ismene's quite natural concern over the fateful task that her sister seeks to impose on them! Notice how quickly Antigone's references to Polynices – at the beginning of their scene he is "*our* brother" – are turned belligerently into "*my* brother" and "the dead man," as if Antigone has appropriated him to the exclusion of her grieving and fearful sister.

Later in the drama, when Antigone has been arrested and condemned for her violation of the decree, Creon begins improvising and announces that he will also condemn Ismene –

> Yes, I hold [Ismene] equally guilty of having planned this burial! Call her! I saw her lately in the house raving, having lost control of her wits.[3]

Antigone does not defend her sister, or explain that she acted alone; she asks only whether Creon wishes "for anything more than to take me and kill me."[4] Ismene, in contrast, claims that she equally guilty with her sister, and accepts condemnation. Antigone spurns her, despite her sister's entreaties:

> *Ismene*: And what desire for life will be mine if you leave me?
> *Antigone*: Ask Creon! You are his champion!
> *Ismene*: Why do you give me such pain, when it does you no good?
> *Antigone*: It grieves me to mock you, if I do mock you.[5]

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[1] *Id.*, 49-68 *passim*.
[2] *Id.*, 69-94 *passim*.
[3] *Id.*, 489-492.
[4] *Id.*, 497.
[5] *Id.*, 548-551.

The desire to sting her sister, to keep devotion to the slain Polynices to herself, hardly speaks to "pure motives" on Antigone's part. What it does reveal, however, is the devastating effects of grief and tragedy on the broader family – a family which, we must remember, includes Creon, Antigone's uncle.

The familial aspects of the drama also suggest something of a natural sociological transition that occurs when a society expands beyond narrow clan or tribal constructs. The spring of the events in Sophocles' drama certainly appears to be the "urgency [of] the sacred command to bury the dead,"[1] but this is not just a principle of private or family morality.[2] In the context of the events of the drama, it is also an example of what Murray has referred to as the disestablishment of the family, the encroachment of civil society on the values and perceived obligations of the family construct. Under stress, civil society moves from a pluralistic coexistence with other sources of social legitimacy and obligation to a position in which no other competing obligations will be tolerated. In this sense, the underlying tension in the drama is not so much between positive and natural law as it is between the civic life of obligation and the personal and religious life of obligation.

In contemporary terms, study of ANTIGONE provides law students with an opportunity to reflect on the delicate balance between civic and the private obligation. In formulating social policy, in fashioning new legal rules and principles, do we as legal professionals have a responsibility to be sensitive to the extent that law may encroach upon personal obligation? In advising private clients with respect to the obligations that civic society imposes upon them, do we also have an obligation to assist them in attempting to reconcile their perceived personal duty with civic obligations? Too often, the legal academy emphasizes – almost to the exclusion of other personal considerations – technical ability and skill in the analysis of legal questions. At least in the United States, "professional responsibility" tends to mean only proficiency in discharging narrow legal tasks without breaching technical rules of behavior for the advocate and counselor. Reflection upon ANTIGONE may lead us to consider whether we as professionals have a broader responsibility to society, perhaps to take on the role of the seer Tiresias in a crisis, and urge civic authority to consider the broader implications of what it commands of citizens. As Tiresias seems to suggest, despite the growing disestablishment of personal sources of authority, civic duty at some level remains personal duty:

> All men are liable to make mistakes; and when a man does this, he who after getting into trouble tries to repair the damage and does not remain immovable is not foolish or miserable. Obstinacy lays you open to the charge of blundering.

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[1] THEODORE ZIOLKOWSKI, THE MIRROR OF JUSTICE 146 (1997).

[2] Antigone seeks to bury Polynices not just out of sentiment (though sentiment for her brother is certainly there), but out of a sense of personal obligation. Thus, she explains to her sister, Ismene:

> Well, I will bury my brother, and yours, if you will not;
> I will not be caught betraying him. . . .
> [Creon] has no right to keep me from my own. . . .
> Do you be the kind of person you have decided to be,
> But I shall bury him! It is honorable for me to do this and die.
> I am his own and I shall lie with him who is my own. . . .

ANTIGONE, 45-46, 48, 71-74.

Consider the dangerous state of the world in the light of blundering martial escapades over the past decade, or the financial devastation that has resulted from the aggressive behavior of the international capital markets. Then ask yourself whether we need to repair the damage and refrain from taking immovable positions on important issues of social concern. As Mahlmann observed with specific reference to ANTIGONE, if human beings lose their normative orientation, the step into the abyss is done.[1] Maintaining a sense of the personal, the inviolable quality of the individual and his or her perceived personal duty is critical to the health of civic duty as well.

b. The *Art of Rhetoric*

At another level, however, ANTIGONE offers the student a series of interesting examples of differing ways in which the advocate might seek to prevent a decision maker from risking a charge of "blundering." It is easy to miss the fact that Sophocles at various points in his drama provides us with working examples of contrasting forms of argument – a catalog of classical rhetoric – that should be of keen practical interest to both the legal practitioner and the classical scholar.

It should not surprise the reader to find that Sophocles, who was not only an innovative dramatist but also a statesman and an appointed general during the Samos expedition, should create a work of dramatic art that cleverly encapsulates traditional modes of rhetoric in the course of the action. Rhetoric – ῥητορικός – is the art of the effective use of persuasive language. As classically conceived, it includes three modes of appeal to the audience: *logos* (the conceptual argument – what Aristotle would later refer to as *techne*), *pathos* (emotional appeal), and *ethos* (the appeal of the character and credibility of the speaker).

It is particularly interesting to see not only the examples of each mode of argumentation that Sophocles wove into his drama, but also the extent to which he was able to modulate within a single speech, integrating the modes. The clearest example of the use of rhetorical *logos* in ANTIGONE must be Creon's opening speech, ostensibly delivered to the elders.[2] He makes a convincing case for security and loyalty to the city as the sources of stability following the upheaval of the insurrection undertaken by the slain Polynices. At the same time, however, he injects emotional appeals (the "polluting violence" of Polynices and his brother and rival Eteocles; the image of the "ship" being guided by a steady hand) and appeals to his own character ("my kinship with the dead"; "I would never be silent"; "my way of thinking"). That rhetoric is not necessarily truth unfolds as Creon reacts more and more harshly as events proceed, and then abruptly reverses himself when he is terrorized by thoughts of the dangers to which he may have exposed himself and his city.

There are several examples of rhetorical *pathos* in ANTIGONE, but the most affecting episode in that regard must surely be Antigone's lyrical farewell to Thebes[3] ("Behold me, citizens of my native land"), with harmony and counterpoint provided by the Chorus. Perhaps the most frightening example, however, is provided by the seer Tiresias, in two parts. The first part, which has a *logos* component to it, seeks to persuade Creon to

[1] Matthias Mahlmann, *The Basic Law at 60 - Human Dignity and the Culture of Republicanism*, 11 GERMAN L.J. 9, 14 (2010), *available at* http://www.germanlawjournal.com/pdfs/Vol11-No1/*PDF_Vol_11_No_01_9-32_GG60_Mahlmann.pdf*.
[2] ANTIGONE, 162-210.
[3] *Id.*, 806-882.

relent and free Antigone from her fate.[1] ("You shall learn, when you hear the indications of my art!") Though initially frightened, Creon rouses himself and remains cynical about the seer's motives. However, he is completely overcome by Tiresias' second, more blatantly emotional and threatening appeal.[2] By then it is too late. We soon learn that Antigone is dead by her own hand, and Creon's son Haemon will soon threaten his father before killing himself in his grief over Antigone's death. Upon hearing the first reports of these deaths, Creon's wife Eurydice will then kill herself.

Law students encountering this drama for the first time are often fascinated by another masterpiece of rhetoric in ANTIGONE – Haemon's oral argument to Creon, in which the son seeks to persuade his father that it would be more prudent and effective policy to forgive Antigone's action and absolve her.[3] It is a well constructed argument, carefully maneuvering past the acknowledged skepticism and hostility of Creon, and it offers many practical insights in argumentation. However, as tensions rise between father and son, Haemon is unable to maintain a calm aspect. Father and son very nearly come to violence on the spot. There is surely a lesson to be learned by students here as well.

5. Conclusion

When I first began to offer my seminar in *Law and Literature*, it seemed a natural choice to include an iconic work like ANTIGONE in the list of assigned texts. By chance, I convinced my faculty collaborator in the course that we should ask the students, as a requirement of the course, to present a staged reading of the play at the end of the semester. This experience, which has been included in the seminar each year since then, was a revelation to both the students and to the members of the law school community who attended the performance. We found ourselves intimately connected to the language of the text, and through it we reached a more direct appreciation of the fundamental ideas engaged by Sophocles' remarkable drama. Like a rhetorical experience, we have confronted not only the conceptual conflict of individual obligation and civic duty, but also the emotional issues involved in the profession of law. One can only hope that this experience will affect the character of the students' professional lives.

[1] *Id*., 998-1032.
[2] *Id*., 1064-1086.
[3] *Id*., 635-723, *passim*.

APPENDIX

Selected Literary Representations of Antigone

SOPHOCLES, ANTIGONE (c. 441 B.C.)
JEAN COCTEAU, ANTIGONE (1922)
ARTHUR HONEGGER, ANTIGONE (1926) (opera, French libretto by Jean Cocteau)
JEAN ANOUILH, ANTIGONE (1942)
BERTOLT BRECHT, DIE ANTIGONE DES SOPHOKLES (1947/1948)[1]
CARL ORFF, ANTIGONAE (opera, 1949)
LUIS RAFAEL SÁNCHEZ, LA PASIÓN SEGÚN ANTÍGONA PÉREZ (1968)
ATHOL FUGARD, THE ISLAND (1972)
MIKIS THEODORAKIS, ANTIGONE (opera, 1990)
TON DE LEEUW, ANTIGONE (opera, 1989-1991)
HENRY BAUCHAU, ANTIGONE (novel, 1997)
GRISELDA GAMBARO, ANTÍGONA FURIOSA (1997)
FEMI OSOFISAN, TEGONNI: AN AFRICAN ANTIGONE (1999)
SEAMUS HEANEY, THE BURIAL AT THEBES (2004)
DOMINIQUE LE GENDRE, THE BURIAL AT THEBES (opera, 2008; libretto by Seamus Heaney and Derek Walcott)

[1] *See also* Frederic Rzewski, Antigone-Legend, for soprano and piano (text by Bertolt Brecht).