# Law in Literature in Classical Antiquity

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## 1-Ancient Greece

1.1.-*The Iliad* and *The Odyssey* by Homer (8th Century B.C.)

*The Iliad*[1] is a Greek epic and the most ancient poem in Western literature. Its story begins with the wrath of Achilles, which ends when he is reconciled with Priam, father of his enemy Hector. *The Iliad* narrates the events transpiring over 51 days in the tenth and final year of the Trojan War. The title of the work comes from the name Troy, which is "*Ilion*" in Greek.[2]

One of the themes of the book, and indeed a recurring theme in Greek literature, is that of homecoming (*nostos*). Another theme is glory, won in heroic combat (*kleos*). Achilles, unlike other Greek heroes, must choose between *nostos* and *kleos*. Another key aspect of the work is *timê* –the respect and honour that a person accrues over the course of their lifetime. The problems begin with the hatred that rises in Achilles in the wake of the dishonourable behaviour of Agamemnon. But the central driving force behind the poem is *ire*, *wrath* and *anger*, the word with which the work begins. Lastly, the issue of *destiny*, which determines the results of actions, is important.

*The Iliad* has had a huge impact on Western culture, across prose, verse, cinema, theatre and comics.

The date of its composition is somewhat unclear. The majority of sources place it during the second half of the 8th Century B.C., although other studies date it to two centuries previously, at least with respect to some of its parts. As with *The Odyssey*, its authorship tends to be attributed to Homer, but some question this claim, even doubting whether the same person may have written both works.

In the tenth year of the Trojan War, Apollo had sent a plague upon the Greek camp in response to the prayers of the priest, Chryses, for the return of the priest's daughter, Cryseïs, captured in a Greek attack and delivered to Agamemnon. The intelligent thing to do would have been to return Cryseïs to her father. Achilles, young and strong, advised Agamemnon to do so. But in Homeric society, lacking formal governmental institutions, this advice is problematic. The scope of Agamemnon's authority over the armed forces is ill defined. Nor is the legitimacy of his position clear. If Agamemnon were a man of great personal strength, the ambiguity of his formal authority would not be so important. But he is insecure. If he wishes to return Cryseïs, he must, to save face, demand something as compensation. Not being able to demand anything from Apollo, Agamemnon instead turns to his embassy, Achilles. In exchange for Cryseïs, he demands Briseis as compensation, who had been promised to Achilles.

This is a terrible error. Agamemnon's abduction of Briseis may be compared with the abduction of Helen by Paris, and Achilles may be seen to be stronger than Agamemnon and even to defend his personal honour with greater dignity. Evidence of Agamemnon's unsuitability to lead the armed forces is the fact that the war had already lasted ten years. Achilles' first impulse is to kill Agamemnon, and he would have done so had he not been detained by Athena explaining that there was a better solution to the conflict, a better revenge. It is this: in battle, the Trojans destroy the Greeks. Agamemnon, desperate, sends an embassy to Achilles to tell him that he will not only return Briseis untouched, but will also deliver his own daughter and innumerable valuable gifts. Achilles, fearing an early death in battle, does not return to war until Hector kills his beloved companion Patroclus, who has moved too close to Troy. When Achilles returns to combat, he ferociously kills Hector.

[1] Homer (s. VIII a.C.), *Ilíada*, translation and notes by Luis M. Macía Paricio and Jesús de la Villa Polo, Madrid, Consejo Superior de Investigaciones Científicas, 2013.
[2] Vincent Farenga, *Citizen and Self in Ancient Greece: Individuals Performing Justice and the Law*, Cambridge-New York, Cambridge University Press, 2006.

But at the end of the poem, Achilles returns the body of Hector to Priam. It is understood that, with the death of Hector, Achilles has sated his thirst for vengeance and that of the Trojans.

*The Iliad* is a story that revolves around vengeance as a means of doing justice. Troy had to be destroyed as vengeance for Paris' abduction of Helen, an act that represented a violation of the laws of hospitality so valued by ancient cultures – rules that are even more evident in *The Odyssey*. But whether there is not a less cruel way to repair Paris' error is also questioned. We also read that vengeance must have its own limits, that Achilles went too far in dishonouring Hector's body and that the return of that body without mutilation is a condition that separates vengeance from barbarism.[3]

But settlement is not the perfect substitute for vengeance, at least not in the heroic warrior world of Achilles. In this regard, the epic resembles *Michael Kohlhaas*. Achilles cannot be bought. Until his wrath dissipates or is directed against another object, there is no possibility of peacefully resolving the conflict. We shall return to this issue in *Hamlet*.

*The Iliad* shows both the excessive character and the fragility of vengeance. Compensation for infringing the rules of hospitality with the taking of Troy is delayed by the struggle between Achilles and Agamemnon.

The concept of bitterness lies behind the opposition of two human prototypes: natural man and social, or civilized, man. Achilles is the former prototype, the heroic individual, who puts personal honour before the mandates of the group. Though Achilles himself expresses doubts regarding his heroic code, the social concessions in *The Iliad* are scant. Placing his heroic honour before the social demands and wellbeing of the Greeks, the cause of the Trojan War, is in fact represented as more worthy of eulogy than reproval.[4]

*The Odyssey*[5] is an epic Greek poem composed of 24 books, attributed to Homer in the 8th Century B.C. In addition to spending ten years fighting abroad, Odysseus spends a further ten years returning to his home in Ithaca, where he was king and where his son Telemachus and his wife Penelope have to tolerate the suitors who, believing Odyesseus to be dead, seek to marry Penelope while at the same consuming the family's wealth. Odysseus' biggest weapons in achieving his aims are his shrewdness and intelligence, which, through means such as disguising himself or giving powerful speeches, enable him to reach his goals.

*The Odyssey*, together with *The Iliad*, is one of the foundational texts of Greco-Latin epics and, therefore, of Western culture, passed on first in spoken form and later transcribed using a metric known as dactylic hexameter.

The 22nd Book of *The Odyssey* addresses the theme of vengeance, which is so recurrent in the Greek world. The Poem is divided into three parts. The *Telemachy* (books 1 to 4) describes the situation in Ithaca in the absence of its king, the misadventures of Penelope and Telemachus and how the latter begins his journey in search of his father. *The return of Odysseus* (books 5 to 12) sees Odysseus arrive at the Court of King Alcinous and narrates his adventures and misadventures since his departure from Troy. *The vengeance of Odysseus* (books 13 to 24) recounts the arrival of Odysseus in Ithaca, his recognition by some slaves and by his own son, how he takes vengeance on Penelope's suitors and kills them all, and finally how he recovers his kingdom and agrees peace with the inhabitants of the island. The work commences in the middle of the story, narrating preceding events through the memories of Odysseus himself.

*The Odyssey* has had an enormous impact on subsequent art, in the form of both verse and prose, and in the cinema and on television, a clear example being the work *Ulysses* by James Joyce, which pays homage to the Homeric poem but with an ironic caveat in that it tells the story of the events that happen to its protagonist in a single day.

*The Odyssey* is the story of the return of Odysseus not from Troy, but from Ogygia. It moves from west to east, from immortality to mortality, from a tranquil life to one of struggle, and it does so by way of a liquid medium – the sea. One sees how Odysseus is symbolically reborn in a cave in Ithaca. He chooses life over death, reality over imagination, earth over heaven, and work over retirement.

Ulysses is the hero of *The Odyssey*, the author of the stories, and is also the "*homo faber*". He acts both for glory and for immediate purposes. His character combines military greatness and more varied working skills.

[3] J. P. Euben, *Greek Tragedy and Political Theory*, Berkeley, University of California, 1986.
[4]. Álvarez Gardiol, "Justicia plena: titularidad y merecimiento, un enclave de justicia en La Ilíada", in *Actas III Congreso Internacional de Filosofía Jurídica y Social, AAFD/IVR*, La Plata, 1990.
[5] *Odisea,* preface by Carlos García Gual, translation into Spanish by José Manuel Pabón, Madrid, Gredos, 2014.

The epic lauds the range of manual work, which is not regulated to being the responsibility of slaves or servants. This is the general concept of work present in *The Iliad* and *The Odyssey*, in which, though recognizing the subordinate status of manual workers, there are continuous references to a consideration and regard for the task of work, and even admiration for a job well done and for the person doing it, for the quasi-familial relationship between masters and servants.[6]

1.2.-*Works and Days* by Hesiod (700 B.C.)

*Works and Days*[7] is a poem written by Hesiod around 700 B.C. Sometimes it is referred to by the Latin term *Opera et dies*. The work contains catalogues, proverbs, advices and recommendations, which include fables, similes and myths. It is organized not chronologically but thematically.

The poem essentially revolves around two fundamental themes: work as the universal destiny of man, and that only one who is prepared to work hard will be able to achieve their destiny. The poem has been interpreted in the context of an agricultural crisis in the Greek world, which led to the search for new lands through colonization.

The work is an ode to or worship of honest work, which brings honour to men, as opposed to leisure. Part of it addresses the question of unjust judges and the practice of usury. Work is seen as the source of all that is good, with the lazy compared to drones in a hive.

Unlike Homer, Hesiod, a farmer and trader, does not tell of heroic deeds in *Works and Days.* Instead, he ponders the goodness of daily work. Rather than boasting of wartime prowess and feats, Hesiod seeks to demonstrate the need for an ordered life, for law and work.

Recognizing the values of work does not prevent Hesiod from attributing a negative origin to it: work is described as one of the penalties with which Zeus punishes Prometheus for having stolen the sacred fire.[8]

1.3.-*The Oresteia* by Aeschylus (525 B.C. – 456 B.C.)

The plot of *The Oresteia* by Aeschylus[9] may basically be summarized stating that it concerns a story of war and vengeance – the Trojan War, to avenge the seduction of Helen by Paris. In a celebrated episode, Agamemnon sacrifices Iphigenia, [10] an innocent victim, in order to appease the wrath of the gods, followed by the subsequent killing of Agamemnon and the vengeance taken by his son Orestes, murdering his mother, Clytemnestra, for which he is judged and pardoned. Until the judgment, it is taken for granted that Clytemnestra's murder by Orestes, though justifiable and inevitable, must be punished in the same manner as Agamemnon must pay for the death of his daughter, for which reason he was forced, in turn, to end the Trojan War.[11]

If one had to summarize the complex intrigues of *The Oresteia* in a single phrase, one might say that it tells of the difficulties of the law of retribution and, as a counterpoint, of the experience of human justice understanding how to integrate the dimension of forgiveness. This work may be read as a passage from the aristocratic world to the democratic *polis*, or even from *mythos* to *logos* and from vengeance to justice. But the work cannot be reduced to the single theme of the transition from private vengeance to public justice. Though this legal perspective certainly dominates in *The Oresteia*, it is not truly appreciated unless placed within the context of at least four other themes, which together form a polyphonic composition.

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[6] Alfredo Montoya Melgar, *El trabajo en la literatura y el arte*, Madrid, Civitas, 1995, p. 40.

[7] *Los trabajos y los días; la teogonía; el escudo de Heracles,* translation into Spanish, preface and notes by María Josefa Lecluyse and Enrique Palau, Barcelona, Omega, 2003.

[8] A. Montoya Melgar, *El trabajo en la literatura…, op. cit.,* p. 41.

[9] *La Orestiada,* translation into Spanish by Álvaro del Amo, Madrid, Instituto Nacional de las Artes Escénicas y de la Música, 1990. Maria Aristodemou, "Seduction of Mimesis: Theater as Woman and the Play of Difference and Excess in Aeschylus's *Oresteia*", in *Cardozo Studies in Law and Literature*, vol. 11, Issue 1, summer 1999, pp. 1-34.

[10] P. Pether, "Trouble with Iphigenia: Feminist Critiques of Feminist Crime Fiction and the Case against Sara Paretsky", in *Australian Journal of Law and Society,* 9, 1993, pp. 3-18. See also: T. Pfau, "The Pragmatics of Genre: Moral Theory and Lyric Authorship in Hegel and Wordsworth", in *Cardozo Arts & Entertainment Law Journal*, 10, 1992, pp. 397-422. Judith Resnik, "Singular and Aggregate Voices: Audiences and Authority in Law & Literature and in Law & Feminism", in Michael Freeman – Andrew Lewis (eds.), *Law and Literature. Current Legal Issues*, volume 2, London-New York, Oxford University Press, 1999, pp. 687-728. Judith Resnik – Carolyn Heilbrun, "Convergences: Law, Literature and Feminism", in *Yale Law Journal*, 99, 1990, pp. 1913-1953.

[11] Sophie Klimis, "Amour, droit et harmonie cosmique dans la trilogie des Danaïdes d'Eschyle", in François Ost – Laurent van Eynde – Philippe Gérard – Michel van de Kerchove (dir.), *Lettres et lois. Le droit au miroir de la littérature,*Brussels, Publications des Facultés Universitaires Saint-Louis, 2001, pp. 11-38.

Political reflections represent a first complementary theme. The second is religious in nature, concerning the alliances between the gods. In effect, the book may be read as a human drama used as a prextext to play out a divine one – that is, the split between the ancient and the new gods. A third theme present in Aeschylus' trilogy is the exceptionally delicate issue of individual responsibility. Though it is true that the Greece of that time did not have a concept similar to our idea of "individual will", it is nonetheless undeniable that this work alludes to notions of blame and responsibility, in the confusing muddle of error, infraction and misery.

In turn, these four themes are related with a fifth one, that which provides the tone for the composition as a whole: this is a rich reflection on the powers of words in themselves, as if accessing the meta-level of justice were impossible except though the liberation of the word itself. Justice will refer to the positing of a dialogue between arguments and counter-arguments, as occurs when evidence is given before the courts.

As regards the theme of retribution, three additional concepts must be noted: that it is applied to both the guilty party and their descendants without distinction; that it may arise out of the violation, not necessarily intentional, of implicit prohibitions or of taboos that are obscure to a greater or lesser degree; and that it is enforced both through acts of justice and by way of natural disasters (as with the storm that undermines the Greek fleet on its return from Troy).

The question of responsibility (will, guilt) is presented as a counter-point to justice through vengeance. Without a minimal level of imputation and of personal responsibility, it is argued that it is impossible to imagine any judgment. But the central question, in truth, is to know whether one answers in the first person for one's own behaviour in Aeschylus' universe. The answer is linked to this image of archaic vengeance, barely distinct from collective responsibility. *Agamemnon* considers responsibility for two crimes: the sacrifice of Iphigenia by Agamemnon and the death of the latter at the hands of Clytemnestra and her lover. The first of these responsibilities is presented in genuinely problematic terms. Agamemnon has undoubtedly acted deliberately, weighing up the consequences of his acts, as is reflected in verses 206 to 217, which hide nothing of the leader of the Greek expedition's process of inner debate.[12]

For millenia, punishment of criminal acts was carried out through private revenge. Collective intervention was only used to placate the wrath of a god who was supposedly offended. An identification was made between crime and sin, an idea which informed penal physiognomy in a decisive way for years. In this evolution, the talión represented a timid attempt to overcome the absolute arbitrary nature with which punishment had erstwhile been applied. Nevertheless, what has been called "medieval punishment" continued until practically the second half of the XVIIIth century, when criminal law was humanized and secularized, breaking with its harshness and with its magical and sacred connections. It is then that punishment was conceived as a guarantee for collective order and the idea of hatred for, or revenge on, the criminal was overcome. The upholding of the guarantee became the responsibility of the state. Until then, the law essentially valued a prisoner's social position most, giving rise to brazen inequalities; punishments were very harsh and cruel and not always befitting the crime for which they were imposed. Punishment basically sought moral expiation and collective intimidation. Corporal punishments were extreme: mutilation, whipping, and so on. Capital punishment, accompanied by atrocious tortures was the punishment par excellence.[13]

In other times, the passive subject of punishment greatly exceeded the living individual, responsible for and guilty of a crime. In ancient times, collective responsibility was ordained, animals and the dead were punished and inanimate objects were offered up to destruction, by way of punishment. As regards collective punishment, as we go back in time, we find it everywhere. Thus, in ancient China, all male relations of those guilty of high treason were decapitated: father, grandfathers, sons, grandsons, uncles and all their sons. Collective responsibility took many forms in ancient Israel. Jehovah punished all for the sins of one. Of Ivan the Terrible it is told that, in the course of his lunacy, he began to kill people "by families", instead of individually. A modern example of group punishment is that which took place at the death of Czar Nicholas II.

[12] François Ost, *Raconter la loi. Aux sources de l'imaginaire juridique,* Paris, Odile Jacob, 2004, pp. 91-151, esp. pp. 91-104.
[13] Gerardo Landrove Díaz, *Las consecuencias jurídicas del delito,* 3rd. ed., Barcelone, Bosch, 1984. 5th. ed. revised by María Dolores Fernández Rodríguez, Madrid, Tecnos, 2002, pp. 15-17. C. Emsley, "The History of Crime and Crime Control Institutions", in Mike Maguire - Rod Morgan – Robert Reiner, *The Oxford Handbook of Criminology*, 3rd. ed., Oxford, Oxford University Press, 2002. Christopher Hibbert (1924-*), The Roots of Evil; a Social History of Crime and Punishment*, 1rst. American Edition, Boston, Little, Brown, 1963. Julius Makarewicz, *La evolución de la pena*, Madrid, Hijos de Reus ed. 1907.

Another example would be the holding responsible of all galley-slaves should one member escape. In Roman times, all the slaves under the master's roof were killed if he were killed. In the Middle Ages, offspring were exterminated in cases involving high treason and rebellion. The deaths of Luis XVI and Marie Antoinette, of General Schleicher and his wife, of Mussolini and his lover are not far from this ancient practice.

Now punishment is conceived as a bureaucratized and rationalized process (Michel Foucault and Max Weber) as opposed to its being conceived as a "passionate for vengeance" phenomenon (Émile Durkheim).

Foucault is a philosopher and sociologist in the tradition of Nietzsche and Weber. From Nietzsche, he adopts a sceptical method and a vision of punishment as a means of constructing individuals with self-discipline, subject to a higher power. From Weber, he takes his vision of modernity as an organization of ever-increasing powers and capabilities. Although there exists no particular theory of punishment in Weber, one may be extracted from the elements of his work. What is interesting about Foucault's, partly Weberian, analysis is to see how the rationalization process punishment has transformed it, going from an institution, heavy with moral and emotive overtones, of practices and rituals, to become a dispassionate, rationalized and bureaucratized process, dispassionate and professionalized. This process which punishment has followed has been the most important change effected in penal sanctions in the XIXth and XXth centuries.

From the XVIIIth century on, the capacity to punish has been increasingly monopolized by government and state agencies, producing a tendency to centralization. A group of professionals is thereby created –prison governors, guards, medical personnel, criminologists, psychiatrists and psychologists. All these have their own jurisdictions and competencies, careers, interests, ideologies, salaries and training. One characteristic of the bureaucrat is precisely that he acts in a routine and dispassionate fashion, without anger or enthusiasm - *sine ira ac studio* - with a studied neutrality and objectivity, in a deliberately dehumanized way, eliminating all love, hatred, or any other irrational emotion from the profession. This intermediation of the bureaucrat between the emotional reactions of society and the real punishment of the offender is an indication of refinement and civic manners, of social distance and professional objectivity, of scientificism and the lack of emotional involvement.

One ironic consequence of this lack of moral and emotional involvement in the execution of punishment has been that the rehabilitatory *ethos* has been somewhat pushed aside in favour of a more "technical" spirit. With the professionalization and bureaucratization of the criminal process, within modern societies, an institutional punishment has been created that is much less accessible to the general public, much more socially invisible and secret than it was in prior regimes. The social task of punishment has been delegated to specialized bodies on the margins of social life, bodies that, to a certain degree, remain hidden. Punishment quits the sphere of daily life. A powerful penal bureaucracy arises which does not limit itself to being the executor of legal decisions and collective sentiments. It has its own power and influence within the punishment system.

Here, we have highlighted the importance of rationalization in certain sectors of the penal system and noted its effects. It is now necessary to make clear the *limits* of such rationalization, to show the continuing existence of non-rational forces in the rituals of punishment. In this sense, there is room for Durkheim's analysis which insists that punishment today continues to be a passionate and vengeful reaction, motivated by feelings of rage, far removed from that neutral, dispassionate response which it pretends it is.

These two interpretations of punishment, however, are not mutually incompatible as they might appear at first sight. Durkheim himself recognizes that punishment increasingly tends to impose less cruel, hard and passionate, sentences in favour of the more rational. On the other hand, Foucault's analysis, as opposed to that of Durkheim, is not based on the entire social process of punishment, from courtroom through sentencing to the prison, but rather details the practices carried out in prisons and penal institutions. The *courtroom* is the main place where punitive rituals are enacted and where moral sentiments are expressed, while modern penitenciaries are more and more technocratically and instrumentally managed, in brief, more dispassionate. The courts, the politicians and a great part of the general public go on treating the subject of punishment in a passionate and moral way. They call upon substantive values, adopt emotional attitudes of condemnation and clamour for retributive punishment.[14]

Having made these general observations on vengeance and returning to the plot of *The Oresteia*, we see that the mother is murdered and a virgin daughter is silenced and sacrified. This leads us to examine the role played by women in Greek society.

[14] David Garland, *Punishment and Modern Society. A Study in Social Theory,* Chicago, University of Chicago Press, 1990, pp. 177-193.

Greek women, regardless of age or social class, were legally no different from minors or animals, their legal status depending entirely on their relationship with men, whether in the role of daughter, sister, mother, wife, or widow.

*The Oresteia* addresses the murder of Clytemnestra, the mother of Orestes. The struggles in the work arise from the conflict between men and women from the first moment. In a society where family relationships were the basis of the *polis*, female infidelity posed a serious threat. The absence of Agamemnon led Clytemnestra to abandon the private arena of the home and return her attentions to the public matters of the *polis*. She is described as a woman with a masculine will, with words like those of a man and combative, unlike ordinary women. As a woman, though, she is accused of being false and deceitful. Clytemnestra has broken the laws of marriage, taking a lover, Aegisthus, an apparently effeminate man, who has not joined the Greek army in Troy. In contrast to the idea that the women is a muse and a support to the man, Clytemnestra's personality breaks with this role through her infidelity and the expression of her own autonomous desire. Both lovers break the expected moulds of men and women in the Athens of the 5th Century B.C. Clytemnestra's adultery and entry into public life cross the boundaries for someone of her sex. But she does not show any feelings of guilt or regret for her transgressions. She responds to the continuing accusations of the Chorus by stating that Agamemnon has killed her sister.

Clytemnestra has two children, Electra and Orestes, who decide to kill their mother in order to preserve the name and honour of her father. Clytemnestra, like Eve, is the fallen woman who must be killed to permit the restoration of the male order. Another less well-known death is that of Clytemnestra's sister, Erigone, who commits suicide by hanging herself. Iphigenia is also sacrificed by a group of men led by her father, a demonstration of the preference accorded to war over love and courtship.

The Greek tragedies often reflect women who escape stereotypes, intelligent women who govern (Clytemnestra), or abandon the home (Phaedra), or sacrifice themselves for their brother (Antigone), or kill their mother (Electra) or are imprudent (Pandora).

Iphigenia, in Aeschylus' version, tries in vain to resist her captors. She has to be tied up and taken to the altar as a scapegoat; a sacrificial lamb. Unlike Cassandra, who forgives her captor, Agamemnon, and in contrast to Electra, who follows the law of her father in planning the death of her mother, Iphigenia does not voluntarily go to her death. As such, she does not satisfy the masculine fantasy of a submissive and passive woman. She is not merely ambiguous, but rather offers resistance. Against the paternal law, which seeks to silence her, she speaks up with the "voice of the virgin" that "melts the hearts of all". The description of the sacrifice of Iphigenia and the cries and tears of Clytemnestra upon hearing her refusal to be sacrificed for the sake of the male mandate, kneeling and imploring piety, produce a deeply dramatic scene.[15]

1.4.-*Antigone* by Sophocles (496 B.C. – 406 B.C

In Classical Greece, in the Tragedy of *Antigone* by Sophocles,[16] we read how Creon, governor of Thebes, orders the burial of one of Antigone's brothers, according to tradition, since he died defending the city, while the other, who died attacking the city, must be left unentombed for the vultures and dogs to devour his innards and, hence, never to be let rest in peace. Antigone, in defiance of Creon's orders, commits the "pious crime" of burying her brother following the divine laws which govern the family, challenging the city laws, despite the warnings of her sister, Ismene, who refuses to help Antigone.[17] Because of this act, Creon sentences Antigone to death, regardless of the pleas of his son, who was going to marry Antigone. The Chorus of Ancients show a reserved attitude towards the deed and warn of divine punishment for disobeying the law.

[15] Maria Aristodemou, *Law and Literature: Journeys from her to Eternity*, Oxford-New York, Oxford University Press, 2000, pp, 58-80.

[16] *Antígona,* in Colección Clásicos Inolvidables, 2nd. ed., Buenos Aires, El Ateneo, 1950. There is also a translation into Spanish by Francisco Miguel del Rincón Sánchez, Madrid, Escolar y Mayo, 2013. Jacques Vergès, *Justicia y Literatura*, Barcelone, Península, 2013. Translation into Spanish from, *Justice et littérature*, Paris, Presses Universitaires de France, 2011, by Loles Oliván, pp. 13-33. See, María José Falcón y Tella, *La desobediencia civil*, Madrid, Marcial Pons, 2000, pp. 309-311; There is a translation into English of its Second Part by Peter Muckley, *A History of Civil Disobedience*, Genève, Diversités, 2005.

[17] Chr. Stanley, "'Antigone' within the Walls of 'House'", in *International Journal for the Semiotics of Law /Revue Internationale de Sémiotique Juridique*, X, 30, 1997, pp. 231-259. S. Tzitzis, "Scolies sur les nomina d'Antigone representés comme droit naturel", in *Archives de Philosophie du Droit*, 33, 1988. Dimitris Vardoulakis, "Invincibly Eros: Democracy and the Vicissitudes of Participation in Antigone", in *Law & Literature*, vol. 24, Issue 2, summer 2012, pp. 213-231.

However, when Creon seeks to revoke his order, he discovers, to his great distress, that Antigone, his son, and even his own wife, have ended their lives.[18]

The interpretation usually given the work by the theorists is that no ruler has the right to demand acts which go contrary to the norms given by the gods,[19] in *Antigone*'s specific case, the customary norms governing the subject of the burial of an uninterred relation.[20] In Sophocles' *Antigone*, Antigone embodies the ideal of a justice identified with piety, founded upon a sacred, eternal and immutable order. Opposed to this, Creon represents a new type of order, of justice, one of a legal-political nature. The resulting conflict between the two is inevitable. Both embody extreme poles and therefore the situation has a fatal dénouement, proper to Greek tragedy. The application of any one of the two laws presupposes the transgression of the other, making obedience to both impossible. Creon has broken the unwritten law of the gods, the *nomoi agrafoi*.[21] Antigone has broken the *nomos* of the city. Both, though in different ways, have gone against justice and both, therefore, must pay.[22]

Those wishing to see in Antigone the prototype of the conscientious objector have not been wanting. The question is whether Antigone's gesture was an authentic act of civil disobedience.[23] Here, writers disagree. For example, for Van Dusen, the answer to the question must be in the affirmative. Thus, in Sophocles, Antigone chose to obey her conscience and to break the laws of the city, without fear and without holding back in the face of punishment. When the dictator, Creon, reminds her that her act is punishable by death, she answers that she did not think that Creon's orders were of such importance that he, a mere mortal, could set aside the unwritten and unbreakable laws of the gods. Antigone was moved by her conscience. Her act was deliberate and intentional. Further, appealing to the judgment of the entire community, she explains her conduct to the Chorus. Antigone does not act in secret and clandestinely, but rather the burial of her brother was open and public. When the soldiers left to guard the body of Antigone's brother discover her intention of burying him, she does not deny her intent, neither does she do so when questioned by Creon, to his great astonishment. Hence, Creon judges Antigone to be guilty of a double crime: first, disobeying his orders; second, the temerity to do so openly.[24] On the other hand, Antigone does not act violently, neither does she violate the rights of other citizens. Finally, Antigone accepts her death sentence. Hers is not a revolutionary or subversive act, rather she accepts the system as a whole.[25]

Nevertheless, those, like Cosi, are not lacking who maintain the contrary position, holding that Antigone's disobedience was not true civil disobedience. For Cosi, it is difficult, if not impossible, to speak of dissent, civil disobedience or conscientious objection in Antigone's case since we are dealing with concepts, tied to the Modern State context, one that recognizes the existence of inalienable human rights, which are difficult to transfer to Ancient Greece. Moreover, Antigone's disobedience would be a "fact", pure and simple; her gesture neither takes the form of a testimony nor does it appear that it had the aim of transforming current legislation,[26] rather, and in this it more closely resembles conscientious objection, she only seeks to satisfy the demands of her own conscience.

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[18] See Ernest Van den Haag, *Political Violence and Civil Disobedience*, New York, Harper & Row, 1972, pp. 6-7.

[19] David Gurnham, "The Otherness of the Dead: The Fates of Antigone, Narcissus and the Sly Fox, and the Search for Justice", in *Law & Literature*, vol. 16, Issue 3, fall 2004, pp. 327-352.

[20] See François Ost, "Antigone encore", in *Journal des Procès*, 355, 2 October 1998, pp. 10-11. *Id*., *Antigone voilée*, Brussels, Ed. Larcier, 2004. *Id*., *Mosè, Eschilo, Sofocle. All'origine dell'immaginario jurídico*, Bologna, Il Mulino, 2007. *Id*. (with L. Couloubaritsis), *Antigone et la résistance civile*, Brussels, Ed. Ousia, 2004.

[21] Joseph P. Tomain, *Creon's Ghost: Law, Justice, and the Humanities*, Oxford, Oxford University Press, 2009.

[22] Giovanni Cosi, *Saggio sulla disobbedienza civile. Storia e critica del dissenso in democrazia*, Milano, Giuffrè, 1984, pp. 118-124.

[23] Susan W. Tiefenbrun, "On Civil Disobedience, Jurisprudence, Feminism and the Law in the Antigones of Sophocles and Anouilh", in *Cardozo Studies in Law and Literature*, vol. 11, Issue 1, *Symposium: The Classical Greek Themes in Contemporary Law*, summer 1999, pp. 35-54.

[24] Joseph Betz, "Can Civil Disobedience Be Justified?", in *Social Theory and Practice*, I, 2, fall 1970, pp. 13-30, esp. pp. 16-17.

[25] Lewis H. Van Dusen, Jr., "Civil Disobedience, Destroyer of Democracy", in *American Bar Association Journal*, 55, February 1969, pp. 123-126, esp. pp. 123-124.

[26] Giovanni Cosi, *Saggio sulla disobbedienza civile. Storia e critica del dissenso in democrazia*, Milano, Giuffrè, 1984, p. 123.

Her disobedience is of a familial and religious, rather than a political, character, even though it is true that, through Sophocles' work, the figure of Antigone did have an influence on the conscience of the people who witnessed the play.[27]

Again, while civil disobedience also may have an exceptional character, and civil disobedients may often be people with exceptional personal characteristics, civil disobedience, understood in the modern sense, that is, from Thoreau's work on, does not encapsulate that heroic quality which is often to be viewed in Antiquity and in the Middle Ages. For civil disobedience to be transformed from its state of being the act of an extraordinary personage to being the act of a simple citizen, a process of cultural secularization was necessary, a process of separating the religious from the lay sphere and, furthermore, the emergence of a democratic, liberal philosophy.[28] Finally, as an argument against considering Antigone's behaviour as an act of a civil disobedient nature, one might cite its individual nature. Not even her own sister wished to participate in it. In contradistinction, there is a collective dimension to modern acts of civil disobedience.[29] Moreover, in the individual nature of her act, Antigone's comes closer to conscientious objection than to civil disobedience.

Antigone has an inflexible and unwavering determination, deaf – as Oedipus, her father, went blind – to the advice of Ismene, beyond normality, rules and prudence. Antigone does not compromise in her search for justice. She is not silent, but rather speaks "loudly and clearly". She resists with her own body, not only with her words. Antigone's favourite word is *philia*, the love of her own, and not *eros*, which implies the altering of desire, a desire that could have led her, being promised to Haemon, to marriage and motherhood. Antigone has a death instinct, an incestuous drive, a loving sacrifice, a fierce resistance to injustice.

As stated by François Ost, the vocabulary a work uses is important: *Nomos*, the most neutral term, appears at the semantic centre of the different legal terms used in the piece. Each party uses and interprets this term in its own manner. For Creonte, political leader of the city, *nomos* is the law of the State, which is expressed in the proclaimed edicts (*Kèrugma*). It is a series of regulations and measures aimed at monitoring and controlling society, and contains no trace of custom, of the old laws or even of the divine justice of *Dikè*. For Antigone, on the other hand, political *nomos* has legitimacy – but only within certain limits, defined by respect for the requirements of *Dikè*, equity, the traditional and unwritten justice of the gods, which express the fundamental customary laws (*nomina*).

The struggle between Antigone and Creon is crystallized in the following fundamentally opposed anthropological opposites or antonyms: young/old, woman/man, individual/society, dead/alive, god/man. One may undertake an essentially *dichotomic* reading of the work. Creon is on one side, leading public policy and the voice of the State, who is a prisoner of a narrow view of the public good and the law, and insensitive to the varying demands of the *polis*, beginning with the role given to women, and for who the friend/enemy distinction is all-important, defining the limits of the validity of the legal order. On the other side is Antigone, who may be compared as much to a wild and untameable animal as to a god-like figure, who remains absolutely alone, without friends, husband or children. Hegel took this antagonistic reading of the work to its extreme, seeing two universes condemned to mutual destruction, which, far from being complementary, are exclusive. This has a tragic conclusion ending in the disappearance of the two essences, both fated to vanish.

But as Ost states, one may also engage in a *dialectic* reading of the piece, which reveals that the order of Creon is excessive since it prohibits the brother of Antigone from being buried "in any place", and not merely, as authorized under Greek law, within the boundaries of the city. One may also see this with relation to the distinction between *effective* law (Creon's edicts) and *ideal* law (the atemporal principles of Antigone), a distinction comparable to and offering a certain parallel with that which exists between formal and material sources of law.

[27] Ronald Mellor, "The Historian and Civil Disobedience", in *Humanities in Society*, 2, 1, winter 1979, pp. 83-88, esp. pp. 84-85.

[28] Elliot M. Zashin, *Civil Disobedience and Democracy*, New York, The Free Press, 1972, pp. 7-8.

[29] Ernesto Garzón Valdés, "Acerca de la desobediencia civil", in *Sistema*, 42, May 1981, pp. 79-92, esp. p. 85. See also, April Carter, *Direct Action and Liberal Democracy*, London, Routledge & Kegan Paul, 1973, p. 116. Hugo Adam Bedau, *Civil Disobedience in Focus*, London-New York, Routledge, 1991, p. 1. María José Falcón y Tella, "Los precedentes de la desobediencia civil en el mundo griego", in *Revista de la Facultad de Derecho de la Universidad Complutense de Madrid*, 90, 1999, pp. 67-88. *Id*., *A History of Civil Disobedience, op. cit*., pp. 5-8.

Essentially, it may be the case that a rule is just in principle but unjust in a particular situation, or that a rule that was just yesterday becomes arbitrary at a later time. The merit of ideal law is to be procedural, offering a form of vigilance and criticism with respect to effective law.

In Sophocles' *Antigone*, moreover, there is not the slightest trace of the procedural guarantees or due process of law that are characteristics of the modern rule-of-law State. We should not forget that we are considering Ancient Greece. This is not a place of individual equity, of case-by-case rules, or of exceptions, as is typical in legal reasoning. Creon's justice suffers from great arbitrariness and from an absolute lack of impartiality. Creon's edict condemns Antigone's brother to the most ignominious of punishments. Can any Head of State extend their authority over the souls of criminals beyond the boundary of death? Furthermore, Creon holds all the powers – legislative, executive and judicial– at one time. He makes the laws, conducts the accusations, determines the grounds of the processes, hands down the verdicts, and grants or refuses mercy. A further indication of arbitrariness in this matter is the fact that Creon acts as judge and party at the same time, judging members of his own lineage, without the blood ties meaning that he recuses himself. His power is, in essence, autocratic in nature. What would later be known as mitigating or exculpatory factors, or even states of necessity, are not taken into account.

The political regime of Thebes consisted of a monarchy, and not a democracy in which acts of civil disobedience might take place. Creon was the new king, supported by a regime that was aristocratic in nature: the Chorus of fifteen Ancient Thebans, of noble lineage, loyal to the crown. As Creon sets forth in his solemn discourse on enthronement, his objective is for the public good to prevail, attending scrupulously to the distinction between friends and enemies of the city, reducing the link with the subjects to a relationship of domination in which his personal power is constantly reaffirmed, in a disciplinary conception of the political bond. The people are absent from this scene. It is his own son, a prince, who calls attention to his abuse of power and attempts to consider what is "rationally" the best aptitude to develop. This involves thinking "justly" (*euphronein*), giving examples of wisdom (*euboulia*) and not engaging in mistaken (*dusboulia*). But dialogue is entirely impossible with Creon, who is deaf to any challenge or appeal, and the communication between father and son soon degenerates into a melange of slanders and curses.

François Ost, in his analysis of the work, finally summarizes its character of "time". Time for Antigone is eternity. She does not belong to the ordinary time of the passing of the days, but draws sustenance from adhesion to immemorial rules, as if there were no real boundary dividing the living from the dead. For Creon, time is obstructive and compulsive, alluding to the Greek name of the old god *Kronos*. This one-dimensional time contaminates both the past and the future through its narrow calculations in service of the State's purposes. It vitiates the memory of the past by denying pardons, and similarly damages the promise of the future, in dismissing any possibility of change. As regards the other great co-ordinate, "space", Creon creates a vacuum in his surroundings and exceeds the spatial limits of the political realm, invading the spheres of religion and family.[30]

1.5.-*Electra* by Euripides (480 B.C. – 406 B.C.)

Aeschylus, Sophocles and Euripides wrote tragedies about vengeance and the blood debt to be paid for victims. Euripides' *Electra*[31] tells the story of how Electra and her brother, Orestes, murder their mother, Clytemnestra, through solidarity with their father, Agamemnon.

This story has held interest for legal theorists, psychoanalysts and feminists, with respect to the link between blood debts and justice. As is narrated in Euripides' *Electra*, Aeschylus' *The Oresteia* and in Sophocles' *Electra*, the story follows Agamemnon's children, Electra and Orestes, completing their vengeance upon their mother Clytemnestra and her lover, Aegisthus, with Electra condemned to exile and Orestes being acquitted at trial in an Athens court. The Furies, who would otherwise have pursued Orestes until his death, are dispersed by Apollo. The fact that the circle of vengeance ends with a legal trial reveals the story as a triumph of justice as a legal procedure over ancient ideas of blood vengeance, which is represented by the final dispersion of the Furies.

Feminists have argued that the tale addresses gender inequality, as shown by the fact that the murdered father of Electra and Orestes is seen as a hero while the mother is considered a traitor, when both were guilty of adultery and murder – Agamemnon himself had murdered the daughter of Clytemnestra, Iphigenia, and had returned from Troy to Mycenae with Cassandra as his lover.

[30] François Ost, *Raconter la loi…, op. cit.,* pp. 161-203.

[31] *Electra*, edition and introduction by P. J. Finglass, Cambridge, Cambridge University Press, 2007.

This inequality is also reflected in the story of Orestes and Electra, since only the former was acquitted by Apollo and the Athenian court, while his sister, Electra, on the other hand, was condemned to exile. Only Orestes can overcome his crime and be reintegrated into society.

Electra is a story in which the primitive and anarchic world of blood vengeance –that is, the feminine aspect– is replaced by the development of a more civilized side, that of public justice and legality, which represents the masculine.

In Euripides' *Electra*, the young avengers Electra and her brother Orestes often speak of the duty to pay a debt, as do the Chorus and other characters. Unlike Hamlet, Electra does not agonize over the guilt of having to carry out vengeance. Apollo said that Clytemnestra and Aegisthus must pay for their crimes, and the siblings take strong action to ensure that this happens.

In a scene that may to an extent be compared with the oratory scene in Hamlet, Orestes sees that the opportunity to kill Aegisthus presents itself when he finds him in the temple on the point of sacrificing an animal. Like Claudius, a charming and hospitable villain, and not recognizing Orestes, who was a boy when along with his sister he was sent far from Mycenae following the death of Agamemnon, Aegisthus invites the youth to join him and gives him the weapon to open up the animal, which Orestes then uses against him, decapitating Aegisthus as he leans down to examine the entrails of the sacrificed animal. Through this awful act, the avenging Orestes plays the role of debt-collector of the vengeance, with the victim the debtor.

When Electra confronts her mother, Clytemnestra, she explains her act as payment for the death of her father, Agamemnon, the blood of her mother extinguishing the debt. It is a proportional punishment.

Agamemnon was killed by a man and a woman acting in concert. Likewise, in the death of Clytemnestra, the ringleader is her daughter Electra, Orestes appearing more dubious and horrified by the idea of killing his own mother. In the same manner, Clytemnestra plays the decisive part in the death of Agamemnon, rather than Aegisthus.

Clytemnestra and Aegisthus are characterized as villains of the piece, going as they do against the sexual ideal prevalent at that time in Greece. Aegisthus was an effeminate person, affected and coward, who depended on a woman –a clear sign of weakness in Greek drama– to bring his own ambitions to fruition. He did not fight in the Trojan War, but stayed at home to seduce the king's wife, betraying the heroic husband following the war. Clytemnestra, meanwhile, has the stain of adultery with the cowardly Aegisthus. In contrast, Electra is a model of sexual purity and of fraternal loyalty. Despite being married, she manages to remain a virgin.

Feeling that perhaps Orestes is not the brave warrior she has imagined him to be, Electra pushes him to act as a man, using manipulative arguments similar to those that the ghost of Hamlet's father would later make in Shakespeare's *Hamlet* to provoke and convince Hamlet. It is undoubtedly the blind will of Electra that ensures vengeance is taken. She is probably the dominant child of a dominant mother. In contrast, the Orestes of Euripides is doubtful and pensive, and not the enthusiastic avenger that Electra would have wished for. He is full of doubts and vacillations regarding the morality of killing his own mother, despite his orders from Apollo. As with Hamlet, Orestes thinks that the voice he hears that drives him toward vengeance must be that of a demon. And his ultimate assent and action are more out of a form of resignation to his cruel destiny than out of a belief that the action Electra implores is a good one. For him, vengeance is bitter – not sweet. There is a contrast between the dominant Electra and the doubtful Orestes.

Electra is obsessed with her mother's sexual life, reproaching her for her sexual relationship with Aegisthus as well as for the murder of Electra's father. This fixation with the mother's sexuality does not represent a rational moral judgment against Clytemnestra, but rather a mind driven to extremes by pain and anger. In contrast to the passionate excesses of Electra's discourse, Clytemnestra defends herself in a lucid fashion, telling Electra that the murder of Agamemnon was not simply motivated by her adultery with Aegisthus, but also because Agamemnon had killed her daughter Iphigenia as a sacrifice to the gods before the Trojan War.

Not even Castor, son of Zeus and brother of Clytemnestra, who descends from Mount Olympus at the end of the work, can judge what has happened as a morally good act. He condemns both the evil actions of Clytemnestra and those of the avengers. Euripides clearly treats vengeance as more complex than what is derived from the simple satisfaction of family conflicts. Blood vengeance does not lead to final satisfaction, but rather to more bloodshed, a better or sole justification for the act being the excuse of satisfying a debt of gratitude owed to the dead.

As mortals, Orestes and Electra cannot use justice to resolve the injustices they have suffered. They can only find satisfaction for their rage. The end of Euripides' work is hardly a happy one: neither Electra nor Orestes can inherit the throne of Mycenae and they are forced into permanent exile. It is as though Euripides were presenting death through vengeance as good and bad at the same time: that a murderer does not deserve a happy ending, but while it remains understandable that one who has been affronted by murder is tempted to take vengeance, someone's death does not excuse the death of another. For both Euripides and Shakespeare, vengeance could never be justified – it cannot be something good, as Castor himself states – but it could be excused, as the result of the unbearable weight placed upon the victim of the affront in deciding whether or not to respond with vengeance. Euripides appears to wish to tell us that it is more than a person can bear.[32]

1.6.-*Lysistrata* by Aristophanes (444 B.C. – 385 B.C.)

*Lysistrata*,[33] which literal meaning in Greek is "army disbander", is a theatrical work by the Classical Greek dramatist Aristophanes, first performed in 411 B.C. It has been considered a symbol of the organized and peaceful movement in favour of peace, in an upturned world in which women triumph over men, when the city was losing the war and also faced a true civil war, toward the final reconciliation festival between Athenians and Spartans and between women and men, with which the work ends.

*Lysistrata* is an anti-war comedy, its writer frequently protesting against war in other works, too, such as *Peace* and *The Acharnians*. *Lysistrata* presents a true and fantastic appeal to peace amongst the Greek *polis*, basically Sparta and Athens. The plot turns upon the refusal by the women of Athens and Sparta, leaded by Lysistrata, to sleep with their husbands until peace is signed. To this end, they take the Athenian Acropolis, the Parthenon, and show themselves firm in their stand. They put on their best clothes and adornments to provoke their husbands all the more. The husbands cannot stand it and they agree to make peace. As with *Antigone*, there is an attempt to protect and rescue human values, in this case to stop the barbaric process of destruction that is war. Also, as in *Antigone*, it is the women, in this case, all are married women, who fight for the opposite sex: for recently born males, for brothers and for the soldiers at the front. There are not lacking those, like Daube, in his study of civil disobedience in Antiquity, who have seen in this episode a precedent, the first sit-in in history, for later famous sit-ins such as those of protest against the war in Vietnam or in favour of minority black rights vis-à-vis the white population, in the North American context. As later happened with these movements, the women manage to free themselves from the police who try to empty out the Parthenon by expelling them from the building. Sit-ins are a typical means of civil disobedience demonstration.[34] In sum, the work imagines women going on sexual strike.

[32] David Gurnham, *Memory, Imagination, Justice. Intersections of Law and Literature*, England, Ashgate, 2009, pp. 39-56.

[33] *Lisístrata*, translation into Spanish, introduction and notes by Ricardo Vigueras Fernández, Ciudad Juárez, Chichuahua, Universidad Autónoma de Ciudad Juárez, 2012. There is also a translation into Spanish by Elsa García Novo, with an introduction by Nacho Novo, Madrid, Alianza, 2011.

[34] David Daube, *Civil Disobedience in Antiquity*, Edinburgh, Edinburgh University Press, 1972, pp. 17-22.