

A LITTLE OF ANTIGONE AND OF NATURAL RIGHT**

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Sophocles elected pain as his companion, as it makes itself universal and inevitable. Nothing is more human than pain. It is in Oedipus. It is in Antigone. It is in Creon himself. Perhaps it is due to this very human trait of his characters that Sophocles's plays are still staged with a relative frequency, more so than Esquilo's and Euripides's.

In *Antigone*, first performed in 441BC, we find countless angles for studies and reflection: religious, moral, political, psychological, scenic, literary, juridical, sexological, criminological and so on. In the political – juridical field itself, there are different points of view to consider. Thus, could Creon be right when he denied burial to a traitor of the State? Or was he, on the contrary, the very personification of the tyrant, having placed *his* law above everything held as normal usage and sacred? On the other hand, wouldn't the true difference between "legal" and "legitimate" be well alive there?

Without the shadow of a doubt, we will find in *Antigone* a first idea of the so-called "natural right" that to this day divides juspositivists and jusnaturalists. Regarding Antigone's revolt, it can be said to represent the "right to resistance" or the "civil disobedience", which features today in the list of fundamental rights of some peoples, and was the flame of inspiration that drove theorists of the limitation of power such as John Locke, and activists such as John Brown¹ and Henry David Thoreau.²

After Oedipus's death, his incestuous sons Eteocles and Polyneices, Antigone's brothers, started fighting for the political power.

¹ (1800-1859)

² (1817- 1862)



The two brothers killed each other in battle. Creon, their maternal uncle, took over the government of Thebes. His first decree was to forbid under threat of death that Polyneices, regarded as a traitor of his nation, should be buried. Antigone rebels against the laws of the State – the written laws – arguing that the immemorial, unwritten laws should prevail over them: “And would not be for fear of any man, not even the most arrogant, that I would risk being punished by the gods for violating them”. Therefore, she decides to perform her brother’s funeral services, even at the risk of her own life.

A little over half a century later, Aristotle, in his *Rhetoric Art*, writing on justice and equity, tries to interpret Antigone’s words:

I say there is, on the one hand, the private law, and, on the other, the common law: the former varies according to the different peoples, and is defined with reference to them, be it written or unwritten; the common law is that which is according to nature. For there is a justice and an injustice, of which man has, in some way, an intuition, and which is common to everyone, even those outside any community or any reciprocal convention. This is what Sophocles’ Antigone clearly states when she declares having behaved justly when she buried Polyneices, although she was flaunting the ban: this was her natural right. “*It isn’t from today, or yesterday, but from all times that these rights come, and no one knows their origin.*” (*Rhetorical Art and Political Art*. Difusão Européia do Livro, 1959, p. 86)

Many a thinker discussing the theme “natural right” remembered the episode in *Antigone*. Besides Aristotle, it is worth mentioning, among others, Hegel, Commelin, Del Vecchio,³ Jaeger⁴, Groppali, Legaz⁵ and Duverger.⁶

³ Giorgio Del Vecchio (1878-1970) was a teacher in Messina, Ferrara Bologna and Rome.



What is the importance of the so-called “natural right”, a name that has proved so equivocal and served such different lords as Thomas Aquinas⁷ and Hobbes?⁸

As shown by Sophocles, since times already lost in the historical perspective, men have been guided by certain moral and religious principles that cannot be explained and have not been made explicit in written rules. These principles should be used as a guideline for the State legislator, and invoked when political life becomes unbearable. That was what the demolishers of the *Ancien Régime* of 1789 did, when they included in the Declaration of the Rights of Man and the Citizen the statement that “the aim of every political association is the preservation of the natural and necessary rights of men”. That was also what, after the Second World War, the constituents in Bonn did when they had evidence of the traumatic nazi experiments. “Man’s dignity is intangible. Respecting and protecting it is the duty of every public power”. (art. 1st . –1)

In the historical view, the so-called “natural law” was created as a means to resist political power, although it has, paradoxically, also contributed to reinforcing it. From *Antigone* to the stoic, from Cicero to Thomas Aquinas, there was always an attempt to support the duality of a super-right and a positive right. The former, being common to every man, had a transcendental aspect.

Therefore, it stood above the *jus positum* of each State. The latter, the positive right, being inferior, should conform to the first. But the doctrine of “natural right” was also used to justify and uphold law and

⁴ Werner Jaeger (1888-1961) started teaching at the university of Harvard in 1939. Between 1934 and 1937, he wrote his indisputably best work –*Paideia*– about the ancient Greek.

⁵ LEGAZ Y LACAMBRA, Luis. *Filosofía del Derecho*. Barcelona: Bosh, 1953, p.291.

⁶ (1917-)

⁷ (1225-1274)

⁸ (1588 – 1679)



theocratic autocracies, since everything the dictator or " God's Man " did was in obedience to higher principles far above men, and whose aim was their welfare. Hence Kant's⁹ attempt to reconcile natural and positive rights, seeing them as integrative rather than antithetical.

⁹ (1724-1804).

(**) English version by Maria Celeste Paulino Franco.

