

LIBERTY AND JUSTICE: THE DIALECTICS OF LEGAL POSITIVISM AND NATURAL LAW IN SOPHOCLES' ANTIGONE

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ABSTRACT

Indubitably, the ordinance of natural law informs human intuitiveness in the dispensation of municipal contingency order(s). Thus natural law supposedly serves as a benchmark or guide towards the formation and assessment of most positive laws. However, there is a recent steady deviation and or outright antipodality in the interface of both laws, due to the doctrine of individualism in western classical liberation, which apparently questions communal conscience or the idea of divine justice. Hence, positive law projects the selfishness of man's superiority, authority and power anchored on positivism, as it is usually in the form of decree, command, assertion, court judgment and order, deprived of any form of interaction with the natural order. Thus, it challenges the place of natural justice in the society by forcefully upholding its stake and stance in human affairs. This palpable excision of natural law from mundane legalities therefore draws the attention of writers, who seek to explicate the state of divinity in natural law, as commands given by God or nature to pilot the affairs of men. The Greek playwright, Sophocles, in his play, *Antigone*, explored these views, while establishing natural law as the supreme. Through liberalism theory, this research interrogated and further highlighted the truism of natural law as well as the banality of positivism. The paper discovers that most dictatorships, even in supposed democracies, are predicated upon wrong application of positive laws by selfish rulers determined to entrench their hold on power.

INTRODUCTION

The aftermath of events, both during and after the Second World War (WWII); the horrors and disappointments of the war as experienced by people, ushered in the rebirth of natural law. There was an increased quest for an explicit definition and establishment of appropriate laws that will govern humans and the society alike. Hence, the rule of law, which incorporates fundamental human rights, in order to manage and curb the tyrannical dispositions inherent in man surfaced. These laws were predicated and largely hinged on divinity, God's commandments, and thus are identified as natural laws.

Consequently, natural law takes its due cause in societal affairs by upholding justice and fairness, devoid of classism, discrimination and subjugation. So, natural law which Edward Coke referred as 'law of the land' or common law, becomes "the surest sanctuary that a man can take, and the strongest fortress to protect the weakest of all," (McKinnon 129). Justice Johnson also sees it, as "intended to secure the individual from the arbitrary exercise of the powers of government, unrestrained by the established principles of private rights and distributive justice". These however, reflect Plato's view on law as quoted by Ricardo Gosalbo-Bono,

that law is "a reflection of divine order consistent with the good" (233) and that, "the laws that are not established for the good of the whole state are bogus laws" (233). Aristotle supports that "true forms of government will of necessity have just laws, and perverted forms of government will have unjust laws" (233). He concludes that justice brings about lawfulness and fairness while injustice creates lawless society. Natural law advocates for equal liberty or right for everyone, unlike positive law, which advocates for the implementation of 'procedural justice' by "disregarding the omens and disdaining the stars" (McKinnon, 139) in order to please the sovereignty. Positive law, according to Han Feizi "are commands publicly published by the government, which people know to be backed by the threat of punishments, following them will be rewarded and violation of them will be punished." (Han, 289). For John Austin, they are "legal rules of a community ... general commands its sovereign has deployed." (Dworkin, 162). Admittedly, positive laws are artificial or manmade, which can be influenced by personal emotions and subjected to targeted individuals or groups in the society.

On the contrary, Hobbes argues that both laws are same, as he puts, "the law of nature and the civic law contain each other and are of equal content." (Hobbes, 212). Again, "Civic and natural

law are not different kinds but different parts of law, whereof one part, being written, is called civic, the other unwritten, natural.” But Habermas disputes Hobbes claims with his concept of ‘facticity’ stressing that positive laws are backed with threats and sanctions for the offenders, usually by the government or a ruler which is not God or divine. According to him “Such laws appear as the will of a lawgiver with the power to punish those who do not comply; to the extent that they are actually enforced and followed, they have an existence somewhat akin to social facts.” (xi).

Evidently, with legal positivism there exists restrictions and lack of freedom by authorities upon the ordinary people, while natural law gives ultimate freedom to the ruler and the ruled alike. According to Christian Ross “like a harlot, natural law is at the disposal of everyone. The ideology does not exist which cannot be defined by an appeal to the law of nature.” (261). Worthy of note is that, though, they are both laws, there is a huge difference in their implementation and their social interactions, as one deals on realism while the other on liberalism. Conversely, liberty as a center focus in fundamental human rights, should not be restricted from any but freely practiced, hence, the discourse of this paper.

LIBERALISM

Liberalism as a movement started in the sixteenth and seventeenth centuries but became pronounced in the nineteenth century with intellectuals like John Locke, Adam Smith and others. As for Locke, the society operates on ‘social contract’. In his work, *Treatises on Government* (1690), while quoting Kelvin Harrison and Tony Bayd, Locke asserts that; Authority was conferred on government by the consent of the governed to maintain order and justice and to uphold essential rights such as those of property. It followed that citizen has a right to rebel if the state abuses the rights of the citizen as included in social contract (197). So liberalism is all about liberty, especially that of a citizen whose right should not be abused or downplayed by any authority. Liberalism gives power to the majority (ordinary people) to decide for the government, as their consent is always solicited before any government’s action.

This truly explains the nature of American Revolution and their constitution during their independence in 1776. Hence, the classical statement of liberty engraved in it, as seen in *The*

Declaration of Independence (1976), which states that : We hold these truths to be self-evident, that all men are created equal, that they are endowed by their creator with certain inalienable Rights, That among these are life, Liberty and the pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed. That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government. To the Liberals, human rights are natural, inherent and determined by God which the government should support rather than challenge it with their positive laws. Manent insists that “we cannot speak of human rights without referring implicitly but directly and concretely to nature” (8). It is individual’s right to be happy, to live, to stay safe and so on. These are the concerns of natural law, while positive law brings intimidation and abuse of these rights of the ordinary citizens. Hence, Robert Post posits that “contemporary [positive] law cannot easily appeal to the authority of God, nature, divine rulers, or universal ethics; it must instead appeal to the authority of democratic self-determination.” (Post, 2).

However, liberalism is in different concepts of discourse, like classic liberalism, political liberalism, feminist liberalism, Marxist liberalism and others. These concepts address this theory based on their different individual and peculiar views. In the course of this research, liberalism is discussed from the perspectives of power relations and leadership abuse.

So, in the plays of early Greek playwrights, Aeschylus, Sophocles and Euripides they advocate for liberty of citizens in their tragedies by projecting natural law as the supreme. They foreshadow the horrors of the Second World War and the need to discard positivism and embrace the natural order. Amongst the tragedies of the period is *Antigone*, one of the most popular plays in the Theban trilogy, where Sophocles vividly juxtaposes the dialectics of both laws, as the protagonist, Antigone, defies the King Creon’s order by burying Polynices.

DISCOURSE

ANTIGONE: The order did not come from God, justice that dwells with the gods below, knows no such law. I did not think your edicts strong enough to overrule the unwritten unalterable laws of God

and heaven, you being only a man. They are not of yesterday or to-day, but everlasting, though where they came from, none of us can tell guilty of their transgression before God I cannot be, for any man on earth. (138).

Evidently, Antigone buries her brother against the rule of the state, as proclaimed by the King, because it is humane and natural for her to perform the needed obligation for the dead Prince. So, King Creon's condemnation of Antigone to death for observing the natural law, - upholding God's commandment to respect the dead, by burying her brother, Polynices, as against the established law of the state, attracts divine punishment upon the King. Conversely, the fair words of Prince Haemon should have been the King's reaction, instead his ego and pride ruin his reign when he tries to override the natural law with positive law. According to Haemon:

For this poor girl, doomed to the cruelest death, and most unjust, that ever woman suffered for an honourable action – burying a brother who was killed in battle, rather than leave him naked for dogs to maul and carrion birds to peck at. Has she not rather earned a crown of gold? – Such is the secret talk about the town (145)

Unfortunately, despite the 'secret talk', the king sees his laws and orders as final, which should be observed by all, within his jurisdiction or under his reign. Hence, he determines to set an example and protect his kingly status by killing his grieving niece, because he believes that, "he whom the State appoints must be obeyed to the smallest matter, be it right – or wrong. And he that rules his household, without a doubt, will make the wisest king, or for that matter, that staunchest subject" (144). With little or no human compassion, King Creon disregards his son, Prince Haemon's plea, of him not to create another death in a family, who lost two sons to death in one day.

Prince Haemon's protestations and advocacy is a foreshadowing of Elie Wiesel's admonitions as cited in Achebe, that "There may be times when we are powerless to prevent injustice, but there must never be a time when we fail to protest". (2012; 249). To King Creon, his order not to bury Prince Polynices stands. Antigone however, sees things differently as she insists:

I will bury my brother; and if I die for it, what happiness! Convicted of reverence – I shall be content. To lie beside a brother whom I love. We have only little time to please the living, but

eternity to love the dead.... Live, if you will; live, and defy the holiest laws of heaven.

Ismene: I do not defy them; but I cannot act against the State. I am not strong enough (128).

Evidently, Ismene's decision not to bury her dead brother for the fear of King Creon, suggests the intimidating effect of positive law upon subjects. This again gives an insight into how positive laws overtime, affect the society negatively. Hence, it either creates inhuman institutions, by intimidating subjects into becoming less considerate towards one another or promoting courtier-services, by erecting fallible and gullible institutions that in the long run, destroy Statedevelopment. However, none of the options is healthy for any society hence being a counter force against God's freedom for mankind, the society suffers greatly. In spite of all, Antigone is only advocating for the natural law, God's law, to take its due cause (impersonal) but King Creon emphasizes on the positive law (personal); projecting his decree and order to overrule the natural law by sentencing a dead body to the dogs and carrion birds instead of being buried.

So, positive law can be egocentric and discriminatory, as it privileges power and superiority. First, the king is concerned with protecting his image before his people and is therefore not willing to condone any act of disrespect from his subjects. So, his command must be obeyed and should remain absolute, whether wrong or right; there is no second thought or review as that may portray him as inconsistent and fallible. This, he preserves at the detriment of all (including his niece and son's betrothed) and for his selfish status. He fears that, "if I tolerate a traitor at home, shall I rule those abroad? He that is a righteous master of his house will be a righteous statesman. To transgress or twist the law to one's own pleasure, presume to order where one should obey, is sinful" (144).

Secondly, the discriminative aspect of positive law can be on gender, class, race, politics, religion, since it usually swings its peak on targeted individuals or group(s), based on the interest and desire of sovereignty. Consequently, in the case of King Creon, gender is the major discriminating factor, as his ego is bruised by the act of a mere girl; not necessarily by the *treacherous* act of burying her brother, but of Antigone being a female. He laments, "I hold the law and will never betray it – least of all for a woman, better be beaten, if need be, by a man, than let a woman get the

better of us” (144). So, Antigone’s action is a ‘double insult’ on his status, by the virtue of her disobedience and gender. Obviously, the King’s major concern is on the gender, as he may have tolerated the act if she is male.

Hence, positive law thrives on weaker preys, as it flourishes on intimidations and the subjugation of subjects, unlike the natural law that is naturally convincing and affirmative. Worthy of note is that, King Creon and Antigone represent the positive and natural law respectively. So, these characters certainly exude and react to the traits of their different representations, as Sophocles uses their personae to depict the manifestations of their distinct views and opinions.

Thus, King Creon’s haughty personality evidently finds Antigone’s affirmative stance irritable, as he misconstrues it for arrogance and an obvious threat to his throne. In furtherance to this, he is resolute on his decree, ready to exude the might and sovereignty of the king. In his lament, “the girl’s proud spirit was first in evidence when she broke the law; and now, to add salt to her injury, she gloats over her deed. But, as I live, she shall not flout my orders with impunity” (138). Apparently, the King is fighting a psycho-social war, obviously not necessarily for Thebes but himself.

On the contrary, Antigone is calm, as she finds fulfillment in her dispensation of the natural law, by doing that which is right before God and human. Despite being accused of a crime, whose penalty is death, she remains unwavering and unapologetic but ready to die for practicing God’s law instead of the King’s selfish command, as she asserts; “so to my grave.... If this is God’s will, I shall learn my lesson in death” (150). The sublimity of her disposition before judgement is a direct contrast to the King’s agitated state as he tackles his son, Prince Haemon, who pleads for his betrothed to be free, while imploring his father to listen to the general plea of Thebes. According to their dialogue:

CREON: would you call it right to admire an act of disobedience?

HAEMON: Not if the act were also dishonourable.

CREON: And was not this woman’s action dishonourable?

HAEMON: The people of Thebes think not.

CREON: The people of Thebes! Since when do I take my orders from the people of Thebe?

HAEMON: Isn’t that rather a childish thing to say?

CREON: No. I am King, and responsible only to myself

HAEMON: You’d be an excellent King – on a desert island

CREON: Of course, if you’re on the woman’s side

HAEMON: Only because I know you are wrong, wrong.

CREON: Wrong? To respect my own authority?

HAEMON: What sort of respect tramples on all that is holy?

King Creon is unyielding, blinded by the power of his authority which supersedes all, he sees himself as the only authority over the land of Thebes. Like the king, many leaders govern their subjects and societies in this pattern, drawing strength from their cruelly established laws to displace or humiliate their subjects. As Antigone reminds Ismene at the beginning of the play that “The noble Creon! It is against you and me he has made this order.... And now is the time to show whether or not you are worthy of your high blood” (127). Apparently, Creon’s Order is to humiliate Prince Polynices. Advertently the living daughters of King Oedipus - Antigone and Ismene, would have forever lived with shame in the entire land if not for Antigone’s insistence on following the cause of natural justice.

The final aspect of the play, is the part of divinity, where the blind seer, Teiresias cautions King Creon over his insensitive judgement upon Antigone. According to the Seer, “hapless and helpless, who can make amends. And has not set his face against repentance. Only a fool is governed by self-will. Pay to the dead his due. Wound not the fallen, it is no glory to kill and kill again” (153). At this scene, divinity and positivism embrace as the latter succumb to the former in the face of calamity. Finally, Prince Polynices will be given a proper burial while the King loses his only son, Haemon to death. Natural law triumphs in the end because it is fair to all, true and just. King Creon’s blind and self-serving decree, becomes the thesis; Antigone’s act of defiance and subsequent burial of Polynices is the antithesis while the sobering lessons and tragic events that followed Antigone’s action form the synthesis.

Sophocles’ *Antigone*, though written during the classical period, continues to be relevant as the issues it raises resonates with modern democracies. The recent push by Western democracies, especially the United States, for a universal application of LGBT rights is a case in point. Not to

be forgotten also are the various instances of selective incorporation where laws have been targeted at specific classes of people as against the dictates of natural law that preaches universal application. Western nations in the guise of humanism are increasingly becoming disdainful of natural law and are beginning to enact laws that scorn the divine essence of man. Genetic modification, liquefaction and recycling of cadavers are cases in point where science is being deployed against the dictates of nature.

CONCLUSION

From the foregoing, it is clear that many positive laws, thrive on selective incorporation. They feed on the sheer greed, haughtiness and megalomania of the rulers as well as their attempts to consolidate their hold on power. Sophocles' eponymous play is preoccupied with these as the King constantly struggles to have his way against the natural law. His decree against prince Polynices precisely captures the true state of positive law and how subjectively manipulating it can be used to get at perceived enemies. This invariably reflects its nature on the society generally, focusing on weak

individuals or institutions, as it serves as a tool of oppression by the ruling or elite class.

Natural law on the other hand seeks to unite the society more, as it treats everyone with equity and fairness, rather than being forceful or condescending. In the text, natural law supersedes positive law, as it the voice of majority and God. It revolves within humane expectations and freedom, as it usually takes preeminence above the positive law.

King Creon's insistence on having his way in spite of the dictates of natural law is akin to President Muhammadu Buhari's determination to impose RUGA and Water Resources Bill on Nigerians despite the palpable opposition by the people. It becomes a sad reminder of what happens when countries have strong rulers but weak institutions. It also underscores the impunity displayed by the Independent National Electoral Commission of Nigeria in their handling of the 2023 Presidential election, as they openly and brazenly disobeyed even their own laws in managing the election, all in their attempts to minister to the needs of the ruling elite.

REFERENCES

1. Achebe, Chinua. *There was a Country. A Personal History of Biafra*. London, Penguin. 2012.
2. Austin, John. "The Province of Jurisprudence Determined." In John Arthur & William H. Shaw (ed.), *Reading in Philosophy of Law*. Upper Saddle River: Prentice Hall. 2000
3. Becker, Carl L. *The Declaration of Independence: A Study in the History of Political Ideas* (Revised ed.). New York: Vintage Books. 1970. ISBN 0-394-70060-0. <https://www.archives.gov/press/press-releases/2005/nr05-83.html> Retrieved 28th March, 2023.
4. Dworkin, Ronald. "The model of Rules." John Arthur & William H. Shaw (ed.), *Reading in Philosophy of Law*. Upper Saddle River: Prentice Hall. 2000.
5. Habermas, Jürgen. *Between Facts and Norm*. Cambridge, Mass: The MIT Press. 1998.
6. Han Feizi. *Han Feizi Ji Jie*, in *Completed Works of Teachers*, Vol.5, footnoted by Wang Xian Zhen. Beijing, China: Unity Publishing House. 1996.
7. Harold R. McKinnon. 'Natural Law and Positive Law' *Notre Dame Law Review* Vol. 23. Issue 2. <http://scholarship.law.nd.edu/ndlr/vol23/iss2/1> Retrieved 28th, 2023.
8. Harrison Kelvin and Boyd Tony. 'Liberalism' *Understanding Political Ideas and Movement* https://www.researchgate.net/publication/327127007_Liberalism 2018. Retrieved 30th May, 2023.
9. Hobbes, Thomas. *Leviathan*. Upper Saddle: Prentice Hall. 1985.
10. John, Locke. *Second Treatise of Government* C.B. Macpherson ed., Hackett 1980.
11. Manent, Pierre. *Natural Law and Human Rights (Catholic Ideas for a Secular World)*. Notre Dame, IN: University of Notre Dame Press. 2020
12. Post, Robert. 2006. *Introduction to another Cosmopolitanism* by Seyla Benhabib. Oxford: Oxford University Press. 2006.
13. Ricardo Gosalbo-Bono (ed) *The Significance Of The Rule Of Law And Its Implications for The European Union and The United States*. Retrieved 28th, April 2023.
14. Alf Ross, Christian. *On Law and Justice* Berkeley: University of California Press. 1959

15. Sophocles. "Antigone" *The Theban Plays*.
England: Clays Ltd 1974