

Law's Stench: Antigone's Materialist Approach to Law

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The Legal Ecology of Antigone

A stench pervades Sophocles' *Antigone* and has lingered over its numerous interpretations for centuries. It is the smell of rotting human flesh, of Polynices' corpse over-baked and oozing in the merciless Cadmean sun, the 'material accomplishment'¹ – to use Paolo Virno's term – of an entire chain of actors and sites of knowledge: human and posthuman bodies, bacteria, fungi, hot sun, wild animals, dust storms, repeatedly sightless guards, grieving sisters, a dogmatic king, competing legal systems, and ancient Greek customs around death and burial. But it is also the smell of a millennial stalemate and its attendant

¹ Paolo Virno, 'The Two Masks of Materialism', trans. Alberto Toscano, *Pli* 12 (2001): 173. Virno criticises materialist accounts that just assume a vital starting point in matter, arguing instead that materialist accounts must reconstruct chains of 'material accomplishments'. This chapter draws on this argument.

rot: the conflict between Creon and Antigone, between legal positivism and natural law.² And inasmuch as it is the smell of rot and decomposition, it is also the smell of rich compost, of emerging imaginaries of law – of an *other* law – spawned in the earth-fallen detritus of the play's two dominant visions of law.

This chapter offers an experimental, olfactory reading of Sophocles' *Antigone* that foregrounds the scent of Polynices' decomposing corpse to reimagine law and its possibilities. The goal is to highlight a third account of law circulating in the play – irreducible to either Creon's legal positivist edict or Antigone's natural law appeal to the gods – and to inquire into its materiality and how legal materialist scholarship might attend to it.³ Since Aristotle's time, *Antigone* has been interpreted as staging the conflict between two legal paradigms: legal positivism and natural law.⁴ The first, represented by King Creon's edict that Polynices' body remain unburied, and the second, by Antigone's appeal to a higher law – the 'laws of the gods' – to justify her burial of Polynices. For most readings of the tragedy, this 'irresolvable conflict' motors the

² Tony Burns, 'Sophocles' *Antigone* and the History of the Concept of Natural Law', *Political Studies* 50, no. 3 (2002): 545–557.

³ For an insightful introduction to legal materialism scholarship, see Hyo Yoon Kang, 'Legal Materiality', in *The Oxford Handbook of Law and Humanities*, eds. Simon Stern et al. (Oxford: Oxford University Press, 2020). The final section of this chapter also discusses this literature.

⁴ Aristotle, *Rhetoric*, trans. C.D.C. Reeve (Indianapolis: Hackett Publishing Company, 2008), 1373b1–10. Also see Burns, 'Sophocles' *Antigone* and the History of the Concept of Natural Law', and Gabriela Remow, 'Aristotle, *Antigone*, and Natural Justice', *History of Political Thought* 29, no. 4 (2008): 585–600.

play: a conflict between human-made law and a higher law beyond or outside the state.⁵

Yet other accounts of law pop up in the legal ecology of the play too. There is at least a third account of law bubbling under in the play that Aristotle and his heirs overlook or perhaps cannot see and which this chapter focuses on. Many others, from Goethe to Judith Butler, have noted it too, but have rarely known what to do with it. Goethe apparently believed it to be spurious and pleaded with the philologists of his day to prove it so.⁶ Butler accepts its authenticity, but does not give it the status of law – a point I consider further below.⁷ But what is this perhaps spurious, perhaps not-really-law-at-all that masquerades as law in the play? Like Antigone's canonical appeal to the laws of the gods, this other account of law is also offered by Antigone, but it comes later in the play (904–920). And while

⁵ Jennifer L. Culbert, 'Shattering Law: Encounters with Love in Billy Budd' in *QLR* 28 (2010): 766. In addition to Aristotle and ancient interpretations, Hegel also offers a conflict-driven interpretation in the *Phenomenology of Spirit*, trans. A.V. Miller (Oxford: Oxford University Press, 1977) as well as many contemporary thinkers such as Luce Irigaray, 'Antigone: Between Myth and History', in *Interrogating Antigone in Postmodern Philosophy and Criticism*, eds. S. E. Wilmer and Audrone Zukauskaitė (Oxford: Oxford University Press, 2010). Nevertheless, some recent interpretations have been turning away from this 'irresolvable conflict' of the main character to the more 'prudent perspectives' of the minor characters, see, Jennet Kirkpatrick, 'The Prudent Dissident: Unheroic Resistance in Sophocles' *Antigone*', *The Review of Politics* 73, no. 3 (2011). I draw on this literature below.

⁶ Johann Wolfgang Goethe, *Conversations of Goethe with Johann Peter Eckermann*, trans. John Oxenford. (Boston: Da Capo Press, 1998).

⁷ See Judith Butler, *Antigone's Claim* (New York: Columbia University Press, 2002): 10. Also see Julen Extabe, 'Antigone's Nomos', *Animus* 13:1 (2009): 60–73.

Antigone's first appeal to the laws of the gods is framed by Creon's interrogation of her (441ff), this other account of law is offered freely (900ff). Here in fact, it is Antigone who sets the frame of the discussion on her death march – claiming that she 'was born to love, not hate' (499).

This is how Antigone puts it:

for a husband who had died there would be another
for me/And a child from another man, if I had been
deprived of this one/But with mother and father cov-
ered over, in Hades/There is no brother who could
ever grow up/By such a law [Greek: *nomos*] indeed
have I given you [Polynices' corpse addressed in the
present] preeminence in honor. (904–920)

Here Antigone seems to claim that her actions were law-ful because of her particular relationships with Polynices as well as the current state of things. In other words, the relations are both social and material as well as historical, or changing over time. They require receptivity and active listening. They are read out of the more-than-human material of the world rather than applied to it. For exam-ple, Polynices' wife could not have done it lawfully (using this law) nor could Antigone have if her parents were still alive. At the same time that the legal claim offers a logic, it also invokes a corpse. The logic is rooted in ancient Greek social family relations as well as more-than-human cycles of life and death and material contingency.⁸ It is com-plex and a bit convoluted. Its application requires recep-tivity, listening and reading the situation. The invocation is less complex but perhaps more problematic. It brings

⁸ Philippe Nonet, 'Antigone's Law', *Law, Culture, and the Humanities* 2, no. 3 (2006): 314–335.

the materiality of Polynices' no-longer-human corpse, for which Antigone acted, back to centre stage, but almost too forcefully, too brutally.

Judith Butler raises a similar critique. According to Butler, 'this is a law of the instant and, hence, a law with no generality and no transposability, one mired in the very circumstances to which it is applied, a law formulated precisely through the singular instance of its application.'⁹ On Butler's reading, Antigone's law is too trapped in its own immediacy and sensuality to be granted the name law. For law, Butler reminds us, must have something of the qualities of generality and transposability, it must have a life and wider application beyond its particular instantiations. In other words, Antigone's invocation of a corpse and her relationship to it simply cannot count as a legal claim because it is too particular. And in many ways Butler seems to be correct. Antigone's formulation fits poorly with the image of law presented by the first two accounts. In the first two accounts of law, law does take on an air of generality, as a ready-made rule that can be applied to particular situations to judge the legality of certain actions, just as a metrestick or ruler might be applied to a particular object to judge its length. It is hard to see how this third legal claim can take on the same generality and ready-made-ness.

My wager in this chapter is that the difficulty of appreciating this third account as law comes more from how we are looking at it. Rather than read Antigone's invocation of Polynices' corpse as a brute material fact, or

⁹ Ibid.

‘a law of the instance’, this chapter suggests we read Antigone’s interactions with the corpse as a complex material accomplishment with multiple layers and various actors both human and nonhuman.¹⁰ What generalisations and patterns might be discerned in Antigone’s claim on such a reading? Might it look more like law? What legal imaginaries might be waiting to be explored? Answering these questions requires returning to the stench I opened this chapter with and attending to it as a complex material composition.

An Olfactory Reading of *Antigone*: Following the Scent of Antigone’s Other Law

In recent years, a diverse range of scholars have begun to criticise oppositional readings of *Antigone* that focus on the legal conflict between Creon and Antigone. These scholars have pointed out that a focus on the oppositional conflict in the play leads to a millennial stalemate we still have not moved passed.¹¹ Rather than focus on the conflict between legal positivism and natural law, their approach has been to look to the ‘minor characters’ of the play in order to unearth alternatives to the ‘oppositional

¹⁰ Here I follow Paolo Virno, ‘The Two Masks of Materialism’, 171: “Sensualism”, if taken seriously, is anything but immediate *incipit*, a presupposition, or a tranquil foundation ... Rather, it should be conceived as a happy point of arrival for the “labor of concepts”, as the result or the apex of theory; as a complex goal, toward which converge quite sophisticated intellectual performances.’

¹¹ Bonnie Honig, *Antigone, Interrupted* (Cambridge: Cambridge University Press, 2013); Carol Jacobs, ‘Dusting Antigone’ in *MLN* 11, no. 5 (1996): 889–917; Samuel Weber, *Theatricality as Medium* (New York: Fordham University Press, 2004).

struggle' of the two main characters. My olfactory reading of the play finds motivation in this approach, but seeks to stay closer to the legal ecology of the play that many of the readings that focus on minor characters overlook.

The minor characters turned to in this recent scholarship are various. William E. Connolly turns to Tiresias in his invocation of a seer's relevance for contemporary politics.¹² Derek Barker and James Tully both turn to Haemon whose impassioned plea to his father to heed the plurality of reasonable positions is particularly suited, they argue, to our contemporary plural society.¹³ Jill Frank, Jenet Kirkpatrick, and Bonnie Honig all turn to Ismene whose 'unmanly' nonviolent resistance and desire for solidarity offer a nice counterweight to her sister's individualistic and rash actions.¹⁴ Margaret Kitzinger, Rebecca McCarthy, and Larissa Atkison turn to the Chorus whose plural composition mirrors well, they suggest, our contemporary political condition of pluralism.¹⁵

However, all these turns to minor characters move away not only from the oppositional struggle of Creon and Antigone, but also from the legal ecology of the play.

¹² William E. Connolly, 'The Theorist and the Seer' in *A World of Becoming* (Durham: Duke University Press, 2011), 148–175.

¹³ Derek W.M. Barker, *Tragedy and Citizenship* (Albany: SUNY Press, 2009); James Tully, *Strange Multiplicity: Constitutionalism in an Age of Diversity* (Cambridge: Cambridge University Press, 1995).

¹⁴ Jill Frank, 'The Antigone's Law' in *Law, Culture, and the Humanities* 2, no. 3 (2006); Jenet Kirkpatrick, 'The Prudent Dissident'.

¹⁵ Margaret Rachel Kitzinger, *The Choruses of Sophokles' Antigone and Philoktetes: A Dance of Words* (Leiden: Brill, 2008); Larissa Atkison 'Antigone's Reminders: Choral Ruminations and Common Sense', *Political Theory* 44, no. 2 (2016).

My olfactory reading also focuses on a minor character, Polynices' rotting corpse, but coupled with a discussion of law – a law that emerges out of Antigone's material-semiotic interactions with Polynices' very active corpse.¹⁶ I focus on the smell of Polynices' corpse as a way to animate it as a minor character, one that makes things happen during the play and is not simply a bloated, rotting, lifeless prop.¹⁷

Polynices is already dead when the play begins. Throughout the whole play we never *see* the corpse, but we do witness its effects, particularly the effect of its smell. Antigone refers to the corpse in the opening scene in her exchange with her sister, Ismene, and the corpse is referenced by the Chorus in their first ode when they recount both Polynices' and Eteocles' deaths. Yet, it is around line 250 that we get a description of the corpse – and this description is more of a non-description as it paradoxically details what was *not seen*. Here, one of the guards tasked with preventing the burial of the corpse comes to report to Creon that something has happened: the corpse has been buried or at

¹⁶ Ingrid Fernandez, *Necrolife* (Saarbrücken: Lap Lambert Academic Publishing, 2014); Reza Negarestani, 'The Corpse Bride: Thinking with Nigredo' in *Collapse 4* (2008): 121–161; and Margaret Schwartz, *Dead Matter: The Meaning of Iconic Corpses* (Minneapolis: University of Minnesota Press, 2015).

¹⁷ Here I follow Michel Serres's work on smell as a 'transformative' and 'metabolic' sense that offers us a different economy for sensing than that of vision, see *The Five Senses*, trans. Margaret Sankey and Peter Cowley (London: Continuum, 2009). I also draw on, Alain Corbin, *The Foul and the Fragrant* (Cambridge: Harvard University Press, 1986); Bruce Curtis, "I Can Tell by the Way You Smell": Dietetics, Smell, Social Theory', *The Senses and Society* 3, no. 1 (2008): 5–22; and Martyna Sliwa and Kathleen Riach, 'Making Scents of Transition: Smellscapes and the Everyday in "Old" and "New" Urban Poland', *Urban Studies* 49, no. 1 (2012): 23–41.

least covered in dust. Yet, as none of the guards saw anyone approach the corpse and there is no evidence of digging, the conclusion that Creon's edict has been violated is not by any means self-evident – although Creon thinks it is. This is what the guard says when Creon asks 'who violated his edict:

I do not know. For there was there no mark/of axe's stroke nor casting up of earth of any mattock; the ground was hard and dry/unbroken; there were no signs of wagon wheels./The doer of the deed had left no trace./But when the first sentry of the day pointed it out/there was for all of us a disagreeable/ wonder. For the body had disappeared/not in a grave, of course; but there lay upon him/a little dust as of a hand avoiding/the curse of violating the dead body's sanctity. There were no signs of any beast nor dog/ that came there; he had clearly not been torn./There was a tide of bad words at one another/guard taunting guard, and it might well have ended/in blows, for there was no one there to stop it./Each one of us was the criminal but no one/manifestly so; all denied knowledge of it. (248–63)

The guard's report is so focused on the failure of vision – of what was not seen – that it fails to account for the fact that it is *literally unclear* whether Polynices' body has been buried at all, rather in the words of the guard: 'there lay upon him a little dust' (256).

In her article 'Dusting Antigone', Carol Jacobs suggests that the dusting 'tells the story of another economy', one that does not conform to Creon's and the guard's economy of buried or unburied and clear, analytical boundaries.¹⁸ In her reading of the play, Jacobs highlights the contrast

¹⁸ Jacobs, 'Dusting Antigone', 891.

between the 'traceless' dusting the guard reports with the Chorus's famous 'Ode to Man'. In this – which follows on the heels of the guard's report – the Chorus praises man's capacity to chart courses across the sea and make marks on the earth:

Wonders are many, and none more wonderful than man. This being goes with the storm-wind across the foamy sea, moving deep amid cavernous waves. And the oldest of the gods, Earth the immortal, the untiring, he wears away, turning the soil with the brood of horses, as year after year the ploughs move to and fro. (332ff)

For Jacobs, the Chorus's 'Ode to Man' is a sharp foil for the traceless non-marks the guard reports. 'When Antigone works the earth, or fails to', Jacobs points out, attributing the dusting to Antigone, 'she does so differently from this universal man turned male [of the choral Ode to Man], plowing neither for possession of the earth nor of the other. She leaves the ground unmarked, unbroken.'¹⁹ In dusting rather than plowing or burying, Antigone's interaction with the materiality of Polynices' corpse 'tell[s] the story of another economy' that disrupts the black and white contrast between buried and not buried, illegal and legal, seen and unseen that govern Creon's legal positivist imaginary. Might it also point to another legal economy, one not oriented around the metaphor of sight and visibility?

After a berating by Creon, the guard returns to his post and, along with the other guards, brushes the dust off the

¹⁹ Ibid., 900.

corpse and resumes watchful guard. This time the corpse is physically described using various senses: it is 'moist' and 'tacky' and the guards leave it 'naked' (410). Furthermore, the guards are described as taking up their watch 'on the brow of the hill, to windward' in order to 'shun the smell of the corpse' (411–12). Evidently, the corpse is not only damp, but also stinky. These are important tactile and olfactory observations that cannot be taken for granted, particularly when sight has already failed us previously. They betoken interactions and ways of knowing that dip below the sights and sounds of the play. But can an account of law emerge here? Can following these scents, can tracing their 'material accomplishments' as complex chains help us better account for Antigone's *other* law? Or ought we conclude with Butler that these scents are too singular, too much of the particular instance, too immediate in their context to broker any development and transposability?

The pungent smell of the corpse suggests that it is in what forensic scientists today define as the third stage of decomposition, or the 'purge'.²⁰ Depending on factors like temperature, cause of death, and exposure to the elements, this stage usually begins a couple days after death. At this point, the corpse typically becomes 'moist' as the body's internal tissues are liquified by microbes 'native' to the body but no longer kept in check by the body's now defunct immune system. Furthermore, forensic scientists now tell us decomposition is a process that corpses both actively undergo *and* participate in. In fact, the first

²⁰ A. Marias-Werner et al. 'Decomposition Patterns of Buried Remains', *Medicine, Science, and the Law* 57, no. 3 (2017).

stage of decomposition is known as ‘autolysis’ literally ‘self-digestion.’²¹ Only minutes after death, enzymes in cells build up to toxic levels. In normal cellular functioning, these enzymes are a routine product of cell metabolism. However, when cells are deprived of oxygen, they lose the ability to remove these enzymes, and at a certain point – usually just minutes after the cessation of respiration – the enzymes begin to devour the cell membranes, leaking out into the flesh in a process of self-cannibalism.²²

This breakdown of cell walls allows vast numbers of bacteria that inhabit our bodies – something both internal to us and yet paradoxically foreign to our genome – to begin spreading through the body. Our bodies are replete with bacteria and microbes from our eyelashes and tongues to skin, gut, and genitals.²³ When the body is ‘living,’ these bacteria are held in check and even perform essential tasks for healthy human functioning. However, after death, these bacteria spread like wildfire, consuming everything in their path. For example, human anaerobic gut bacteria – crucial for human digestion and largely responsible for the stench of decomposition – begin eating their way out of the intestines and then systematically through the rest of the internal organs. This process is only exacerbated once the white blood cells of the immune system become defunct. These gut bacteria are so voracious and systematic in their consumption habits that today forensic criminal investigators use their

²¹ Mo Costandi, ‘Life after Death: The Science of Human Decomposition.’ *The Guardian*, 5 May 2015. <https://www.theguardian.com/science/neurophilosophy/2015/may/05/life-after-death>

²² *Ibid.*

²³ Peter Turnbaugh et al. ‘The Human Microbiome Project,’ *Nature* 449 (2008): 804–810.

presence or absence on certain organs to determine time of death.²⁴

When thinking about the 'disappearance' of Polynices' corpse – the crux of the legal issue in *Antigone* – the question of who or what is acting is clearly important. Indeed, the whole tragedy is premised on the allocation of blame for this deed. Nevertheless, nearly all interpretations fail to consider the active role Polynices' corpse plays in its own disappearance. The enzymes that initiate this process carry the same DNA as the cells they destroy; they are of the same stuff at the most fundamental genomic level. Gut bacteria, in contrast, are different. Collectively these critters are made up of thousands of different species that inhabit the human gut in varying and diverse compositions throughout an individual's life. Still, it is hard to say that these bacteria are 'outsiders' without literally turning the stomach inside out. Without them, digestion and life as we know it would be impossible. The self depends on these nonhuman critters for its vital functioning just as much as it depends on its human cells.²⁵

But if we are not quite willing to see these bacteria as wholly 'other' in life, why should we in death? If we say, 'I digest my food' or 'I eat an apple', as Annemarie Mol has pointed out, and mean something by it – all the while recognising it is never a hermetically-sealed subject who digests food but a complicated network of human organs, multispecies bacteria, and conscious as well as unconscious drives – should we not also say '*I decompose?*', '*I partake in the process of turning internal organs*

²⁴ Ibid.

²⁵ Ibid.

into liquid that then seeps out into the soil making *my* flesh moist?’²⁶ And if we say *I* am active in this process of decomposition, must we not also say that ‘*I* help make the stench that draws the flies and maggots and that sends the guards windward’? Might *I* even help produce the tacky fluid that dust might stick to?

The argument here is *not* that Sophocles had a modern theory of organic decomposition and forensic science, but that we would be amiss to deodorise from our reading the very bodily, stinky, immanent, and literally posthuman material happenings that abound in the play. Polynices’ corpse is presented by Sophocles in all its vibrant material messiness – stinky, sticky, sweet – a ‘material accomplishment’ composed of diverse interactions that also include other characters of the play too.²⁷ In the play, Polynices’ corpse is repeatedly presented as active, morphing, changing, enmeshed in a complicated web of interaction: attracting vultures and dogs, driving upwind the guards stationed to watch over Polynices’ corpse, turning neighbouring cities against Thebes, inciting the ire of the gods, and beckoning a grieving sister. Might these diverse chains of interactions provide some of the patterns and generality Butler requires of law?

Not long after the guards retake their watch over Polynices’ corpse, a second dusting or burial scene occurs. This time Polynices’ corpse is described as embedded in series of interactions with varying outcomes. Baking in the noonday sun, the corpse emits

²⁶ Annemarie Mol, ‘I Eat an Apple: On Theorizing Subjectivities’, *Subjectivity* 22, no. 1 (2008).

²⁷ Virno, ‘The Two Masks of Materialism’, 173.

a stench that the guards find so unbearable they must physically move. And then – broadening the cast of non-human minor characters:

a squall lifted out of the earth a storm of dust/a trouble in the sky. It filled the plain/ruining all the foliage of the wood/that was around it. The great empty air/was filled with it. We closed our eyes, enduring/this plague sent by the gods. When at long last/we were quit of it, why, then we saw the girl. (lines 417–423)

Crucially, this second dusting scene is no less problematic from the guards' visual perspective than the first. Even though they were keenly paying attention this time, and the corpse was not shrouded in the darkness of night, their eyes still failed them. This time though it is not fatigue that caused them to close their eyes, but a more external actor: a dust storm.

According to the guard who recounts this second dusting scene to Creon, the dust filled the entire sky, and when the dust settled, Antigone was espied standing over the corpse. On returning to Creon, the pitiable guard continues his account:

She was crying out with the shrill cry/of an embittered bird/that sees its nest robbed of its nestlings/and the bed empty. So, too, when she saw/the body stripped of its cover, she burst out in groans/calling terrible curses on those that had done the deed/and with her hands immediately/brought thirsty dust to the body; from a shapely brazen/urn, held high over it. (lines 424–431)

As the dust settles, Antigone wails unintelligibly like a brooding bird bereft of its chicks. It is tempting to read

this as the response of a grieving sister upon the sight of her brother's stinking, oozing, desecrated corpse. The guards, of course, have already responded to the corpse in their own way, 'moving windward' to escape the stench. Antigone, however, seems to be drawn toward the corpse. Polynices is her brother, and although dead and stinky, Antigone moves toward the corpse as Greek custom would seem to demand.²⁸ Yet this is not how the guards describe the interaction they witness. Rather than a grieving Greek sister, they describe something more animalistic, something nonhuman: a wild bird 'shrieking'.

Yet Antigone is not the only one 'shrieking' in her interactions with Polynices' corpse. Nor are her interactions with Polynices' corpse entirely 'singular' or 'of the instant' as Butler suggests, but patterned and shared, though perhaps not with humans.²⁹ The blind seer Tiresias' birds of augury also fall into 'shrieking and unintelligible frenzy' when they encounter the corpse of Polynices (999). Tiresias gives this ominous report to Creon just after Antigone's account of her other law:

our altars and hearths have been defiled, every one, by birds and dogs, with carrion from the son of Oedipus who lies in miserable death [Polynices]. And hence the gods no longer accept sacrificial prayers from us, nor blazing thigh-bones, nor does any bird scream out intelligible cries, for they have consumed a stream of dead man's blood. (lines 997ff)

²⁸ Danielle Allen, *The World of Prometheus: The Politics of Punishing in Democratic Athens* (Princeton: Princeton University Press, 2000).

²⁹ Butler, 'Antigone's Claim', 10.

In Tiresias' telling, the birds of Thebes, like Antigone, find themselves drawn to Polynices' corpse and their response is akin to Antigone's. In other words, Antigone's invocation and interaction with Polynices' corpse is not a singular or idiosyncratic occurrence in the play. It follows, to some extent at least, a pattern that can be seen in the carrion birds. Attuning ourselves to this seemingly minor detail can help us appreciate how the corpse's draw on Antigone is not simply her idiosyncratic 'subjective' response: it draws birds too. This helps us see that Antigone's actions – which she claims as lawful – do follow a certain 'transposable' or 'generalizable' pattern to return to Butler's critique.³⁰

But this only tells us that we might be operating in an alternative legal imaginary here. What can we say about it despite vision's repeated failures to apprehend it? I turn now to articulate three features that I believe are particular to this *other* law and distinguish it from the two dominant accounts of law in the play. I then conclude by suggesting how this alternative legal imaginary opens new avenues for legal materialist research.

A Materialist, Earthbound Natural Law

The olfactory reading I have just presented begins to scent out the contours of a legal imaginary that is admittedly hard to see. Yet there are three features that I would like to foreground. First, law here is presented to us as *an ongoing process of composition*. Unlike the other two accounts which offer the image of law as a readymade

³⁰ Ibid.

rule to be applied, the third account only begins to take shape as we trace the series of ‘material accomplishments’ that compose its unfolding in the present time of the play.³¹ This does not mean the first two accounts do not have rich materialist stories to tell about their creation or coming into being, as much recent legal materialist scholarship has shown.³² But for these first two accounts, this materialist story is located in an unwritten preface when it comes to the characters’ engagement with law. For the two dominant accounts, law is imposed, applied, and appealed to ready-made rather than composed through the characters’ interactions. In short, both Creon’s edict and Antigone’s appeal to the law of the gods enters the stage fully made, an object rather than a process.

In contrast, we meet Antigone’s other law at the time of its composition, not because the text has been spuriously added as Goethe wanted to believe, but because here law is not a rule, but a ‘form of life’, something lived, engaged, composed, and even resisted.³³ In interacting with Polynices’ corpse, in the corpse’s draw on her, in its own actions and ‘self-digestion’, in the bird-like wails it invokes out of her, Antigone co-creates a law, weaving into it form and pattern through her engagement with it and the world around her. Her co-creators include a decomposing and self-digesting corpse, dust, a storm, birds, guards, and a host of other critters and actors. Together they form

³¹ Virno, ‘The Two Masks of Materialism’, 173.

³² In particular see Bruno Latour, *The Making of Law*, trans. Marina Brillman and Alain Pottage (Cambridge: Polity, 2003).

³³ For a development of this theme that nonetheless does not develop the materialist angle pursued here, see James Boyd White, ‘Justice in Tension’, *No Foundations* 9 (2012): 1–19.

what I venture to call a posthuman 'nomic community' drawing on Robert Cover's notion that law is also generated from below, in communities of interaction and not just official state institutions.³⁴

This leads to a second feature: *an orientation toward law and justice beyond the state*. Here Antigone's other law may seem to approximate her initial appeal to the laws of the gods, albeit in a much more earthbound and immanent way. Both legal claims seem to hold out hope that regardless of what the state and its institutions say, there is a realm of natural justice, a lawfulness existing beyond or at least not fully reducible to state power.³⁵ This of course can be a difficult thing to accept, especially for legal positivists and their heirs.³⁶ But there is an important difference here too. While Antigone's appeal to the laws of the gods grounds its orientation toward justice precisely in its immateriality – its 'unwrittleness' and 'timelessness' (454–458) – or metaphysical qualities, her *other* account of law grounds it in the fecund compost of Polynices' active, morphing, becoming all-too-material corpse.

Here, law's orientation to justice is found not in the realm of transcendence, but in the unfinished, compostable, and emergent properties of law as a material

³⁴ Robert Cover, 'Nomos and Narrative' in *Narrative, Violence, and the Law* (Ann Arbor: University of Michigan Press, 1995), 95–172.

³⁵ Linda Ross Meyer, *The Justice of Mercy* (Ann Arbor: University of Michigan Press, 2010), 11.

³⁶ Marianne Constable, 'Genealogy and Jurisprudence', *Law and Social Inquiry* 19, no. 3 (1994); Phillippe Nonet, 'What is Positive Law?', *Yale Law Journal* 100, no. 3 (1990).

composition.³⁷ Here the assertion is *not* that law is law only when it corresponds with some transcendent, universal rule, but the materialist's old adage: 'only in the connection of thought with pleasure (or with pain) do ethics and politics find a non-negligible foundation.'³⁸ This is 'corporeal justice' which rather than locate justice outside space and time – a vision of what the world ought to be – locates it within the plurality and indeterminacy of a material world that is in the process of becoming, a series of 'material accomplishments.'³⁹ In this legal imaginary, justice is never absolute or pure, it is composed in the here and now and the sites of its composition are not restricted to the state and its institutions. Indeed, in Antigone's case, it happened outside the city walls and in confrontation with state law.

This segues into the final feature I would like to highlight here: this law's *proximity*. Law here is a bit blurry, its edges are not quite clear, they decompose and emerge. In short, as the play repeatedly shows us, this law is hard to see. It is not black and white, but more blurred and composite and constantly missed by the eyes. Unlike Creon's law which is clearly placed in time and space and unlike Antigone's first account which anchors itself in the metaphysical, this other account is

³⁷ A similar orientation to law, but one wedded to legal positivism, can be found in Bruno Latour, *The Making of Law*.

³⁸ Virno, 'The Two Masks of Materialism', 169.

³⁹ Elizabeth Grosz and Pheng Cheah, 'The Body of Law: Notes Toward a Corporeal Justice' in *Thinking Through the Body of Law*, eds. Pheng Cheah et al. (New York: New York University Press, 1996).

proximal. It is here, but not clearly in the way the first two accounts of law are present. It can be sensed – more with the nose as we've seen than with the eyes – but it cannot be defined, it cannot be analytically boxed. It requires receptivity and listening. And it goes deeper, the blurriness or proximality seems to even be essential to processes of human-more-than-human patterning – a way of weaving the interactions into a material world that well exceeds the human estate.

Arguably, this is what makes Antigone's other account of law so hard to appreciate as law as well as such a threat to legal positivism's emphasis on analytical clarity.⁴⁰ In this legal imaginary, law cannot be defined as such, it emerges and decomposes, it patterns and connects, it is the more-than-human in-between stuff that holds us and separates and must be cared for. One must be continually receptive to scent it out. It requires something more akin to what Donna Haraway has called 'situated knowledges' and this can be problematic for models of law that look to define law as rule rather than a mode of engagement or form of life.⁴¹ But what does this desire to define law – so central to legal positivism – obscure? I turn now to briefly

⁴⁰ For the legal positivist position see, Herbert L.A. Hart, *The Concept of Law* (Oxford: Oxford University Press, 2012). This antithesis between the analytic clarity of legal positivism and the blurriness of natural law goes back to Jeremy Bentham's *An Introduction to the Principles of Morals and Legislation* (London: T. Payne & Son, (1789) [1780]), which develops one of the first legal positivist critiques of natural law thought.

⁴¹ Donna Haraway, 'Situated Knowledges: The Science Question in Feminism and the Privilege of Partial Perspective', *Feminist Studies* 14, no. 3 (1988): 575–599.

consider how this *other* materialist account of Antigone's natural law might open new paths for contemporary legal materialist research.

Conclusion

Developing alongside resurgent materialist currents across the humanities and theoretical social sciences in recent years, multiple law and humanities scholars have begun to examine what it would mean to study law as a material phenomenon, while simultaneously decentering the human as maker and subject of law.⁴² Like their fellow travellers in other fields, the strategies employed by legal materialists appear to be animated by a complex of recent developments demanding circumspection around anthropocentric modern visions and spurred by discomfort with poststructuralism's singular emphasis on language and culture at the expense of matter and nature.⁴³

The resulting findings have been diverse and insightful. From Bruno Latour's⁴⁴ focus on the physical mediation of law's creation by following lawyers' paper trails⁴⁵ and law's physical mediators⁴⁶ from products like handcuffs,

⁴² See Diana Coole and Samantha Frost, eds. *New Materialisms: Ontology, Agency, and Politics* (Durham: Duke University Press, 2010) for an overview of new materialist trends. See Kang, 'Legal Materiality', for an overview of legal materialism.

⁴³ *Ibid.*, 44–45.

⁴⁴ Latour, *The Making of Law*.

⁴⁵ Also see Cornelia Vismann, *Files*, trans. Geoffrey Winthrop-Young (Stanford: Stanford University Press, 2008).

⁴⁶ Kyle McGee, *Bruno Latour: The Normativity of Networks* (Abingdon: Routledge, 2014).

turnstiles, border walls⁴⁷ to patented Coke cans⁴⁸ and Peter Goodrich's⁴⁹ – as well as this series' – emphasis on the aesthetic, sensuous materiality of law. Alongside these investigations, there has been nuanced work that has sought to explore law's relationship to language and language's relationship to materiality too. Hyo Yoon Kang's important critique of a vitalist materialism especially for law – reminding us that things don't just call out, but that their calls must be constructed – and differentiation between law's physical matters and a non-physical legal materiality has been timely here as has Marianne Constable's exploration of law as linguistic bond.⁵⁰

This chapter has sought to contribute to this scholarship by exploring a legal materialist imaginary found in a play written nearly 2,500 years ago. The play offers this legal materialist imaginary in contrast to the dominant imaginaries of legal positivism and natural law that conventionally frame the play. And while many have denied this *other* legal claim the status of legal, this chapter has argued that there is enough scent evidence to at least experimentally grant this status. How might one study the materiality of law in this alternative legal imaginary? What would giving up legal positivism's presuppositions

⁴⁷ See the various research articles in the special edition 'Material Worlds: Intersections of Law, Science, Technology, and Society' of *The Journal of Law and Society* 39, no. 1 (2012).

⁴⁸ Andreas Philippopoulos-Mihalopoulos, 'Atmospheres of Law: Senses, Affects, Lawscapes', *Emotion, Space and Society* 7 (2013): 35–44.

⁴⁹ Peter Goodrich, 'Sepculla Law: Image, Aesthetic and Common Law', *Law and Critique* 2, no. 2 (1991): 233–254.

⁵⁰ Kang, 'Legal Materiality'; Marianne Constable, *Our Word is Our Bond: How Legal Speech Acts* (Stanford: Stanford University Press, 2014).

about law – including the demand that it be analytically definable – mean for the study of legal materialism?

The olfactory reading presented here explored the possibility of an immanent and materialist, yet more-than-human law: an earthbound natural law. It suggested that the play dramatises the emergence of an *other* law from the rich compost left in wake of Creon and Antigone's millennial stalemate. This other law might also be called natural law, but with important differences from Antigone's first appeal. This other law is composed through material interactions rather than applied readymade as a gift (or prohibition) from the heavens. It is oriented to justice, but a justice that emerges in the indeterminacy and plurality of an immanent world in the process of becoming.⁵¹ It seems to make its home with a materialist or corporeal justice that emerges or is possible in posthuman 'nomic communities' on the edges of the state.⁵²

How might law's materiality be thought here on the fringes of the state in posthuman, earthbound nomic communities? How might law operate more or differently as part of our material interactions with a world in becoming? This is a question for contemporary legal research and not *Antigone*. One place a legal materialist

⁵¹ Elizabeth Grosz and Pheng Cheah, 'The Body of Law'.

⁵² Donna Haraway and Bruno Latour have both begun to theorise this type of posthuman, 'earthbound' community, See Donna Haraway, *Staying with the Trouble: Making Kin in the Chthulucene* (Durham: Duke University Press, 2016); Bruno Latour, *Facing Gaia: Eight Lectures on the New Climatic Regime*, trans. Catherine Porter (London: Polity, 2017). On 'nomic communities', in addition to Cover, 'Nomos and Narrative', see F.G. Snyder, 'Nomos, Narrative, and Adjudication: Toward a Jurisgenetic Theory of Law', *William & Mary Law Review* 40, no. 5 (1998–1999).

might look would be at the composition of law in communities that are not states, but still produce *law*, especially against the background of state law like Antigone. Recent ethnographic research on the politics of ecovillages and intentional communities is interesting here because they provide us both with sites in which non-state nomic activity can be observed and posthumanist practices are frequently explored both conceptually and practically.⁵³ More research is needed here by legal materialists, but that is outside the scope of this exploratory chapter.

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⁵³ Joshua Lockyer, *Seeing Like a Commons: Eighty Years of Intentional Community Building and Commons Stewardship in Celo, North Carolina* (New York: Lexington Books, 2021); Zach Rubin, 'A Not-so-silent Form of Activism: Intentional Community as Collective Action Reservoir' *Humanity and Society* 45, no. 4 (2021): 509–532; Ferdinand Stenglein, 'Exiting Private Property: On the Interstitial Terrain of Becoming Communards', in *Rule and Resistance Beyond the Nation State: Contestation, Escalation, Exit*, eds. Felix Anderl et al. (London: Rowman & Littlefield, 2019), 221–241; Philip Wallmeier, 'Exit as Critique: Communes and Intentional Communities in the 1960s and Today', *Historical Social Research* 42, no. 3 (2017): 147–171.

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