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**ANCIENT CIVIL DISOBEDIENCE AND THE ETHOS OF
FIDELITY TO TRUTH**

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Abstract

This paper concerns ancient conscientious disobedience, arguing its popular alignment with orthodox civil disobedience theory is misguided. This is due to a conflict of ethoi, namely, the fidelity to truth of antiquity and the fidelity to law of civil disobedience. It discusses two ancient narratives, Sophocles' Antigone and chapter 6 of the Book of Daniel, to examine the legitimacy of their status as ancient paradigms of civil disobedience. Although the protagonists of both narratives conform to most requirements of civil disobedience, they lack the requisite protest intent. They intend to follow their religious duties, not change the law. This reveals a more profound disconnect from civil disobedience in the form of conflicting ethoi. Civil disobedience is founded upon the actor's fidelity to law. An intent to protest is its most important expression, as it shows the actor's concern lies in improving the justice of the legal system the law protested operates within. Antigone and Daniel's lack of an intent to protest thus shows an absence of fidelity to law. Instead, both are motivated by fidelity to truth. They are solely concerned with following the dictates of their respective truths, a commitment so strong that it operates independent of whether their acts constitute disobedience to a mortal law. This paper then turns to two more ancient case studies: the story of the Hebrew Midwives and Socrates. While they were undoubtedly not civil disobedients, the fidelity to truth manifest in both reveals it to be the predominant ethos behind ancient conscientious disobedience. Hence, this paper concludes that civil disobedience does not align with most acts of ancient disobedience. But this does not undermine the gravitas of these ancient narratives. Instead, the best approach is to recognise that they remain potent instances and notions of conscientious, but not civil, disobedience.

Word length

The text of this paper (excluding abstract, table of contents, footnotes and bibliography) comprises exactly 14,988 words.

Subjects and Topics

Civil Disobedience-Fidelity to Truth-Fidelity to Law-Antigone-Daniel Chapter 6.

I Background

A Introduction

I, men of Athens, salute you and love you, but I will obey the god rather than you; and as long as I breathe and am able to, I will certainly not stop philosophizing.

— Socrates¹

The gravitas of antiquity is transcendent. Although thousands of years may separate us from the ancient world, it has continued to capture and shape modern thinking. This paper will concern the location of ancient conscientious disobedience within civil disobedience theory.² I will argue that ancient disobedience should not be shoehorned into the distinctly modern concept of civil disobedience, as there is a disconnect between their respective ethoi.

Part I will outline civil disobedience generally. Against this, Part II will discuss two stories considered some of the earliest examples of civil disobedience, chapter 6 of the Book of Daniel and Sophocles' *Antigone*,³ to determine whether their paradigmatic status is warranted. I argue that, while both present acts that conform closely to the requirements of civil disobedience, neither Daniel nor Antigone fulfil the requirement of an intention to protest. They do not seek to effect some change to the law through their disobedience. Instead, both actors merely intend to perform their religious duties irrespective of its prohibition. Chapter 6 of the Book of Daniel and *Antigone* thus emerge as stories principally concerned with demonstrating the protagonist's strength of faith, not their involvement in the mortal legal system. Far from being one of many arbitrary requirements, I identify the protest requirement as central to civil disobedience. For this reason, I conclude Daniel and Antigone should not be considered paradigmatic civil disobedients.

¹ Plato "Apology" in Christopher Emlyn-Jones and William Preddy (eds) *Plato: Euthyphro, Apology, Crito, Phaedo* (Harvard University Press, Cambridge, 2017) 86 [*Apology*] at lines 29d–e (emphasis added).

² While antiquity is a broad term, this paper will focus upon narratives from the Old Testament and Ancient Greece (primarily Athens in the sixth to fourth centuries BC).

³ *The King James Bible* <thebibles.com> at Daniel 6; and Dudley Fitts and Robert Fitzgerald *The Antigone of Sophocles: An English Version* (Harcourt, Brace, 1939) [*Antigone*].

In Part III, I explore the implications of Daniel and Antigone's failure to meet the protest requirement in greater depth. I argue that it reveals a divide between the respective ethoi of civil disobedience and the conscientious disobedience found within the Book of Daniel and *Antigone*. I identify fidelity to law, principally expressed through the protest requirement, as the central feature of civil disobedience. In contrast is fidelity to truth, where the actor disobeys a law in pursuit or performance of truth. While the former is concerned with sparking change to the law through their disobedience, the latter is merely concerned with doing what is right. Disobedience under fidelity to truth, therefore, is coincidental to the actor's commitment to following truth. Accordingly, I locate Daniel and Antigone's acts as emblematic of their fidelity to truth. My concern is not with proposing a new class of civil disobedience, or disobedience more generally, to which Daniel and Antigone belong. Rather, I argue their lack of fidelity to law undoes the notion of considering them paradigmatic civil disobedients, as replacing fidelity to law with truth collapses the "civility" of civil disobedience.

In Part IV, I propose that fidelity to truth captures most instances of conscientious disobedience in antiquity, moving ancient disobedience further away from civil. I discuss two more case studies to demonstrate this point: the Hebrew Midwives of Egypt and Socrates. Although a covert act performed by disobedients who refuse to accept their punishment, the Midwives' saving of the Hebrew newborns per God's law represents an extremely ancient instance of conscientious disobedience marked by fidelity to truth. Despite taking place much earlier, and in a vastly different societal context, I link the Midwives' fidelity to truth to that of Socrates. My discussion of Socrates is different in form to that of the Midwives, as establishing his fidelity to truth is a more complex task. Accordingly, I use the opportunity to interrogate the plethora of commentary concerning his place as a prototypical figure of fidelity to law. I conclude the discussion on whether Socrates affirmed a doctrine of justified disobedience of the law is misguided, arguing that what emerges from the Platonic texts is that he is a character principally concerned with fidelity to truth in the form of *parrhesia*. Accordingly, while neither the Midwives nor Socrates come close to fulfilling the requirements of civil disobedience, the fidelity to truth underpinning both demonstrates its pre-eminence as the ethos behind ancient conscientious disobedience.

I conclude that the root cause of the disconnect between ancient conscientious and civil disobedience is sourced in a conflict of ethoi. The fidelity to truth behind most ancient disobedience is incompatible with the fidelity to law of civil disobedience. Although the power within these ancient narratives endures, this does not justify shoehorning them into civil disobedience. The better approach is to recognise that they are compelling stories of conscientious, but not civil, disobedience.

B Civil Disobedience Generally

Following the American civil rights movement and anti-Vietnam war protests of the mid-20th century, civil disobedience emerged as a topic of academic interest.⁴ Attempting to capture those acts of non-violent disobedience characteristic of the contemporary political unrest in America, John Rawls defined civil disobedience as a “public, non-violent, and conscientious act contrary to law usually done with the intent to bring about a change in the policies or laws of government”.⁵ Underpinning Rawls’ definition is the disobedient’s fidelity to law: their ultimate concern lies with the health of the wider legal system, and hence the actor breaks the law as a last resort to bring the majority’s attention to an injustice.⁶ Rawls’ account became the most persistent and influential orthodox civil disobedience theory.⁷

This paper will principally treat civil disobedience according to its orthodox account. Rawls’ theory represents the most influential orthodox conception, but I also take guidance from Carl Cohen’s 1966 framework.⁸ His requirements for civil disobedience are essentially the same as Rawls’, but with some valuable nuance. While Rawls writes civil disobedience is “usually” done with the intent to change a law and does not

⁴ Piero Moraro *Civil Disobedience: A Philosophical Overview* (Rowman & Littlefield International, Maryland, 2019) at 1.

⁵ John Rawls “The Justification of Civil Disobedience” in Aileen Kavanagh and John Oberdiek (eds) *Arguing About Law* (Routledge, London, 2009) 244 at 247.

⁶ At 248–249.

⁷ Hugo Bedau “Introduction” in Hugo Bedau (ed) *Civil Disobedience in Focus* (Routledge, London, 1991) 1 at 4; and see Raffaele Laudani *Disobedience in Western Political Thought: A Genealogy* (Cambridge University Press, Cambridge, 2011) at 112–113.

⁸ Carl Cohen “Civil Disobedience and the Law” (1966) 21(1) Rutgers L Rev 1.

explicitly include “protest” as part of his definition,⁹ Cohen holds as an essential element the requirement for the act to be a protest through which the actor intends to effect change to the law.¹⁰ This is not to say there is any conflict between Rawls and Cohen. Quite the opposite, in fact. Fidelity to law underpins both theorists’ views of civil disobedience, as Cohen requires the civil disobedient to “accept the general legitimacy of the system of laws” and cannot place themselves outside or above them.¹¹ Further, Cohen’s explicit requirement of protest can essentially be read into Rawls’ account. Protest is expressed through the disobedient’s appeal to the majority’s sense of justice, which itself represents the essential act of Rawlsian civil disobedience:¹²

Civil disobedience is a public act which the dissenter believes to be justified by [a] conception of justice, and for this reason it may be understood as addressing the sense of justice of the majority in order to urge reconsideration of the measures protested ...

So, both Rawls and Cohen represent effectively the same orthodox account. Using both in tandem is helpful, however. While Rawls focuses more on expounding the rationale underpinning the requirements, Cohen sets out the requirements themselves in a manner that represents a more developed framework.

Accordingly, the requirements of civil disobedience I will use for this paper are:

- (1) An intentionally illegal act; that is
- (2) Public;
- (3) Non-violent;
- (4) Which the actor intends to function as a protest, in that they seek to effect some change to a law through their disobedience; and
- (5) Following which, the actor accepts and submits to the punishment for their lawbreaking.

My application of this framework is also influenced by Piero Moraro, who emphasises the importance of analysing civil disobedience by looking at the dispositions of the

⁹ Rawls, above n 5, at 247.

¹⁰ Cohen, above n 8, at [2.12]–[2.13].

¹¹ At [3.1]–[3.3].

¹² Rawls, above n 5, at 248 (emphasis added).

disobedient actor, not merely their act.¹³ In other words, determining what drove the actor to disobey is crucial to assessing whether their act qualifies as civil disobedience. This approach is congruent with the orthodox account; the only difference is that it heightens the scrutiny required to assess whether the actor intended their disobedience to function as a protest. Cohen allows for a degree of flexibility in applying his framework: “[a]bsolute precision in definition and the use of categories ... is out of the question”.¹⁴ Hence, just because the requirements above are unfulfilled, whether an act is civil disobedience can remain an open question. Analysing the actor’s dispositions, therefore, also helps to clarify the status of borderline cases.

While this paper will principally concern the orthodox conception of civil disobedience, it is worth noting that its boundaries and very definition remain a fiercely debated subject. The 21st century saw a broadening of Rawls’ civil disobedience, exemplary of which was Robin Celikates’ radical democratic conception.¹⁵ Celikates took issue with particular elements of Rawls’ theory. For instance, the publicity requirement was too broadly defined and suggested that the actor must notify the authorities before performing their disobedient act.¹⁶ Non-violence, too, was hamstrung by the various definitions of “violence”. Some states view property damage as violence, while in others, collectively standing in one place or sitting down in the street amounts to violent coercion.¹⁷ Celikates also questioned Rawls’ requirement of appealing to the majority’s sense of justice and, in addition, allowed for civil disobedience which aimed to effect more systemic change, rather than an act directed towards a particular law or policy.¹⁸

Yet, Celikates retains the protest requirement: the disobedients must “pursue the political aim of changing specific laws, policies, or institutions”.¹⁹ Its enduring place in even a highly iconoclastic theory, therefore, demonstrates the centrality of protest to civil disobedience. In part, this is because protest establishes the disobedience as a

¹³ Moraro, above n 4, at 2.

¹⁴ At [1.21]–[1.22].

¹⁵ Robin Celikates “Democratising Civil Disobedience” (2016) 42 *Philos Soc Crit* 982.

¹⁶ At 983.

¹⁷ At 983.

¹⁸ At 984–985.

¹⁹ At 985.

means to a particular end and helps to distinguish it from unprincipled lawbreaking.²⁰ Furthermore, it highlights the intention that should be underpinning the actor's disobedience, namely, a desire to bring about some change in law or policy by bringing attention to its injustice. The centrality of protest to civil disobedience is a subject I will later discuss in greater detail within Part III.

Celikates' revision of the other orthodox requirements, however, demonstrates that civil disobedience is a live issue. It is partly for this reason that it remains a valuable subject to analyse; the plethora of competing theories represent civil disobedience is a fertile ground for new ideas.

C The Roots of Civil Disobedience

While civil disobedience may have only emerged as an academic theory in the 20th century, acts of conscientious disobedience are nothing new. This has not been lost on scholars working within civil disobedience. For example, many laud Sophocles' fifth-century BC play, *Antigone*, as containing one of the first great examples of civil disobedience.²¹ Moreover, ancient examples of conscientious disobedience have had a tangible influence on the development of civil disobedience theories. Martin Luther King Jr, who introduced civil disobedience into the popular academic consciousness,²² relied heavily upon Socrates and early Christians under Roman persecution to explain his practice of civil disobedience.²³

However, a disconnect soon becomes evident when one turns to these ancient paradigms. In the next part, I will focus on two of these paradigms, Daniel and Antigone. Both actors perform remarkably similar acts of disobedience and fulfil most requirements of civil disobedience. But there seems to be an incongruence between the

²⁰ See Cohen, above n 8, at [2.13].

²¹ Susan Tiefenbrun "On Civil Disobedience, Jurisprudence, Feminism and the Law in the *Antigones* of Sophocles and Anouilh" (1999) 11(1) *Law and Literature* 35 at 35; and see Dorota Gozdecka "Antigones of Contemporary Theatre: Capturing Problems of Today's Civil Disobedience in a Theatre Play" (2021) 25 *Law Text Culture* 204 at 204.

²² Laudani, above n 7, at 104.

²³ See for example Martin Luther King Jr "Letter from Birmingham Jail" in Martin Luther King Jr (ed) *Why We Can't Wait* (Signet Classics, New York, 2000) 85.

spirit of their acts and the disobedience that Rawls, and civil disobedience more generally, intended to capture. While the disobedient's fidelity to their legal system is central to civil disobedience, Daniel and Antigone appear to be more concerned with simply performing their religious duties. From this, my research question arose:

Do Antigone and Daniel represent a disconnect between ancient and civil disobedience? If so, what lies behind it?

This first requires assessing whether a disconnect exists, which I undertake in the next part by examining Daniel and Antigone's acts against the framework of civil disobedience set out above.

II Ancient Paradigms of Civil Disobedience

A Introduction

In this part, I will discuss two ancient paradigms of civil disobedience: Daniel and Antigone. Their acts of disobedience are often lauded as some of the earliest examples of civil disobedience,²⁴ and the purpose of this part is to assess the legitimacy of that claim. After summarising Daniel and Antigone's respective acts, I will evaluate them against the framework of civil disobedience set out in Part I of this paper. I reach remarkably similar conclusions for both instances of disobedience. While they are public, non-violent and illegal acts, neither Daniel nor Antigone can be said to have intended to protest through their disobedience. That is, they did not intend to effect some change in the law. Far from being a failure to conform to an arbitrary requirement, Daniel and Antigone's lack of the requisite protest intent reveals an ethos behind their disobedience that distinguishes it from civil disobedience. Both are stories about the protagonist's strength of faith, not their involvement in the mortal legal system.

²⁴ See for example David Daube *Civil Disobedience in Antiquity* (Edinburgh University Press, Edinburgh, 1972) at 82 regarding Daniel's status as a "veritable charter of civil disobedience" and 5 regarding Antigone's as the "Greek prototype of civil disobedience".

B Daniel

The first paradigm I will discuss is chapter 6 of the Book of Daniel, found in the Old Testament.²⁵ The protagonist of this narrative, Daniel, is perceived by many to be an ancient, archetypal hero of civil disobedience: “[a]s is well known, Daniel commits one of the most famous acts of civil disobedience ever made in that he directly disobeys the unrighteous law of [the King]”, claims Samms.²⁶ There is an understandable reason for Daniel’s paradigmatic status. His act within chapter 6 is in near-perfect accordance with the requirements of orthodox civil disobedience. It is open, illegal and non-violent; and Daniel accepts his punishment. But I will argue he lacked the requisite intention to protest the law, that is, to intend to effect the law’s repeal by disobeying it. Far from a non-essential requirement, I will argue Daniel’s failure to meet the protest requirement undermines his status as a civil disobedient, revealing it is a story concerned with faith, not politics.

1 Background

Our protagonist is Daniel, a Jew taken from his native Jerusalem to Babylon to serve the King. Although Babylon was a gentile city, Daniel endured to maintain his faith. Many years later, he is promoted to chief of the King’s princes.²⁷ Jealous of Daniel, however, the princes conspire to bring about his downfall. Targeting Daniel’s faith, they convince the King to pass a decree that states “whosoever shall ask a petition of any God or man for thirty days, save of thee, O king, he shall be cast into the den of lions”.²⁸ After Daniel learns the King has passed this decree, he goes home, opens his windows towards Jerusalem and prays three times a day.²⁹ He has no desire for privacy, and soon the princes find Daniel praying and proceed to tell the King.³⁰ In accordance with his decree, the King casts Daniel into the lion’s den and seals it with a stone.³¹ But

²⁵ *The King James Bible*, above n 3, at Daniel 6.

²⁶ Daniel Samms “Daniel: A Model for the Cultural Relevancy of the Believer” (Senior Thesis, Liberty University, 2003) at 20.

²⁷ At Daniel 6:1–6:2.

²⁸ At Daniel 6:7.

²⁹ At Daniel 6:8.

³⁰ At Daniel 6:11–6:13.

³¹ At Daniel 6:16–6:17.

when the King returns the following day, he finds Daniel is still alive.³² Daniel declares his God has saved him from the lions, and the King is so impressed that he not only forgives Daniel but instructs his kingdom to recognise the power of Daniel's God (in addition to casting into the lion's den all 120 princes who conspired against Daniel, as well as their wives and children).³³

2 *The Civil Disobedience of Daniel*

Daniel's act in chapter 6 closely conforms to the requirements of civil disobedience set out in Part I. His prayers represented an intentional illegal act; praying directly violated the King's decree as Daniel thereby petitioned God instead of the King.³⁴ Perhaps Daniel did not accept the illegality of his act. When the King finds him unharmed the next day, Daniel tells him that "[the lions] have not hurt me ... [because] innocenc[e] was found in me ... [and] I have done no hurt".³⁵ However, this speaks to Daniel's personal justification for his act, not whether it was, in fact, illegal.³⁶ Turning to publicity, although opening his windows towards Jerusalem was a religious custom Daniel abided by, he certainly knew that he would be visible to the public.³⁷ The fact he continued to pray despite the princes gathering to witness him confirms Daniel intentionally acted openly and publicly. Bar the fate of the princes (which was the King's, not Daniel's, doing); his act was also undoubtedly non-violent. It is thus

³² At Daniel 6:20.

³³ At Daniel 6:21–6:26. Note that this is not tantamount to the king converting Babylon to Judaism: Philip Davies *Daniel* (JSOT Press for the Society for Old Testament Study, Sheffield, 1985) at 112.

³⁴ See also Milton Konvitz "Conscience and Civil Disobedience in the Jewish Tradition" in Milton Konvitz (ed) *Judaism and Human Rights* (2nd ed, Routledge, London and New York, 2001) 112 at 113, who argues the fact that Daniel's prayers were a positive act and not an omission is a strong indication of civil disobedience. The question of whether civil disobedience can include an omission is not within the scope of this paper, however.

³⁵ At Daniel 6:22.

³⁶ See Cohen, above n 8, at [2.3] regarding the distinction between the identification and justification of civil disobedience.

³⁷ Daniel Jones "Civil Disobedience: A Contextual and Theological Examination of Biblical Texts Addressing Government and Civic Duties for Christian Citizens" (PhD Dissertation, Mid-America Baptist Theological Seminary, 2019) at 114–115.

understandable why Milton Konvitz views Daniel as fulfilling the essential orthodox elements,³⁸ while Daube presents him as a “veritable charter of civil disobedience”.³⁹

However, one could argue that Daniel did not fulfil the punishment requirement. Cohen writes that a civil disobedient, like any other lawbreaker, must be “properly subject to the normal punishment for the offense he commits”.⁴⁰ Although Daniel went into the lions’ den without protest, God saved him from their jaws. Further, Daniel believed he was innocent and deserved to be saved.⁴¹ He therefore lacks the martyrdom that Cohen identifies as necessary for civil disobedience: in accepting punishment, the civil disobedient transforms their act into one of sacrifice and is thus able to draw public attention to the intense concern they have for their protest.⁴² Perhaps this is semantics, as Daniel’s punishment was technically to be cast into the lions’ den — but such a punishment is tantamount to a death sentence. This conceptual difficulty is likely why Konvitz rephrases the punishment requirement in light of Daniel: the actor must simply “show a *readiness* to suffer for their conscience”.⁴³ But the nuances of whether Daniel fulfilled the punishment requirement need no more exploration. Besides demonstrating the power of Daniel’s God, the fact the lions did not kill Daniel carries just as much narrative power as it would had he died. Daniel’s commitment to his faith is the most salient point of the story. The fact he was willing to be sealed in the lion’s den — not because he thought God would save him, but because his commitment to the divine was so strong that it rendered any mortal consequence, including death, meaningless — exemplifies this.

The central theme of Daniel’s commitment to his faith guides a further element of discussion: whether Daniel’s act was one of protest, through which he intended to effect change to the King’s laws. I will argue it was not. Before doing so, however, I reiterate that protest is one of the most integral requirements of civil disobedience, demonstrated

³⁸ Konvitz, above n 34, at 115.

³⁹ Daube, above n 24, at 82.

⁴⁰ Cohen, above n 8, at [5.1].

⁴¹ At Daniel 6:22.

⁴² Cohen, above n 8, at [5.2].

⁴³ Konvitz, above n 34, at 115 (emphasis added).

by its near-universal place in both modern and orthodox theories.⁴⁴ Although I discuss the philosophical basis for protest's centrality to civil disobedience in Part III, at this point in my paper, the key focus is that Daniel's failure to meet the protest requirement begins to reveal the disconnect between his act and civil disobedience.

Because Daniel acted immediately once the King passed the law, he almost certainly intended to object to it publicly — but whether he intended to bring about that law's repeal is another question. Scholars overwhelmingly agree this was not the case. Instead, it is far more likely Daniel intended to demonstrate the strength of his faith and commitment to divine law, which continued despite any mortal law to the contrary.⁴⁵ Jones, for example, writes that Daniel's "public display was not a political statement or done in self-edification".⁴⁶ Instead, the law was intentionally contrived to take advantage of Daniel's faith, which his adversaries knew would remain unshaken. So, when the King passed the law, Daniel neither changed nor concealed his ordinary religious behaviour.⁴⁷ He simply continued acting in accordance with his religious duties. It would therefore be misguided to view Daniel's act as a protest through which he sought to change the law. His faith was not contingent on any law; it continued despite any mortal prohibition and, therefore, whether that law was repealed was immaterial.

In this way, Daniel emerges as a story concerned primarily with an individual's strength of faith, as opposed to one where an actor uses disobedience politically, in that they seek to effect change and thus operate in consideration of mortal laws and concerns. It is interesting that the only reason Daniel's act became disobedience is because of a political whim. If it were not for the capricious passing of the decree, there would be nothing significant about Daniel's prayers. Of course, Daniel was still presented with a choice between following God's law (which provided for his religious duty of prayer) and the King's law. But the fact Daniel acts almost without a second thought for the

⁴⁴ Celikates, above n 15, at 985; Cohen, above n 8, at [2.12] and [2.13]; and Rawls, above n 5, at 247.

⁴⁵ See Konvitz, above n 34, at 112.

⁴⁶ Jones, above n 37, at 114.

⁴⁷ Jones, above n 37, at 114 citing Stephen Miller *Daniel* (B&H Publishing Group, Nashville, 1994) at 179.

latter, nor its consequences, reveals he is a character whose obedience to divine law is so steadfast that he is, in many ways, blind to any mortal prohibitions and the fact he may be disobeying them.

The centrality of Daniel's strength of faith reflects the broader purpose of the Book of Daniel. The Book was written during the sixth century BC, a time of turbulent competition between powers who were hostile to Judaism.⁴⁸ In 587/6 BC, Jerusalem was captured by King Nebuchadnezzar, which resulted in the exile of many Jews to the gentile Babylon.⁴⁹ The first audience of the Book of Daniel were likely these Jewish refugees, for whom they could identify in Daniel a pillar of strength.⁵⁰ This was necessary — their exile had created a crisis of faith, as Philip Davies explains:⁵¹

... gone were the Temple and the land, and with them the monarchy, the nation-state, and the formal political role of the prophet. Gone was the God who defended his holy city. In brief, the religion of Israelite theologians ... was in disarray.

Daniel functioned as a model for the Book's audience. He demonstrated how Jews could still have complete faith in *Yahweh's* supremacy, despite their external circumstances and the fact they were now in a land where other deities were worshipped, thus raising doubts about *Yahweh's* continued sovereignty.⁵² Chapter 6 of Daniel does not represent the Bible putting forward a guide for disobedience to effect political change — the exiled “Jews had no political influence, and their behaviour could therefore have no direct effect on the course of political events”.⁵³ To see this in chapter 6 of Daniel misses the point of the narrative. Instead, it demonstrated to its audience, at a time when it was of paramount necessity, that they could have faith in

⁴⁸ Barbara Leung *Glimpsing the Mystery: The Book of Daniel* (Lexham Press, Washington, 2016) at 8. Leung notes there is some debate about whether Daniel was written in the sixth or second century BC, but considers the former more likely: at 8–9.

⁴⁹ Davies, above n 33, at 22.

⁵⁰ Leung, above n 48, at 6 and 8.

⁵¹ Davies, above n 33, at 23.

⁵² Davies, above n 33, at 24; and Leung, above n 48, at 11.

⁵³ Davies, above n 33, at 23.

their God despite the fact that doing so may have been unpopular, or even disobedient, to the world around them.

3 *Daniel: Conclusion*

Daniel's failure to meet the civil disobedience requirement of an intent to protest hamstring his status as a paradigmatic civil disobedient. Of interest, however, is that Daniel fulfils the other requirements. He carried out his prayers openly, non-violently and in direct violation of the King's decree; and went willingly into the lion's den to accept his punishment. Hence, at face value, it is easy to perceive him as a paradigm of civil disobedience. But his lack of intent to protest — although only one among many requirements, protest strikes at the heart of civil disobedience — begins to reveal a divide between the respective ethoi of ancient disobedience and modern civil disobedience. Again, the story of Daniel is about the strength of his faith, not involvement in the mortal legal system. This ethos is a theme that will be resounded in my discussion of *Antigone* below.

C *Antigone*

Sophocles' *Antigone*⁵⁴ is an Athenian tragedy that many perceive to contain one of the earliest models of civil disobedience. Antigone, the play's namesake, is perhaps more widely celebrated than Daniel for her paradigmatic status. Robert Cover, for example, proclaims that "Antigone's star has shown brightly through the millennia. The archetype for civil disobedience has claimed a constellation of first-magnitude emulators".⁵⁵ Susan Tiefenbrun agrees with Cover: "Antigone [is] one of the first great heroines of civil disobedience and the inspiration of resistance movements against tyranny".⁵⁶ It is understandable why Antigone has obtained this paradigmatic status: she comfortably fulfils most of the requirements of civil disobedience. But a point of intrigue appears because, precisely like Daniel, Antigone fails to fulfil the protest requirement. Although the tragic genre *Antigone* belongs to means it is a far more morally ambiguous narrative than the Book of Daniel (and thus deserving of a fuller discussion), I will conclude that Antigone is an apolitical character. Resembling Daniel,

⁵⁴ *Antigone*, above n 3.

⁵⁵ Robert Cover *Justice Accused: Antislavery and the Judicial Process* (Yale University Press, New Haven, 1975).

⁵⁶ Tiefenbrun, above n 21, at 35.

she is only concerned with following the dictates of divine law, regardless of whether they conflict with any mortal prohibitions. Accordingly, Antigone lacks the requisite protest intention for civil disobedience, thus undoing her status as a paradigmatic civil disobedient.

1 Background

First performed in the fifth century BC,⁵⁷ *Antigone* is set against the mythical Theban war, where two brothers, Eteocles and Polyneices, fought over the throne.⁵⁸ After Polyneices attacks the city, the two brothers are killed and their uncle, Creon, becomes King. *Antigone* opens immediately after Creon's ascension to the throne. Antigone is the sister of the two dead brothers and the niece of Creon. Creon gives one brother, Eteocles, a glorious funeral and burial. However, he passes a law prohibiting the burial of Polyneices, whom he declares a traitor. Creon orders that Polyneices is to rot in the fields outside the city and that anyone who tries to bury him will be sentenced to death.⁵⁹

Antigone is told of this law by her sister, Ismene, and decides that she will bury Polyneices. Despite her sister's pleas and an almost certain punishment of death,⁶⁰ Antigone remains unshaken: "I will bury him; and if I must die, I say that this crime is holy".⁶¹ Unphased by anyone knowing of her plans,⁶² Antigone buries Polyneices where he lays, covering him with a small amount of dirt — "[j]ust enough for the ghost's peace".⁶³ She does this twice after the first mound is blown off in a storm. It is a repeated but minimal breach of the law, therefore.

⁵⁷ Although the exact year is disputed, it was likely between 450–440 BC: Douglas Cairns *Sophocles: Antigone* (Bloomsbury Publishing Plc, London, 2016) at 1–3.

⁵⁸ Andrew Brown "Antigone" in Sander Goldberg and Tim Whitmarsh (eds) *The Oxford Classical Dictionary* (online looseleaf ed, Oxford University Press). See also the translator's note given by Fitts and Fitzgerald: *Antigone*, above n 3, at n 1.

⁵⁹ *Antigone*, above n 3, at lines 14–24.

⁶⁰ At lines 45–52.

⁶¹ At lines 55–56.

⁶² At line 69.

⁶³ At lines 218–228.

Antigone is caught and brought before Creon, where she denies nothing.⁶⁴ Antigone tells Creon that his edict breached natural law. There are “honours due all the dead” and, accordingly, Polyneices deserved a proper burial irrespective of whether he was a traitor.⁶⁵ Although she accepts her death sentence, Antigone denies her actions were illegal.⁶⁶ She may have breached Creon’s law but, in doing so, was following divine law. She therefore rejects the validity of his decree, as it was “not God’s proclamation”.⁶⁷ An Athenian audience would likely have agreed with Antigone. In Greek myth, denial of burial was treated with strong disapproval. The *Iliad*, for example, presents Akhilleus’ refusal to bury Hektor as the ultimate horror.⁶⁸ Refusing interment was a religious affront: upon death, the body belonged to the gods and burial represented its transfer to them.⁶⁹ Although contemporary Athenian law prohibited the burial of traitors within Athenian soil, they could undoubtedly be laid to rest elsewhere.⁷⁰ Therefore, Creon’s outright prohibition of Polyneices’ burial, regardless of location, was a clear wrong.

The play’s resolution confirms the severity of Creon’s transgression. Despite the public’s support of Antigone,⁷¹ Creon entombs her, leaving her to die. Only after unfavourable auspices and the gods’ rejection of the Theban’s sacrifices⁷² — undeniable proof that Creon has upset the divine order — does he finally relent, ordering for Polyneices to be buried and Antigone to be freed.⁷³ But it is too late: Antigone has hung herself.⁷⁴ Haimon, Creon’s son and Antigone’s fiancée, takes his

⁶⁴ At line 352.

⁶⁵ At lines 413 and 357–363.

⁶⁶ At lines 406 and 722.

⁶⁷ At lines 357–363.

⁶⁸ Cairns, above n 57, at 38.

⁶⁹ Cairns, above n 57, at 39.

⁷⁰ Cairns, above n 57, at 39–40.

⁷¹ At lines 552–559.

⁷² At lines 777–803.

⁷³ At lines 777–811 and 866–867.

⁷⁴ At lines 959–960.

life upon learning of this,⁷⁵ and the Queen does the same upon learning of Haimon's death.⁷⁶ Thus, it is Creon who has committed the only wrong.⁷⁷

2 *The Civil Disobedience of Antigone*

Although a secular text and written in the different social context of Ancient Greece, *Antigone* closely resembles the disobedience in the Book of Daniel. Most orthodox civil disobedience requirements can be promptly disposed of. Burying Polyneices was an intentionally illegal act even though, like Daniel, Antigone proclaims her innocence. Second, her act was public. Antigone invites Ismene to tell everyone that she buried Polyneices,⁷⁸ does not hide her identity while carrying out the act and does not try to flee when caught.⁷⁹ Third, her act was unequivocally non-violent. Fourth, Antigone accepts her punishment. She does not deny the charges⁸⁰ and accepts her death sentence.⁸¹ Although Antigone's punishment was technically to be entombed, Creon certainly expected her to die.⁸² The practice of live entombment allowed the state to hand down a death sentence that supposedly absolved them from religious guilt, as the state only *indirectly* caused prisoner's eventual death in the tomb (due to starvation, for example).⁸³ Thus, Creon's order to "lock her living in a vault of stone ... to absolve the State *of her death*", shows he intended the entombment to function as a death sentence.⁸⁴ Antigone therefore accepts her punishment, as she died in the tomb. The fact she took her own life should not invalidate this.⁸⁵

⁷⁵ At lines 960–963.

⁷⁶ At lines 984–1007.

⁷⁷ There is some debate on Antigone's culpability. See, for example, Laudani, above n 7, at 10, discussing Hegel's belief that Antigone was guilty and the "constitutive tragedy of all Western culture".

⁷⁸ At line 69.

⁷⁹ At lines 330–334.

⁸⁰ At line 352.

⁸¹ At lines 364–372.

⁸² At lines 632–636.

⁸³ The same justification was used for the live burial of Vestal Virgins in Rome: see Ariadne Staples *From Good Goddess to Vestal Virgins: Sex and Category in Roman Religion* (Routledge, London, 1998) at 151.

⁸⁴ At lines 633–635 (emphasis added).

⁸⁵ See also Tiefenbrun, above n 21, at 41, arguing that Antigone accepts her punishment but taking her life within the tomb accords her a degree of honour.

Yet, precisely like Daniel, an impasse is reached at the protest requirement. Her disobedience revealed the law's injustice and prompted its change,⁸⁶ but was this Antigone's intended result? There is a significant amount of debate on this topic, mainly because *Antigone* is a tragedy and thus contains inherently complex and ambiguous characters. Bonnie Honig argues Antigone was a political hero, breaking Creon's law to effect change to his legal system by making a claim for her agenda and "solicit[ing] a public that may see things her way".⁸⁷ If Honig is correct, it would mean Antigone's burial of Polyneices represents a typical Rawlsian call to the majority's sense of justice through the identification of an injustice.

Similarly, Tina Chanter proposes Antigone intended to "articulate a law (*nomos*) to which Creon remains blind".⁸⁸ She buries Polyneices to draw public attention to the injustice of not only Creon's law but also of a legal system prohibiting female participation.⁸⁹ In this way, she intended to effect change to both Creon's burial prohibition and the wider legal system through her act, "sketch[ing] a future of a politics yet to come".⁹⁰

Chanter and Honig are supported by the fact that, on many levels, *Antigone* is a profoundly political play. James Kierstead reads *Antigone* as a conflict between democracy and tyranny, the latter manifest in Creon's legal system.⁹¹ Kierstead's reading is congruent with the historical context: Athenian democracy triumphed over tyranny in the late sixth century BC and had taken hold by the time Sophocles wrote

⁸⁶ See Lewis Sussman "Similarities between Antigone and Martin Luther King Jr.: 'An Unjust Law is no Law at All'" (2002) 78(1) *The Classical Bulletin* 43 at 51; and Tiefenbrun, above n 21, at 36.

⁸⁷ Bonnie Honig *Antigone, Interrupted* (Cambridge University Press, Cambridge, 2013) at 7–8. See also Theodore Koulouris "Neither Sensible, Nor Moderate: Revisiting the *Antigone*" (2018) 7(2) *Humanities* 60.

⁸⁸ Tina Chanter "Antigone's Political Legacies: Abjection in Defiance of Mourning" in SE Wilmer and A Zukauskaitė (eds) *Interrogating Antigone in Postmodern Philosophy and Criticism* (Oxford University Press, Oxford, 2010) 19 at 21.

⁸⁹ At 24.

⁹⁰ At 21.

⁹¹ James Kierstead "Democracy's Humility: A Reading of Sophocles' *Antigone*" (2017) 34 *Polis* 288. See also Sussman, above n 86, at 51.

Antigone.⁹² Sophocles presents Creon as the antithesis of democracy: the Greek word used for Creon’s decree, “κῆρυγμα”, was not used to describe a democratically passed law.⁹³ Creon ignores the public’s support for Antigone, who are terrified by Creon and “tell [him] only what [he likes] to hear”.⁹⁴ His decree was one justified by his personal enmity towards Polyneices, not for concern of the *polis*, and its passing accordingly establishes himself as an autocrat.⁹⁵ He is the paradigmatic tyrant,⁹⁶ and the state he rules “is an illegitimate one precisely because it is undemocratic”.⁹⁷ It could, therefore, be imagined that Antigone intended to expose the injustice of Creon’s tyranny, as effecting a triumph of democracy over tyranny would likely have been the course of action Sophocles’ Athenian audience thought was just.⁹⁸ In this way, one could read a prototypical Rawlsian appeal to the majority’s sense of justice in Antigone’s burial of Polyneices, bolstering Chanter and Honig’s arguments.

In diametric opposition is another school of thought that perceives Antigone as a purely apolitical character, with her intention entirely unrelated to matters concerning the *polis*.⁹⁹ A firm proponent of this approach is Susan Wiltshire, who argues that, unlike a traditional civil disobedient, Antigone’s act is not a means to an end. Citing Bernard Knox, Wiltshire writes that:¹⁰⁰

⁹² PJ Rhodes “General Introduction” in PJ Rhodes (ed) *Athenian Democracy* (Edinburgh University Press, Edinburgh, 2004) 1 at 2.

⁹³ Kierstead, above n 91, at 294.

⁹⁴ *Antigone*, above n 3, at lines 550–559.

⁹⁵ Tiefenbrun, above n 21, at 42.

⁹⁶ Kierstead, above n 91, at 294.

⁹⁷ Kierstead, above n 91, at 290.

⁹⁸ See also Sussman, above n 86, at 51.

⁹⁹ There is a discussion to be had about whether Antigone was a revolutionary, thus distinguishing her from civil disobedience. Sussman, for example, views Antigone’s burial of Polyneices as a challenge to Creon’s legitimacy as a ruler: Sussman, above n 86, at 51. This is outside the scope of this paper, however, partly for the reason that it is difficult to tell whether Antigone is challenging Creon’s entire legal system, as the burial prohibition is the first law he had passed.

¹⁰⁰ Susan Wiltshire “Antigone’s Disobedience” (1976) 9(1) *Arethusa* 29 at 31 citing Bernard Knox *The Heroic Temper: Studies in Sophoclean Tragedy* (Cambridge University Press, London, 1964) at 114 (footnote omitted).

[although] the exposure of the corpse of Polyneices is not in the interest of the city ... this is accidental to [Antigone's] motives. 'Her attitude', [Knox] says, 'is not that higher, enlightened loyalty to the *polis* which pursues the best policy rather than the immediately expedient; it is an attitude which ignores the interests of the *polis* completely'.

Wiltshire's argument is intertwined with the chorus' description of Antigone as "αὐτόνομος" (autonomous, subject to one's own laws), which she interprets as a recognition that Antigone "has removed herself from all man-made law ... except that of her own nature".¹⁰¹ Thus, instead of acting to effect some change in the *polis*, or even perform her duties according to divine law, Antigone's nature "obligates her to fulfil only the dictates of her own consciousness".¹⁰² Under this approach, Antigone is an entirely self-interested character who exploits a divine law, that only happens to coincide with her interests, as a false justification for her burial of Polyneices. Therefore, she does not intend to bring about the repeal of the burial prohibition or any change in Creon's legal system, because those are intentions demonstrative of concern for the health of the broader *polis*.

While I certainly agree with Kierstead's reading of *Antigone* as a political play, I am unconvinced that Antigone intended to effect either the repeal of the burial prohibition or a change in Creon's wider legal system — that is, she did not intend to protest Creon's law or legal system by burying Polyneices. She is apolitical in that sense, yet I agree with the more considered approach of Clifton Spargo that Antigone is only autonomous to the extent that her motivation transcends political considerations.¹⁰³ Antigone is not a law unto herself: she acts out of reverence to divine law, and it is only upon a strained, cynical reading that her repeated accounts of this can be perceived as an explanation Antigone uses to justify her self-interest.

Instead, I propose Antigone's intention reflects that of Daniel's: to abide by divine law despite any mortal law to the contrary. Although *Antigone* is not a religious text (as the Book of Daniel is), Antigone mirrors Daniel as a character who operates in accordance

¹⁰¹ Wiltshire, above n 100, at 32.

¹⁰² Wiltshire, above n 100, at 33.

¹⁰³ Clifton Spargo "The Apolitics of Antigone's Lament (From Sophocles to Ariel Dorfman)" (2008) 41(3) Mosaic 117 at 118.

with, and because of, their unshakeable faith in divine law. Antigone sets out not so much to disobey Creon's mortal law, but rather to follow the laws of God. Just as Daniel's prayers only become illegal, and thus disobedient, by virtue of a capricious and atypical law; so too does Antigone's burial of Polyneices only become extraordinary because Creon has passed an unprecedented law, contrary to the divine and inspired only by personal enmity. Thus, like Daniel, Antigone is unconcerned with any mortal law which conflicts with the divine because the operation of her faith is entirely independent of any whims of a mortal legal system. This is the effect of Antigone's confrontation with Creon:¹⁰⁴

... your edict, King, was strong, but all your strength is weakness itself against the immortal unrecorded laws of God. They are not merely now: they were, and shall be, operative for ever, beyond man utterly.

The source and dictates of their respective divine laws may differ (Daniel practices the monotheistic Jewish faith, while Antigone adheres to the polytheistic religious framework of Ancient Greece);¹⁰⁵ and although Antigone is martyred while Daniel is not, the substance of both characters' disobedience is the same: they are motivated to act because of, and according to, their faith in a higher law; a motivation which persists despite any mortal law to the contrary or threat of death (whether realised or not).

3 *Antigone: Conclusion*

It is understandable why Antigone appears as a paradigmatic case of ancient civil disobedience. Antigone's burial of Polyneices was a non-violent, open violation of Creon's law, for which she accepted her punishment. There is a notable debate about whether her objective in breaking the burial prohibition was to effect the law's repeal. While the political nature of *Antigone* lends weight to those answering this question in the affirmative, Antigone's repeated references to her divine obligations cannot be overlooked. I have argued she was an apolitical character, concerned solely with burying Polyneices per her divine obligations. The strength of Antigone's commitment to these obligations rendered the fact that Creon's mortal law prohibited it immaterial.

¹⁰⁴ At lines 357–363.

¹⁰⁵ The religious framework of *Antigone*, and Ancient Greece more generally, was polytheistic despite the use of "God" in the singular form by the translators, which purely reflects a stylistic choice.

Thus, like Daniel, Antigone does not fulfil the protest requirement. This hinders her status as a paradigmatic civil disobedient.

D Ancient Paradigms: Conclusion

Thus far, I have discussed two ancient figures celebrated as paradigms of civil disobedience in antiquity: Daniel and Antigone. Although both operate within different religious contexts, they are remarkably similar. *Prima facie*, both characters seem to conform closely with the requirements of civil disobedience, but fail to meet the requirement of an intention to protest a law or policy through their act. This is important, as the disobedience's function as a protest is one of the most critical requirements of both orthodox and modern civil disobedience. Antigone and Daniel, on the other hand, are motivated by their faith and intend merely to perform their obligations according to it despite any mortal law or consequence to the contrary.

So, both characters leave us with the same question. How should the fact they fulfil almost all requirements of civil disobedience, yet fail to meet the protest requirement, be squared against their status as paradigmatic civil disobedients? On the strict assessment against the requirements of civil disobedience I have conducted in this part, their lack of the requisite protest intention is enough to exclude them as civil disobedients. But this still leaves the debate reasonably unresolved. Cohen, for example, allows for a degree of flexibility in his framework to include borderline cases.¹⁰⁶

In the next part, I will elaborate on the importance of the protest requirement for civil disobedience. I will argue that it is not just one among many requirements — instead, it is representative of the ethos of civil disobedience, namely, the actor's fidelity to law. Therefore, Daniel and Antigone's lack of intent to protest points towards an ethos distinct to fidelity to law, undoing the notion that they are paradigmatic civil disobedients.

¹⁰⁶ Cohen, above n 8, at [1.21]–[1.22].

III Fidelity to Law versus Truth

A Introduction

Antigone and Daniel's lack of intention to protest represents an even greater divide between their acts and civil disobedience than their failure to meet one among many requirements initially suggests. In this part, I will locate the source of this disconnect as a conflict of ethoi. Specifically, I argue that Daniel and Antigone's motivations represent an ethos of fidelity to truth, vastly distinct from the fidelity to law emblematic of civil disobedience.

In doing so, I first discuss fidelity to law and its centrality to civil disobedience. Following this, I will set out the concept of fidelity to truth and how it captures the ethos of Daniel and Antigone's disobedience. I argue the difference between fidelity to law and truth means actors operating under the latter, including Daniel and Antigone, should not be understood as performing civil disobedience, even if they closely conform to all requirements bar an intention to protest.

B Fidelity to Law

The actor's fidelity to the law of the state they operate within is the most central and defining feature of civil disobedience. Essentially, fidelity to law means that the disobedient's primary concern is the state's health. This forms the moral basis of civil disobedience: the disobedient is justified in breaking the law because it is a means of remedying some injustice within the legal system. Fidelity to law's centrality to modern and orthodox civil disobedience was recognised by Alexander Livingston, who writes:¹⁰⁷

Fidelity to law asserts distinctively modern conceptions of self and freedom as the basic conditions of illegal yet legitimate political action ... The display of fidelity is crucial for civil disobedience to function as a 'mode of appeal' to the public's shared conception of justice. Civil disobedience, in short, is an exercise in public reason by other means.

¹⁰⁷ Alexander Livingston "Fidelity to Truth: Gandhi and the Genealogy of Civil Disobedience" (2018) 46(4) Political Theory 511 at 513–514 (footnote omitted).

Put simply, if the ethos of contemporary civil disobedience could be distilled, it would be fidelity to law.¹⁰⁸ It is the rationale uniting and underpinning its (perhaps otherwise arbitrary) requirements of publicity and accepting punishment, as Rawls himself explained:¹⁰⁹

Civil disobedience expresses disobedience to law within the limits of fidelity to law, and this feature of it helps to establish in the eyes of the majority that it is indeed conscientious and sincere, that it really is meant to address their sense of justice. Being completely open about one's acts and being willing to accept the legal consequences of one's conduct is a bond given to make good one's sincerity ...

Fidelity to law also explains why the protest requirement is so essential. The reason an actor must protest a law or policy through their disobedience, and thus intend to effect change, is because they are primarily faithful to the health of the wider legal system. In fact, protest reflects the “civility” of civil disobedience.¹¹⁰ It demonstrates the civil disobedient does not intend to act in hinderance or defiance of the legal system, as a revolutionary or unprincipled lawbreaker would.¹¹¹ Rather, wanting to change the law shows a deep concern for the legal system that law operates within and a desire to improve its overall justice. There is simply no utility in wanting to see a law changed if one is not ultimately faithful to the legal system that law is a part of — it is a recognition of that system's power and importance. In sum, fidelity to law underpins the protest requirement, but the inverse is also true. A protest requirement reflects the centrality of fidelity to law, because wanting to change the law shows the actor is ultimately concerned with the content and justice of the wider legal system.

The existence of the protest requirement thus demonstrates fidelity of law's enduring centrality to modern civil disobedience theories. Modern theorists of civil disobedience critiquing the orthodox Rawlsian conception have certainly considered the place of

¹⁰⁸ See Candice Delmas and Kimberly Brownlee “Civil Disobedience” (4 January 2007) Stanford Encyclopedia of Philosophy <plato.stanford.edu> at [1.3].

¹⁰⁹ Rawls, above n 5, at 248.

¹¹⁰ Çiğdem Çıdam and others “Theorizing the Politics of Protest: Contemporary Debates on Civil Disobedience” (2020) 19 Contemporary Political Theory 513 at 524; and see Cohen, above n 8, at [2.13] and [3.1].

¹¹¹ Çıdam and others, above n 110, at 524.

fidelity to law,¹¹² but I argue that their retention of the protest requirement shows it endures even the most iconoclastic theories. In formulating his radical democratic theory, Robin Celikates rejects a blanket requirement that the actor remains within the limits of fidelity to law.¹¹³ Celikates' issue, however, is with prohibiting the actor from wanting to effect broader systemic change to an unjust legal system,¹¹⁴ as opposed to only a particular law.¹¹⁵ He still requires an intention to protest: civil disobedience is an "act of protest ... with which citizens ... pursue the political aim of changing specific laws, policies, or institutions".¹¹⁶ Thus, I argue fidelity to law is still the central ethos of Celikates' modern theory because the actor is still concerned with improving the justice of the wider legal system.

The same can be said for Kimberly Brownlee, who rejects a requirement for the actor to be motivated by fidelity to law (instead, it can be any "moral commitment") but still requires an aim to "bring about a lasting positive change in law or policy".¹¹⁷ Brownlee may reject the Rawlsian requirements based upon fidelity to law (namely, accepting punishment and openness),¹¹⁸ but I argue requiring an intention to change a law still represents fidelity to law. Again, there is no reason to desire a change in law if you are not ultimately faithful to the wider legal system it operates in. Not all modern theorists have disposed of fidelity to law, however. William Schuerman reinforces its centrality to civil disobedience, critiquing what he sees as an "anti-legal turn" in some modern theories.¹¹⁹ Hence, fidelity to law has come under attack by some modern theorists, but its enduring centrality to civil disobedience is evident in the universality of the protest requirement.

¹¹² See also Delmas and Brownlee, above n 108, at [1.3] for an overview of these theorists.

¹¹³ Celikates, above n 15, at 985.

¹¹⁴ Which orthodox theorists are hesitant to: see for example Cohen, above n 8, at [3.1]–[3.3].

¹¹⁵ At 984–985.

¹¹⁶ At 985.

¹¹⁷ Kimberly Brownlee *Conscience and Conviction: The Case for Civil Disobedience* (Oxford University Press, Oxford, 2012) at 20; and see at 23 and 24.

¹¹⁸ At 23.

¹¹⁹ William Schuerman "Recent Theories of Civil Disobedience: An Anti-Legal Turn?" (2015) 23(4) *The Journal of Political Philosophy* 427.

C Fidelity to Truth

In his examination of Mohandas Gandhi's theory of civil disobedience, Livingston identified an alternative ethos of conscientious disobedience in the form of fidelity to truth.¹²⁰ While Livingston may have developed his identification of fidelity to truth upon Gandhi's writings, particularly his concept of the *satyagraha* (one embodying a "firmness/insistence on truth"),¹²¹ I will argue that fidelity to truth captures the ethos of Daniel and Antigone's disobedience, and is the source of their incongruence with civil disobedience.

Fidelity to truth is perhaps best understood in contrast to fidelity to law. Essentially, the actor is motivated not by their fidelity to the legal system they operate in, but by the pursuit or performance of "truth" derived from some higher source. Whether that source is religious is immaterial. Oskar Schindler, for instance, saved over 1,000 Jews from deportation to Auschwitz during World War II.¹²² He was motivated by a truth sourced in universal human rights: "I had to help ... I had no choice ... it didn't mean anything that they were Jewish, to me they were just human beings".¹²³ In its most simplified terms, an actor motivated by fidelity to truth disobeys because it is right, not because they wish to change the law.

Although their disobedient act may closely conform with the requirements of civil disobedience, an actor motivated by fidelity to truth, not law, performs the requirements for very different reasons. Acceptance of punishment, for example. Under the orthodox account, the actor accepts their punishment to demonstrate their faith in the rule of law, as they recognise the importance of upholding it means they should be subject to the same consequences as any other lawbreaker.¹²⁴ On the other hand, an actor motivated by fidelity to truth may accept their punishment in pursuit of, or in accordance with,

¹²⁰ Livingston, above n 107.

¹²¹ Livingston, above n 107, at 525.

¹²² United States Holocaust Memorial Museum "Oskar Schindler" (last edited February 10 2023) Holocaust Encyclopedia <www.encyclopedia.ushmm.org>.

¹²³ US Holocaust Museum "Oskar Schindler's Motivations, as Told by Holocaust Survivors" (December 15 2018) Medium <www.us-holocaust-museum.medium.com>.

¹²⁴ Cohen, above n 8, at [5.1]; and Rawls, above n 5, at 248. See also Livingston, above n 107, at 514.

virtue; a virtue that is marked by fearlessness towards state-imposed consequences of imprisonment, bodily harm or death.¹²⁵ It is this fearlessness that also underpins their non-violence.¹²⁶ The actor's commitment to truth is utterly independent of mortal considerations, and thus physical conflict becomes immaterial. This is not to say a disobedient motivated by fidelity to truth will always satisfy the publicity and punishment requirements, as my discussion of the Midwives in Part IV will later demonstrate. Unlike civil disobedience, what truth requires will vary on a case-by-case basis. For now, however, the salient point is that an actor motivated by fidelity to truth can comfortably fulfil most elements of orthodox civil disobedience, but for an entirely different purpose.

However, the protest requirement of civil disobedience will rarely, if ever, be fulfilled by an actor motivated by fidelity to truth. Fidelity to law conceives of disobedience as *ends*-oriented, in that the actor uses disobedience as a protest in an effort to change a law or policy.¹²⁷ Fidelity to truth, however, is *means*-oriented: the purpose and value of performing the disobedience lies in the act of disobedience itself, not what the actor expects it to achieve.¹²⁸ The act is a way of pursuing or acting in accordance with truth, and thus the fact it is deemed "disobedience" by the law is primarily a coincidence. Hence, changing the law will only ever be a *secondary*, incidental goal of an actor motivated by fidelity to truth.¹²⁹ The distinction between ends and means-oriented acts also shows how fidelity to truth is not simply the higher law justification already recognised by civil disobedience.¹³⁰ That pertains to an actor who intends for their disobedience to change the state's law so it reflects some source of divine law; that is, the act must still be one of protest.¹³¹ A disobedient who conforms to most requirements

¹²⁵ Livingston, above n 107, at 514, 522 and 526.

¹²⁶ See Livingston, above n 107, at 529.

¹²⁷ Livingston, above n 107, at 525.

¹²⁸ Livingston, above n 107, at 525.

¹²⁹ See Livingston, above n 107, at 525.

¹³⁰ See for example Cohen, above n 8, at [8.1]–[8.7].

¹³¹ See also Kyle Lambelet, who discusses the obligation to perform civil disobedience to remedy an incongruence between state and natural law: Kyle Lambelet "Lovers of God's Law: The Politics of Higher Law and the Ethics of Civil Disobedience" (2018) 19(7) Political Theology 593.

of civil disobedience, but whose act is not a protest, is therefore likely to be motivated by fidelity to truth, not law.

D The Fidelity of Daniel and Antigone

Fidelity to truth thus emerges as the ethos capturing Daniel and Antigone's disobedience. It is telling that Gandhi, from whose philosophy Livingston identified fidelity to truth, saw Daniel as representing the "purest form of *satyagraha*".¹³² Equally applicable to Antigone, it was Daniel's commitment to his faith — the source of his "truth" — that drove him, not a commitment to ensuring the justice of the mortal legal system he operated in. This strength of faith explains why Antigone and Daniel do not intend to change the law. The laws may have been changed as a result of their disobedience, but this was entirely immaterial to their objectives. They only wished to act according to their truth, and hence their disobedience was only coincidental to a mortal law that contradicted this.

In this way, the fact Daniel and Antigone were disobedients becomes somewhat inconsequential. Both may have been conscious they were disobeying a mortal law, but the salient part of both narratives is that they followed their truth *despite* the fact doing so may have violated the law. Put another way, regardless of whether the laws prohibiting God's petition or Polyneices' burial existed, neither Daniel nor Antigone would have acted any differently. They merely performed their duties according to the truth derived from their respective faiths, reflecting the means-oriented disobedience characteristic of fidelity to truth. This is entirely distinct from the very deliberate choice to disobey that Rawls expects a true civil disobedient will make. Because civil disobedience breaches the law, an actor must be sure that disobeying will serve the health of the wider legal system.¹³³ Fidelity to truth, in contrast, subordinates the subjective choice of disobedience to the primacy of truth.¹³⁴ In Daniel and Antigone's case, they are so committed to following the truth derived from their faith that they act

¹³² Ed Noort "Gandhi and the World of the Hebrew Bible: The Case of Daniel as Satyagrahi" (2022) 13 Religions 859 at [2.12].

¹³³ Rawls, above n 5, at 249.

¹³⁴ Angel Perez-Lopez and Israel Perez-Lopez "Catholic Conscience and Civil Disobedience: The Primacy of Truth" (2022) 20(3) Nova Et Vetera 773 at 777.

almost without a second thought for the fact that doing so may represent a disobedient act.

Hence, Daniel and Antigone's lack of intention to effect change to a law or policy is not merely a failure to meet one of many requirements. Instead, it is demonstrative of their total estrangement from civil disobedience. The fidelity to law underpinning a true actor of civil disobedience, expressed through their performance of the protest requirement, is instead traded for an entirely different ethos of fidelity to truth. I argue this defeats any notion of Daniel and Antigone's status as civil disobedients. Disobedience that is not intended to function as a protest is simply not civil disobedience, as replacing fidelity to law with truth collapses the "civility" of civil disobedience.

My purpose is not to propose a new class of civil disobedience characterised by fidelity to truth to which Daniel and Antigone belong. Nor do I wish to use Daniel and Antigone to offer a new class of conscientious disobedience more generally. For that, one may turn to Kimberly Brownlee's explanation of "assistive disobedience", where the disobedience is principally done for the purpose of performing the illegal act, not to communicate condemnation of its prohibition.¹³⁵ Rather, I am solely concerned with showing that disobedience done because of fidelity to truth is markedly different to civil disobedience and cannot be shoehorned into it. Accordingly, Daniel and Antigone's fidelity to truth means they should not be deemed paradigmatic civil disobedients, despite their conformity with most requirements of civil disobedience.

E Fidelity to Law versus Truth: Conclusion

Daniel and Antigone's failure to meet the protest requirement reveals a disconnect between the respective ethoi of their acts and civil disobedience. Fidelity to law is the philosophical basis of civil disobedience and gives rise to its otherwise arbitrary

¹³⁵ Brownlee, above n 117, at 24–27. Brownlee gives the example of doctor performing an illegal assisted suicide for a terminally ill patient. "[H]er act is not done, or should not be done, *for the purpose of communicating condemnation of the law that prohibits the procedure*. Rather, her act is done, or should be done, *for the purpose of aiding the patient*. Nonetheless, her act is communicative and conscientious when it is done openly and defended openly *because that will communicate her condemnation of the law*": at 24–25.

requirements. The civil disobedient acts openly and accepts their punishment, for example, as an expression of their fidelity to law. An intention to protest is the most important manifestation of fidelity to law, as it demonstrates the actor's ultimate concern lies with improving the health of the wider legal system.

In contrast, disobedience underpinned by fidelity to truth is performed because it is right, not because the actor wishes to change the law. Although some requirements of civil disobedience may be fulfilled by an actor acting under fidelity to truth, it is done for an entirely different purpose. An intent to protest, however, will almost certainly be lacking. This is because the actor's performance or pursuit of truth operates independent of any mortal concerns, and thus what the legal system looks like is immaterial. Hence, fidelity to truth captures the ethos of Antigone and Daniel's disobedience, as evidenced by their failure to meet the protest requirement. Their disobedience arose solely from their performance of truth, not a commitment to improving the justice of the legal system. Accordingly, Daniel and Antigone's fidelity to truth represents their complete estrangement from civil disobedience.

In the next part, I will argue that Daniel and Antigone are not unique in their embodiment of fidelity to truth. In fact, it is the ethos that underpins and unites many cases of conscientious disobedience in antiquity, revealing an even broader disconnect from civil disobedience.

IV The Ethos of Ancient Conscientious Disobedience

A Introduction

In this part, I will argue that fidelity to truth extends to many instances of ancient disobedience beyond Daniel and Antigone. I will demonstrate this by examining two more case studies, the Hebrew Midwives of Egypt and Socrates. While neither come close to meeting the requirements of civil disobedience, their expression of fidelity to truth not only unites them with Daniel and Antigone, but also reveals it to be the pre-eminent ethos behind ancient conscientious disobedience. Both the Midwives and Socrates are important in their own right, however. The Midwives' disobedience affords valuable insights into the nature of fidelity to truth, while my discussion of

Socrates provides an opportunity to address the plethora of commentary celebrating him as a prototypical archetype of fidelity to law.

B The Hebrew Midwives of Egypt

In his book, *Civil Disobedience in Antiquity*, David Daube provides in-depth summaries and analyses of ancient conscientious disobedience.¹³⁶ The earliest example Daube identifies is the story of the Hebrew Midwives of Egypt, contained in the Book of Exodus,¹³⁷ which some have argued is a valid case of civil disobedience.¹³⁸ While I will briefly discuss why this story is incapable of being classed as civil disobedience, my focus is more on showing how it embodies fidelity to truth. The Midwives are significant because they provide valuable insight into the nuances of fidelity to truth, demonstrating, for example, that it will not always conform with most requirements of civil disobedience as Daniel and Antigone do. Thus, the Midwives' story reinforces fidelity to truth's centrality to ancient conscientious disobedience and its marked differences from civil disobedience.

1 Background

The story of the Hebrew Midwives takes place during the Egyptian enslavement of the Hebrews. In an effort to keep their population low, the Pharaoh ordered the Midwives to kill every Hebrew male newborn upon his delivery. But the Midwives "feared God" and kept the children alive,¹³⁹ thus disobeying the Pharaoh's mortal law to not violate God's law. Interestingly, the Midwives did not act because of an express command from God — they purely knew it was the correct course of action.¹⁴⁰ When confronted by the Pharaoh, the Midwives deny responsibility: unlike Egyptian wives, they say, Hebrew wives deliver their babies so quickly that the midwife only arrives after the

¹³⁶ Daube, above n 24.

¹³⁷ At 5; and *The King James Bible*, above n 3, at Exodus 1:15–1:21.

¹³⁸ See, for example, Konvitz, above n 34, at 112; and John Redekop "Christians and Civil Disobedience" (Religious Liberty Commission of the Evangelical Fellowship of Canada, Background Paper, March 2001) at 2. Whether an act is civil disobedience depends on the requirements being applied. Konvitz, for example, excludes a requirement of publicity in his reformulation of civil disobedience: at 115. My focus is not on the merits of each requirement, but whether the story fits within the orthodox conception of civil disobedience set out in Part I.

¹³⁹ At Exodus 1:17.

¹⁴⁰ See Jones, above n 37, at 91; and Konvitz, above n 34, at 112.

fact, and surreptitiously killing the infant is no longer possible.¹⁴¹ At the very least, this is wilful deceit; at the most, an intentional lie.¹⁴² Nonetheless, the Midwives avoided punishment and could thus continue saving the children. The story of the Hebrew Midwives of Egypt, therefore, represents an extremely ancient story of conscientious disobedience, performed in a context where the purpose — avoiding a genocide — was of paramount importance.

While it is undoubtedly a powerful example of conscientious disobedience, this story cannot be properly classed as civil disobedience. The Midwives' deliberate failure to kill the infants may have been illegal, conscientiously motivated and non-violent; but the clandestine nature of their actions precludes recognising them as civil disobedients.¹⁴³ The Midwives' disobedience was not open and public, as they acted secretly. This is a significant barrier: “[c]landestine acts simply will not qualify as civil disobedience”, writes Carl Cohen.¹⁴⁴ Nor did the Midwives accept their punishment, instead lying to avoid it.

¹⁴¹ At Exodus 1:19; and see Jones, above n 37, at 90 citing John Hannah “Exodus” in JF Walvoord and RB Zuck (eds) *The Bible Knowledge* (Victor Books, Wheaton, 1985) 103 at 109.

¹⁴² See Jones, above n 37, at 90; and Daube, above n 24, at 9. See also George Meisinger, who proposes that, according to Old Testament law, wilful deceit is tantamount to an intentional lie: George Meisinger “Is it Ever Right for a Christian to Disobey Civil Authority?” (paper presented to Chafer Theological Seminary Bible Conference, Houston, March 2012) at 4.

¹⁴³ See also Nora O’Callaghan, who argues that the Midwives’ failure to kill the newborns was an omission, not an act, and thus means the story represents a “conscientious objection claim”, instead of civil disobedience: Nora O’Callaghan “Lessons from Pharaoh and the Hebrew Midwives: Conscientious Objection to State Mandates as a Free Exercise Right” (2006) 39(3) *Creighton L Rev* 561 at 564. See also Konvitz, above n 34, who makes a similar argument: at 113. I am not treating civil disobedience as excluding omissions for the purposes of this paper, but there is certainly an argument that it could be read into Rawls, above n 8, and Cohen’s, above n 5, consistent phrasing of civil disobedience as an “act”.

¹⁴⁴ Cohen, above n 8, at [2.12]. See also Rawls, above n 5, at 248. Compare Celikates, who questions the publicity requirement. However, Celikates’ concern lies more in whether publicity requires the actors to notify the authorities in advance of their act, as opposed to merely requiring the actor to perform the act publicly: Celikates, above n 15, at 983.

Further, the Midwives had no intention of protesting the Pharaoh's law and effecting its repeal.¹⁴⁵ Not only is this evident from the measures taken to conceal their acts, but there would also have been absolutely no utility in doing so. Under the Pharaoh's autocratic reign, where the Midwives formed part of the enslaved Hebrews, appealing to the majority's sense of justice through a disobedient protest would have had no effect. It is almost certain they would have been killed.¹⁴⁶ Therefore, the Midwives' story is far more unambiguous in its distinction from civil disobedience than Daniel and Antigone, as they fail to meet more requirements than solely protest.

2 *The Midwives' Lessons in Fidelity to Truth*

Yet, like Daniel and Antigone, the Midwives undoubtedly represent conscientious disobedience motivated by fidelity to truth. It almost goes without saying that the Midwives did not save the children because they were faithful to the Pharaoh's law. On the contrary, it was because they "feared God".¹⁴⁷ It is for this reason that the Midwives had to act secretly — following the truth of God's law, which required them to save the children, could not have been done openly. As Daube explains, "if [the Midwives] confessed, they would deprive themselves of all possibility of further saving activity".¹⁴⁸ If the Pharaoh had learned of their acts, he would almost certainly have executed the Midwives and found another way to kill the newborns. Thus, "[t]heir lie enables them to carry on their good work unmolested".¹⁴⁹ A principal commitment to performing their truth also explains why the Midwives do not fulfil the protest requirement. Gene James writes that the Hebrew Midwives' actions cannot "be plausibly interpreted" as an attempt "to communicate protest" because their goal of saving the children "required total secrecy for [its] success".¹⁵⁰ So, like Daniel and

¹⁴⁵ See also Gene James "The Orthodox Theory of Civil Disobedience" (1973) 2(4) *Social Theory and Practice* 475 at 482.

¹⁴⁶ This also operates a strong example of how integral a democratic society is to the fulfilment of orthodox civil disobedience. See also Rawls, above n 5, at 247–248: "in a viable democratic regime there is a common conception of justice by reference to which its citizens regulate their political affairs and interpret the constitution. Civil disobedience is a public act which the dissenter believes to be justified by this conception of justice".

¹⁴⁷ At Exodus 1:17.

¹⁴⁸ Daube, above n 24, at 9.

¹⁴⁹ Daube, above n 24, at 9.

¹⁵⁰ James, above n 145, at 482.

Antigone, the Midwives' fidelity to truth lies behind their ultimate incongruence with civil disobedience.

The significance of the Midwives goes beyond merely demonstrating another example of fidelity to truth, however. The fact they diverge more from civil disobedience than Daniel and Antigone opens a valuable avenue for discussing in greater detail what fidelity to truth looks like in practice, and how it distinguishes itself from civil disobedience.

First, one could observe that the Midwives seem to lack the fearlessness of bodily consequences I identified as characteristic of fidelity to truth in Part III and demonstrative in Daniel and Antigone. But this difference is only apparent. Following truth in the particular case of the Midwives could only have been achieved by avoiding the consequences of punishment. It would have been an injustice against God had the Midwives confessed to the Pharaoh, because this would mean they could no longer save the Hebrew newborns. Thus, the lie and secrecy of the Midwives do not show that they feared the Pharaoh's punishment, but instead that they recognised it had to be avoided to fulfil their religious duty. In this way, there is no difference between Antigone, Daniel and the Midwives. The former could perform their truth without regard for mortal consequences, while the latter could not. The secrecy demonstrative in the Midwives is valuable, however, as it shows that disobedience backed by fidelity to truth will not always look like civil disobedience, and will not always be a case of solely lacking an intention to protest. What the performance of truth looks like will depend on the particulars of each case.

Further, the Midwives demonstrate how inconsequential the fact of disobedience is to an actor motivated by fidelity to truth, a point I made reference to in Part III. Interestingly, this comes not from the Midwives' disobedience to the Pharaoh's law, but rather God's. Although the Midwives disobey the Pharaoh's law by failing to kill the children, they also disobey God's law by lying to the Pharaoh about their involvement. Lying is strictly forbidden by both the Old and New Testaments — the codification of this prohibition within the Ten Commandments represents its

seriousness.¹⁵¹ It is interesting, then, that the Midwives' act of lying is not given any special attention by the narrative.¹⁵² Scholars have grappled with this apparent contradiction. George Meisinger, for example, views the Midwives as evidence of a hierarchy of commands within God's laws. Lying can be justified when it is performed for the reason of "preserv[ing] the sanctity of life", because the latter is a higher command than the prohibition on lying.¹⁵³ Daniel Jones, on the other hand, perceives more nuance in the Midwives' lie. The story of the Midwives does not condone "the action of lying but instead commends the action of fearing God to preserve life, *despite* the lying".¹⁵⁴

I agree with Jones, although Meisinger is correct to identify the importance of preserving the sanctity of life to the Midwives' actions. The salient point of the Midwives' story is not that they disobeyed. Rather, it is that their commitment to act according to truth — derived from fearing God and requiring them to preserve life — was so strong that it rendered any fact of disobedience, mortal or divine, inconsequential. In the words of Exodus, that the Midwives "feared God" is the crux of the narrative; it was for this reason that God "dealt well with the Midwives" and "made them houses".¹⁵⁵

The location of the Midwives early in the Old Testament also supports the proposition that their manifestation of fidelity to truth develops into that seen in chapter 6 of Daniel, as both examples operate within and according to the same religious framework. Whether a direct influence or not, the resemblance is clear: just as the Midwives "feared God",¹⁵⁶ "no manner of hurt was found upon [Daniel], because he believed in his God".¹⁵⁷ Again, both stories are not so much about establishing rules for justified disobedience according to the Old Testament, but rather about following God's law *despite* any disobedience. In fact, countless other stories of Old Testament disobedience

¹⁵¹ Jones, above n 37, at 99 citing Exodus 20:16 and Leviticus 19:11.

¹⁵² Jones, above n 37, at 90.

¹⁵³ Meisinger, above n 142, at 3–4.

¹⁵⁴ Jones, above n 37, at 98 (emphasis added).

¹⁵⁵ At Exodus 1:17 and 1:20.

¹⁵⁶ At Exodus 1:17.

¹⁵⁷ The King James Bible, above n 3, at Daniel 6:23.

resound this fidelity to truth. By way of example, the Book of Numbers contains the story of Balaam, a prophet who a heathen king orders to curse the Israelites.¹⁵⁸ However, Balaam defers to God and blesses the Israelites, disobeying the King. The reason was solely because it was the correct action according to God's truth: "[h]ow shall I", Balaam, "curse ... whom God hath not cursed"?¹⁵⁹ Although Balaam ultimately escaped unharmed,¹⁶⁰ he was prepared to "die the death of the righteous" if it meant he was acting according to truth.¹⁶¹ Therefore, the more nuanced understanding of fidelity to truth provided by the Midwives' story unveils the ethos' centrality to ancient, conscientious disobedience.

3 *Morality without Civility*

Finally, the story of the Midwives reminds us that an act of conscientious disobedience does not need to be civil in order to have moral weight. There is a tendency in academia to label all acts of conscientious disobedience as civil. As Delmas identifies, this is because "[t]o label something an instance of civil disobedience is to lend it political respectability" and, I add, moral force.¹⁶² Exemplary of this is Daube, who argues that the Midwives demonstrate civil disobedience should not require openness:¹⁶³

It is not the job of ... any fighter for a cause, to satisfy the unhealthy fantasies of inexperienced theorists. The midwives in Egypt, ... by duping the Pharaoh, succeeded in carrying on their fruitful work.

On the one hand, I understand Daube's position. Despite not fulfilling the openness requirement, the Midwives are a very compelling case of conscientious disobedience, preventing genocide through their act. But I do not think changing the requirements of civil disobedience should be the natural consequence of this. Civil disobedience's requirements spring from fidelity to law, and removing them to incorporate disobedience where truth, not law, is the actor's concern, removes what makes the

¹⁵⁸ The King James Bible, above n 3, at Numbers 22:1–24:25. See also Daube, above n 24, at 65–67.

¹⁵⁹ At Numbers 23:8.

¹⁶⁰ At Numbers 24:25.

¹⁶¹ At Numbers 23:10.

¹⁶² Candice Delmas "Civil Disobedience" (2016) 11 *Philosophy Compass* 681 at 688.

¹⁶³ Daube, above n 24, at 70.

disobedience civil in the first instance. The better approach is to recognise that acts of disobedience backed by fidelity to truth are not civil disobedience. Yet, the Midwives make this distinction palatable, demonstrating that not all disobedience needs to be civil to have moral force.

4 The Midwives: Conclusion

Like Antigone and Daniel, the Hebrew Midwives of Egypt represent an ancient story of conscientious disobedience backed by fidelity to truth, not law. The importance of their disobedience — preventing a genocide — shows how disobedience need not be civil to be moral. Their story also shows the nuances of fidelity to law. The secrecy of the Midwives' act means they are further away from civil disobedience than Antigone and Daniel are, yet this provides valuable insight into just how different disobedience motivated by fidelity to truth is from civil disobedience. First, they show that not all instances of disobedience motivated by fidelity to truth will appear as close to civil disobedience as Antigone and Daniel, because what the performance of “truth” looks like varies on a case-by-case basis. Further, the Midwives' disobedience of God's prohibition against lying demonstrates how immaterial the fact of disobedience is to an actor motivated by fidelity to truth. Unlike the civil disobedient, an actor of fidelity to truth does not justify the act of disobedience but rather the act of following truth *despite* disobedience. This is a subtle but important point, and its reflection in other stories of Old Testament disobedience reinforce fidelity to truth's place as the central ethos behind ancient conscientious disobedience. My examination of Socrates in the next part bolsters this claim.

C Socrates

Turning again to Ancient Greece, I will argue that Socrates was a figure motivated by fidelity to truth, strengthening its position as the central ethos behind ancient disobedience. Like the Midwives, Socrates does not come close to meeting the requirements of civil disobedience. Not only did he refuse to accept he disobeyed the law, but it is also improbable he in fact did. Thus, this subpart's focus is not on whether Socrates conforms to the requirements of civil disobedience. Instead, I aim to establish Socrates' perspective on disobedience was marked by fidelity to truth.

Doing so, however, requires the wealth of academic commentary marking Socrates as a figure motivated by fidelity to law to be overcome. Any discussion of Socrates in the context of conscientious disobedience is complicated by the fact that, whether legitimately or not, he has been a highly influential figure in civil disobedience's development. Martin Luther King Jr, who brought civil disobedience into the popular American academic consciousness, quoted Socrates heavily.¹⁶⁴ Hugo Bedau's 1991 book, *Civil Disobedience in Focus*, is a collection of what he perceives as the most important essays to civil disobedience.¹⁶⁵ Bedau orders the essays chronologically, and it is Plato's *Crito* (in which Socrates is the protagonist) that he places first.¹⁶⁶ Bedau is a proponent of the genealogy theory, which links a chain of figures beginning with Socrates and ending with Rawls, to show the fidelity to law ethos of civil disobedience has existed since antiquity.¹⁶⁷ Thus, in demonstrating Socrates' fidelity to truth, it is necessary to interrogate the perception of him as a prototypical figure of disobedience motivated by fidelity to law. The resulting discussion differs in form from that of the Midwives, as establishing Socrates' fidelity to truth is a more complex task. Nonetheless, I conclude it is the central ethos behind Socrates' position and reflects his obligation of *parrhesia*.

1 *The Apology and Crito*

To determine if Socrates was a figure motivated by either fidelity to law or truth, whether he believed there could be a justified disobedience of the law must first be addressed. This is a complex question that arises from two Platonic texts detailing his trial (the *Apology*) and execution (*Crito*) within fourth century BC Athens.¹⁶⁸ Socrates was an Athenian citizen famed for his wisdom. Through conversations with other

¹⁶⁴ See for example King, above n 23, at 90.

¹⁶⁵ Bedau, above n 7.

¹⁶⁶ At 13.

¹⁶⁷ See also Livingston, above n 107, at 512. For an example of how the genealogy theory manifests, see William West's discussion of Socrates' place as a model of civil disobedience for Martin Luther King Jr: William West "Socrates as a Model of Civil Disobedience in the Writings of Martin Luther King Jr" (2000) 76(2) *The Classical Bulletin* 191. The genealogy theory also underpins Daube's *Civil Disobedience in Antiquity*: Daube, above n 24.

¹⁶⁸ *Apology*, above n 1; and Plato "Crito" in Christopher Emlyn-Jones and William Preddy (eds) *Plato: Euthyphro, Apology, Crito, Phaedo* (Harvard University Press, Cambridge, 2017) 196 [*Crito*].

citizens, Socrates interrogated his interlocutor's beliefs on a particular subject (love, courage, for example) in an effort to draw out the true meaning of that subject.¹⁶⁹ In 399 BC, Socrates was summoned to the Athenian court to answer charges brought by Meletus, a fellow citizen.¹⁷⁰

The trial is the subject of Plato's *Apology*. Socrates is charged with corrupting the youth and believing in his own divinities, not the gods of Athens.¹⁷¹ He denies any wrongdoing: the charges are slanderous, designed by envious men to bring about his downfall.¹⁷² Although Socrates' interrogation of the fundamental beliefs of Athenian citizens inspired annoyance and enmity, this was a divine mission to help them discover the truth. God has set him upon Athens to be its "gadfly", "awaken[ing] and persuad[ing] and reproach[ing] each one" of its citizens.¹⁷³ Importantly, Socrates asserts that he will refuse to comply with any penalty preventing him from philosophising, even if it means his death, because it is incongruent with God's law. He will interrogate the beliefs of "whomever, younger or older", he happens to meet because "[G]od orders" it.¹⁷⁴ Thus, even if he were released on the condition that he was to stop philosophising, Socrates would say:¹⁷⁵

I, men of Athens, salute you and love you, *but I will obey [God] rather than you*; and as long as I breathe and am able to, I will certainly not stop philosophizing.

Despite his defence, the jury returns a guilty verdict and must decide his sentence. Socrates says he has only benefitted the city, and hence the only just consequence —

¹⁶⁹ This is only one aspect of Socrates' philosophy, although it is the most famous. See Sara Ahbel-Rappe *Socrates: a Guide for the Perplexed* (Bloomsbury Publishing Plc, London, 2009) at ch 1, 1–14 for a general introduction to Socrates.

¹⁷⁰ Ahbel-Rappe, above n 169, at 15–16.

¹⁷¹ *Apology*, above n 1, at lines 24b–c. See also Daube, above n 24, at 72–75 for a discussion on the merits of the charges against Socrates.

¹⁷² At lines 28a–b.

¹⁷³ At lines 30d–31b. As in my discussion of *Antigone*, I use the singular form of "God" merely for style and convenience.

¹⁷⁴ At lines 30a–b.

¹⁷⁵ At lines 29d–e (emphasis added).

what he “deserve[s] according to [his] worth in truth” —¹⁷⁶ would be a reward (he suggests free meals), not punishment.¹⁷⁷ Despite this, the jury condemns Socrates to death.

Plato’s *Crito* details Socrates’ imprisonment in the days leading up to his execution.¹⁷⁸ Socrates is visited by Crito, who urges him to escape. It will be easy: Crito says he only needs to bribe the right people, and he and Socrates’ other friends would give up all their money, property and suffer punishment to secure Socrates’ freedom.¹⁷⁹ But Socrates rejects this. He must obey the decision ordering his execution, proposing that Athens’ laws must be obeyed regardless of whether they are just. For the purposes of this paper, this is the most salient part of *Crito*:¹⁸⁰

... [Has it slipped your mind that] the homeland is deserving of more honour and reverence and worship than your mother and father and all of your other ancestors? And is held in higher esteem both by the gods and by men of good sense? And that when she is angry you should show her more respect and compliance and obedience than your father, and either convince her to do what she commands and suffer without complaining if she orders you to suffer something?

Crito agrees a citizen must obey Athens’ laws. So, Socrates refuses to escape, willingly drinks the hemlock and dies.

1 Against Justified Disobedience

Socrates’ declaration thus seems to favour blind obedience to the law, and its contradiction to his defiance in the *Apology* has sparked an ongoing debate as to whether he believed there could be justified disobedience of the law. Ernest Barker answers this question in the negative. He proposes Socrates saw “no rule of natural justice outside the law: law is justice ... and what is just is simply what is commanded in the laws”.¹⁸¹ Rex Martin, although also believing Socrates did not affirm justified

¹⁷⁶ At lines 36d–e.

¹⁷⁷ At lines 36d–37a. See also Ahbel-Rappe, above n 169, at 16.

¹⁷⁸ *Crito*, above n 168.

¹⁷⁹ At lines 44b–45c.

¹⁸⁰ At lines 51a–c.

¹⁸¹ Ernest Barker *The Political Thought of Plato and Aristotle* (Dover Publications, New York, 1959) at 52.

disobedience, rejects Barker's argument because it presupposes the non-existence of unjust laws.¹⁸² This contradicts Socrates' recognition of an Athenian law that is incongruent with what is "just".¹⁸³ Rather, Martin adopts a social contract approach, proposing that Socrates thought all laws had to be obeyed, regardless of whether they were just or unjust, because the citizen had agreed to obey the laws of Athens as a condition of their citizenship.¹⁸⁴ A citizen may persuade Athens to change the law because of its injustice, but this cannot be done through disobedience.¹⁸⁵ Hence, Socrates cannot escape the execution because:¹⁸⁶

[t]here is, in terms of the agreement, no such thing as justifiable disobedience; rather, any disobedience to law is a breaking of the fundamental agreement and, hence, *ipso facto* unjust.

While his social contract with the Athenian *polis* (by virtue of his citizenship) certainly underpins Socrates' reasoning in *Crito*,¹⁸⁷ Martin's argument fails to properly dispose of Socrates' assertion in the *Apology* that he would not follow a prohibition preventing him from philosophising. Both Martin and Barker instead attribute the *Apology*, somewhat conveniently, to a case of Socrates failing to adhere to his own teachings.¹⁸⁸ Nonetheless, they remain steadfast in their arguments that Socrates did not affirm justified disobedience.

2 *Disobedience Justified by Socrates' Fidelity to Law*

On the other side of the debate are those who believe that Socrates allowed for justified disobedience because of his perceived fidelity to the law. Spiro Panagiotou, for example, sees Socrates' dialogue in *Crito* as representing the Athenian laws' perspective, not his own. The latter does not affirm justified disobedience, but Socrates

¹⁸² Rex Martin "Socrates on Disobedience to Law" (1970) 24(1) *The Review of Metaphysics* 21 at 23.

¹⁸³ *Crito*, above n 168, at lines 51b–c.

¹⁸⁴ At 32.

¹⁸⁵ At 34.

¹⁸⁶ At 32.

¹⁸⁷ *Crito*, above n 168, at lines 51e–52a: "whoever remains with us [the *polis*], having observed how we decide lawsuits and take care of other civic matters, we claim that this man by his action has now made an agreement with us to do what we command him to do".

¹⁸⁸ Martin, above n 182, at 34; and Barker, above n 181, at 52.

himself does.¹⁸⁹ While this is a thought-provoking reading, I will focus more on those who treat Socrates' dialogue as representing his own views. AD Woozley is one such proponent. He places particular emphasis on Socrates' statement that one faced with an unjust law must *either persuade or obey*.¹⁹⁰ Unlike Martin, Woozley does not read this as meaning one must continue obeying until they can persuade. Instead, the distinction between persuasion and obedience means Socrates allows for justified disobedience — but only when it is to persuade the people and government to remedy an unjust law.¹⁹¹ Under this approach, Socrates' doctrine is underpinned by the same ethos as modern civil disobedience, fidelity to law, because his main concern is the justice of the *polis*' legal system and, hence, disobedience is justified only when it functions as a public protest intended to appeal to the majority's sense of justice.¹⁹² The genealogy theory is manifest in Woozley's argument, as he uses this interpretation to align Socrates to modern paradigms of civil disobedience from the American civil rights movement of the 1960s.¹⁹³ Like those African Americans who sat at the front of the bus to protest laws to the contrary, it is an intention to persuade, protest and effect change through disobedience that marks Woozley's interpretation of Socrates' conception of justified disobedience.

Woozley presents a well-reasoned answer to the *ipso facto* issue of why Socrates did not escape his execution, which he himself declared an unjust punishment.¹⁹⁴ He argues Socrates' doctrine of justified disobedience only extends to laws, which have a general application to all citizens, and not court orders, which have a specific application to particular citizens.¹⁹⁵ This approach is supported by the distinction between laws and

¹⁸⁹ Spiro Panagiotou "Socrates and Civil Disobedience" in Barry Gower and Michael Stokes *Socratic Questions: New Essays on the Philosophy of Socrates and its Significance* (Routledge, London and New York, 1992) 93.

¹⁹⁰ AD Woozley *Law and Obedience: The Arguments of Plato's Crito* (The University of North Carolina Press, Chapel Hill, 1979) at 30 citing *Crito*, above n 168, at lines 51a–c.

¹⁹¹ At 30, 38 and 41.

¹⁹² At 30–31.

¹⁹³ At 31.

¹⁹⁴ *Crito*, above n 168, at lines 54b–c: Socrates has "been done an injustice".

¹⁹⁵ Woozley, above n 190, at 41.

court verdicts that Socrates makes in *Crito*: he has “been done an injustice not by ... the laws, but by men”.¹⁹⁶ Daube advocates a similar position:¹⁹⁷

To practise civil disobedience to ordinary laws and orders which violate your conscience is one thing; to practise it to the decision of a court is another. The latter enjoys a special, sanctity: once it is flouted the city cannot go on as an organized, coherent society. After all, it was by then only a short time since feuds and all sorts of irregular settling of disputes had been replaced by orderly, democratic — or democratic-looking — procedures.

Hence, a citizen cannot disobey court orders because their obedience is integral to the proper maintenance of society. Laws, on the other hand, can be disobeyed without damaging the social order to the same extent. The ethos behind Daube’s interpretation of Socrates’ doctrine of justified disobedience thus emerges as fidelity to law. It is the broader health of the *polis* that is central: a law can be disobeyed in its service; but the damage to the polis resulting from disobedience of a court order will always outweigh the benefit. However, Woozley and Daube’s qualification presents an ostensible contradiction to the *Apology*, where Socrates declared he would not follow a court order prohibiting him from philosophising.¹⁹⁸ While Daube does not wholly address this,¹⁹⁹ Woozley argues that such a prohibition would not represent a formal court order, but rather a warning that if Socrates were caught philosophising again, he would be arrested and punished.²⁰⁰ Woozley’s reading of Socrates in *Crito* as affirming justified disobedience motivated by fidelity to law thus manages to address the issues of both Socrates’ lack of disobedience in *Crito*, and his willingness to engage in it in the *Apology*.

3 *Socrates and Fidelity to Truth*

While Woozley and Daube present strong arguments, they miss the importance of Socrates’ fidelity to truth, namely, his commitment to fulfilling his duty of *parrhesia*. I argue that this is the salient point of the *Apology* and *Crito*, not whether Socrates

¹⁹⁶ At lines 54b–c.

¹⁹⁷ Daube, above n 24, at 77.

¹⁹⁸ *Apology*, above n 1, at lines 29d–e.

¹⁹⁹ See Daube, above n 24, at 76–78 for the extent of his discussion.

²⁰⁰ Woozley, above n 190, at 44–45.

affirmed justified disobedience. Accordingly, Socrates should be principally understood as a figure motivated by fidelity to truth, not law.

Raffaele Laudani proposes the debate concerning the apparent contradiction between the *Apology* and *Crito* is misguided. It is not Socrates' perspective on disobedience that is important, but rather his obligations flowing from *parrhesia*, the philosopher's duty to "speak-truth".²⁰¹ As Michel Foucault explains, Socrates' *parrhesia* obliges him to reveal the truth to Athenian citizens without consideration of any external, mortal circumstances: he must philosophise regardless of Athens' political state and despite any risk of punishment or death.²⁰² Socrates in the *Apology* makes it clear that *parrhesia* is a divinely-sourced obligation: "[G]od seems to have set [him] upon the city" to perform it, and doing so is "a service to the god".²⁰³ Failing to speak the truth because of fear of external circumstances is hence an injustice committed against the divine.²⁰⁴ Thus, Socrates' declaration in the *Apology* that he will philosophise despite any prohibition is the ultimate manifestation of his divinely-sourced duty of *parrhesia*.

Yet, *parrhesia* also obliges Socrates to never commit an injustice. Not only does it require him to reveal truth to the Athenian citizens, but it also obliges Socrates himself to live according to truth.²⁰⁵ It is Socrates' commitment to *parrhesia* that underpins and reflects the "fundamental Socratic law", "to act rightly regardless of the consequences".²⁰⁶ Socrates' refusal to escape his execution in *Crito* is thus principally an expression of his *parrhesia*, as it was the just course of action according to truth. To escape would have been an injustice, as Socrates tells himself from the perspective of the Laws:²⁰⁷

²⁰¹ Laudani, above n 7, at 12.

²⁰² Michel Foucault "2 March 1983: First Hour" in Arnold Davidson and Graham Burchell (eds) *The Government of Self and Others: Lectures at the Collège de France 1982-1983* (Palgrave Macmillan, London, 2010) 299 at 317; and *Crito*, above n 168, at lines 28b–29c.

²⁰³ *Apology*, above n 1, at lines 30a–b and 30e–31a.

²⁰⁴ Foucault, above n 202, at 318.

²⁰⁵ Foucault, above n 202, at 319.

²⁰⁶ Mark Howenstein "Socrates and the Moral Limits of Legal Obligation" (2009) 5(1) *Law, Culture and the Humanities* 55 at 71.

²⁰⁷ *Crito*, above n 168, at lines 54b–d. See also Howenstein, above n 206, at 73.

[If] you leave us ... having been done an injustice ... *you return the injustice ... and repay the harm and flee in shame*, having violated your agreement and contract with us and harmed those who least of all should be harmed, yourself, your friends, your homeland, and us ...

In other words, Socrates would have committed the same injustice under *parrhesia* by fleeing his cell as he would have by not practicing philosophy because of a court prohibition: he would have been failing to live in accordance with truth because of fear of punishment or death.

Hence, the attempt to class Socrates as a figure concerned with fidelity to law is misguided. The *Apology* and *Crito* are not about the semantics of two competing doctrines, one favouring justified disobedience and the other imposing blind obedience. On the contrary, both represent Socrates' fundamental commitment to follow the right course of action according to truth. Mark Howenstein thus sees no contradiction between the two texts because "in both cases Socrates simply acts rightly".²⁰⁸ While his obedience in the *Apology* to a prohibition preventing him from philosophising "would be a matter of submission to the law of the state in violation of his foremost duty", *parrhesia*, "Socrates' obedience in the *Crito* is one of affirmative alliance with it".²⁰⁹

Therefore, even if one could read extract a doctrine of justified disobedience from *Crito*, as Woozley proposes, this does not mean Socrates is driven by fidelity to law.²¹⁰ Socrates' main concern is with acting in accordance with truth, not what the health of the *polis* requires.²¹¹ Truth may sometimes command Socrates to act with concern for the state — a product of the overlap between Athenian laws and religion —²¹² but it

²⁰⁸ Howenstein, above n 206, at 72.

²⁰⁹ At 72.

²¹⁰ Compare Livingston, above n 107, who rejects the claim that Socrates is a figure concerned with fidelity to truth: at 529. Livingston's argument speaks more to Gandhi's mistranslation of Socrates (which remains a valuable topic, but unrelated to this paper) than it does to where Socrates' fidelity lies, however.

²¹¹ See also Laudani, above n 7, at 12.

²¹² Howenstein, above n 206, at 70.

will only ever be a subsidiary product of *parrhesia* and not an independent motivation. Thus, Socrates should not be perceived as embodying the ethos of civil disobedience, least of all for the fact he fails to fulfil most of its requirements.

4 *Connecting Socrates' Fidelity*

The result of Socrates' fidelity to truth is that it unites him with Antigone and Daniel, and furthers the divide between ancient and civil disobedience. Like the Midwives of Egypt, Socrates supports the argument that fidelity to truth is the prevailing ethos behind justified disobedience in antiquity, not the fidelity to law that is central to civil disobedience. Again, these ancient figures act because it is right, not because they wish to change the law. Hence, all measure their culpability against whether they acted in accordance with truth, not mortal law. Because Socrates fulfilled his divine obligation of *parrhesia*, he refuses to accept he has done wrong and thus deserves — according to his “worth in truth” — a reward, not punishment.²¹³ And, in *Crito*, it is because “this is where the god leads [him]” that he still accepts his punishment.²¹⁴ The same standard of self-evaluation is used by Daniel, who tells the King that he was saved because he was innocent according to God's laws: “[the lions] have not hurt me ... [because] innocenc[e] was found in me”.²¹⁵ Antigone bears a similar resemblance to Socrates: she has “done no wrong” because she has “not sinned before God”.²¹⁶ Like Socrates, she accepts her punishment not out of fidelity to law, but because her commitment to a divinely-sourced truth is so strong that it negates any fear of a mortal death: “I knew I must die, even without your decree: I am only mortal. And if I must die ... this is no hardship”.²¹⁷

In this way, ancient disobedience is not really disobedience at all. It is not an intention to disobey arising from a subjective belief that unites these ancient figures.²¹⁸ Rather, it is the fact they act in total accordance with truth, so that when disobedience to a

²¹³ *Apology*, above n 1, at lines 36d–e.

²¹⁴ *Crito*, above n 168, at line 54e.

²¹⁵ *The King James Bible*, above n 3, at Daniel 6:22. This is confirmed by the narrator at Daniel 6:23: “no manner of hurt was found upon [Daniel], because he believed in his God”.

²¹⁶ *Antigone*, above n 3, at lines 722–723.

²¹⁷ At lines 364–367.

²¹⁸ See Laudani, above n 7, at 12–13; and Perez-Lopez and Perez-Lopez, above n 134, at 777.

mortal law does occur, it is only a result of that law's coincidental incongruence with truth. As was demonstrated by the Midwives, fidelity to truth is about the actor's commitment to performing or pursuing truth *despite* the fact of disobedience. Thus, although Socrates is further away from meeting the requirements of civil disobedience than Daniel and Antigone, fidelity to truth unites them and distinguishes the latter's acts, and ancient disobedience more generally, from civil disobedience.

5 *Socrates: Conclusion*

Socrates' arguments in the *Apology* and *Crito* have created the impression that he was a prototypical figure of fidelity to law who affirmed a doctrine of justified disobedience. Although these Platonic texts may suggest Socrates approves of a law's disobedience when it is in service to the *polis*' health, I have argued this impression is misguided. Instead, Socrates should be understood as a figure concerned principally with fidelity to truth. Socrates' truth takes the form of his divine obligation of *parrhesia*, which underpins both his refusal to obey an order prohibiting his philosophising and his compliance with the court order for his execution. Both reflect the just course of action according to truth, not compliance with a doctrine of justified disobedience.

In a broader sense, Socrates' fidelity to truth unites him with Daniel and Antigone. Like the Midwives, this effect is two-fold. Socrates' non-compliance with the requirements of civil disobedience emphasises its difference to fidelity to truth; and bolsters a claim for recognising fidelity to truth as the prevailing ethos behind ancient conscientious disobedience.

D The Ethos of Ancient Conscientious Disobedience: Conclusion

The Hebrew Midwives and Socrates demonstrate how fidelity to truth extends beyond Antigone and Daniel, and their more obvious incongruence with civil disobedience allows for a deeper understanding of the ethos. The clandestine act of the Midwives shows how identifying an act of conscientious disobedience backed by fidelity to truth will not always be a question of whether the actor intended to protest. Doctrinal requirements are, in fact, irrelevant to fidelity to truth. What "truth" requires depends on the circumstances and any disobedience is, in any case, coincidental to the performance of that truth. This point is resounded in Socrates' fidelity to truth in the

form of *parrhesia*, its centrality to the *Apology* and *Crito* showing that Socrates' status as a prototypical figure of fidelity to law is unwarranted.

Further, both the Midwives and Socrates support fidelity to truth's position as the predominant ethos of ancient conscientious disobedience. By shifting the focus away from whether an act merely fulfils the requirements of civil disobedience onto the ethos behind it, the Midwives and Socrates reveal the commonality of fidelity to truth. Whether it be truth derived from the Old Testament, *parrhesia* or another source — it is a principal commitment to acting in accordance with truth that gives rise to most conscientious disobedience in antiquity. This is not to say fidelity to truth captures *all* ancient disobedience — there are certainly some instances closer to fidelity to law. By way of example, the early Roman Republic practice of *secessio* involved the *plebs* — a minority group comprising non-patricians —²¹⁹ withdrawing from the city several times, only to return when compromises had been reached with the aristocracy which ensured them some political power.²²⁰ Its participants acting to improve the justice of the Roman political order, *secessio* is perhaps the true ancient paradigm of civil disobedience. Although *secessio* is beyond the scope of this paper, it is undoubtedly the exception within antiquity.²²¹ Instead, the Midwives and Socrates emphasise what Daniel and Antigone initially revealed: ancient disobedience most commonly occurred when an actor's commitment to performing or pursuing truth happened to conflict with a mortal law.

V Conclusion

This paper sought to uncover the root cause of a disconnect between the ethoi of ancient and civil disobedience. By examining four case studies, I have argued that fidelity to truth is the predominant ethos of ancient conscientious disobedience. This ethos

²¹⁹ Christopher Saladin “Revolution in the Divided City: The Plebian Social Movement, Secessions, and Anti-Government in the Roman Republic during the 5th Century Struggle of the Orders” (5 December 2017) Augustana Digital Commons <www.digitalcommons.augustana.edu> at 13–14; Laudani, above n 7, at 18–20; and Piero Treves and Tim Cornell “Secessio” (7 March 2016) in Sander Goldberg and Tim Marsh (eds) *The Oxford Classical Dictionary* (online looseleaf ed, Oxford University Press).

²²⁰ Saladin, above n 219, at 4.

²²¹ See Laudani, above n 7, at 15–21.

distinguishes most ancient cases of disobedience from civil disobedience, for which fidelity to law is central.

I first discussed two remarkably similar stories celebrated as ancient paradigms of civil disobedience: Antigone and Daniel. There is an understandable reason why they bear this status, as their acts conform to most requirements of orthodox civil disobedience. Both acted illegally, publicly, non-violently and accepted their punishment. Yet, Daniel and Antigone fail to satisfy the protest requirement. Although the laws prohibiting their respective acts were repealed because of their disobedience, neither one intended to achieve this. Instead, both characters merely followed their divine obligations — Daniel's duty of prayer and Antigone's duty of burial — despite any mortal prohibition to the contrary. Hence, the character of the legal system they operated in and whether any law prohibited the fulfilment of their duties were immaterial to both Antigone and Daniel.

While Daniel and Antigone's failure to meet the protest requirement hamstrings their status as civil disobedients, it also reveals a deeper incongruence between the spirit of their acts and that of civil disobedience. This disconnect is best understood as a conflict between the fidelity to law underpinning civil disobedience and the fidelity to truth which drives Daniel and Antigone. An actor's fidelity to law, expressed in their ultimate desire to improve the justice of the wider legal system through their disobedience, is the ethos of civil disobedience. It gives rise to its otherwise arbitrary requirements, namely publicity and accepting punishment. I have argued that the protest requirement is the most important expression of fidelity to law, as a desire to change the law shows a deep concern for the legal system that law operates in. A disobedient act performed by an actor motivated by fidelity to truth, in contrast, is done simply because it is right according to truth. Because the actor's commitment to pursuing or performing truth is often so strong that it operates independent of mortal concerns, they can fulfil the requirements of accepting punishment and publicity — but for an entirely different reason than a true civil disobedient. The protest requirement, however, will seldom be fulfilled. Not only is the legal system's character irrelevant to an actor's performance of truth, the utility of disobedience backed by fidelity to truth lies in the act itself, not what the actor expects it to achieve.

Fidelity to truth hence captures the ethos of Daniel and Antigone's disobedience, revealing a far more profound disconnect from civil disobedience than their failure to meet the protest requirement initially suggested. It was a shared commitment to performing their divine obligations — the source of their "truth" — that led to Daniel and Antigone's disobedience, not a commitment to improving the justice of the legal systems they operated in. Indeed, the very fact of disobedience was inconsequential to both actors, as the salient point of both narratives is that they obeyed their obligations to truth *despite* doing so disobeyed the law. This explains why neither intended to change the law, even though that may have resulted from their disobedience. The divide between fidelity to truth and law is significant enough to invalidate Daniel and Antigone's status as paradigmatic civil disobedients. Disobedience not intended to change the law is simply not civil disobedience, as replacing fidelity to law with truth collapses its very civility.

The Midwives of Egypt and Socrates, two ancient case studies further from the requirements of civil disobedience, demonstrate how fidelity to truth extends beyond Antigone and Daniel and captures most ancient disobedience. The Midwives saved the Hebrew newborns because they "feared God". The clandestine nature of their act shows fidelity to truth will not always resemble civil disobedience, because the form and dictates of truth depends on the circumstances of each case. Although Socrates did not disobey the law *per se*, his arguments in the *Apology* and *Crito* have created the misguided impression that he expounded an early doctrine of justified disobedience motivated by fidelity to law. This misses the point of the Platonic texts, as Socrates is principally driven by his fidelity to truth in the form of *parrhesia*. Thus, fidelity to truth emerges as the prevailing ethos behind ancient notions of disobedience.

Hence, the root cause of the divide between ancient and civil disobedience is sourced in a disconnect of ethoi. While antiquity provides us with incredibly powerful stories of conscientious disobedience, overlaying modern concepts of fidelity to law onto acts done because they were right according to truth is simply anachronistic. Although paradigmatic cases such as Daniel and Antigone may look like civil disobedience, this paper has shown the necessity of looking beyond merely what requirements were met. Indeed, whether the actor's ethos reflects fidelity to law is perhaps the most critical question in assessing civil disobedience. This is especially true for instances of ancient

conscientious disobedience, where fidelity to law is seldom found. Thus, although turning to antiquity may legitimise modern claims to civil disobedience by suggesting it is a tradition spanning centuries,²²² restraint is needed. The fidelity to truth behind ancient conscientious disobedience should not be ignored.

However, the conflict of *ethoi* does nothing to undermine the gravitas of ancient disobedience. The Midwives' disobedience, for example, prevented a ruthless mass murder of innocent children, exemplifying an *exceptionally* conscientious act. But this should not allow us to shoehorn acts of ancient disobedience into a distinctly modern concept by overlooking or misrepresenting what lies behind those acts. The better approach is to recognise that they remain extraordinarily compelling instances of conscientious, but not civil, disobedience.

²²² See Livingston, above n 107, at 512–513.

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