

ARTICLES

DEMOKRATIA AND ANTIGONE: BEFORE AND AFTER SAPPHO

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Enter Antigone.

Antigone of Thebes, of the accursed family, of the two dead brothers, only one of whom can be legally buried, of the half-brother who is also her father, and of the silenced sister.

Antigone of the contest with Creon, with the State, with the powers that be and the powers that would be; with the outcome never in doubt.

Antigone of the cave.

Antigone of the many plays by the same name, of some plays under a different name, of cameo appearances in philosophies, of vases and paintings and operas and songs and cinema.

* © 2009, Ruthann Robson. All rights reserved. Professor of Law and University Distinguished Professor, City University of New York School of Law. This essay is the third in a three-part series entitled *Before and After Sappho*. The first essay, *Logos*, highlights the myth of Helen and appears in *Trivia: Voices of Feminism*, vol. 10, available at www.triviavoices.net. The second, *Eudaemonia*, features the myth of Artemis, and appears at 22 *L. & Lit.* 354–370 (2009).

I appreciate the work, dedication, and indulgence of the editors and staff of *Stetson Law Review*, as well as of Professor Robert Batey, in this publication. At CUNY, I am grateful to Laura Nixon, class of 2010, and Emily Reigel, class of 2011, for research assistance, to the CUNY School of Law Dean's Summer Scholarship Support, and to my colleagues at CUNY, especially Janet Calvo, for conversations about ancient Greece. For discussions about Derrida, brotherhood, and democracy, as well as accompanying me on a trip to Robben Island, all of which have informed this essay, I am indebted to Professor Alfred (Jaco) Barnard, University of Cape Town, South Africa. Finally, both the support and skepticism of Sarah Valentine have been invaluable.

Antigone of the syllabus: in Law and Literature, in Civil Disobedience, in Greek Drama, in Origins of Political Theory, in Women in the Ancient World.

That Antigone.

(That there may be different Antigones, an Antigone with different brothers and sisters, an Antigone on a different continent, and even nonhuman Antigones, perhaps we should ignore for now.)

Antigone as a myth can be difficult to excavate. She does not appear in Homer's *Iliad* or *Odyssey*, except perhaps as a shadow. She is sourced to other epics, lost epics, perhaps also authored circa 800 BCE, two centuries before Sappho, and perhaps also authored by Homer or some collection of people we name "Homer."¹ *The Theban Cycle*, from which we derive our stories of Antigone, recounts (invents?) tales from several centuries earlier.²

Antigone is the daughter of Jocasta and Oedipus: Oedipus, who solved the riddle of the Sphinx, who married his mother, Jocasta, by accident, but still . . . making Oedipus both the father and half-brother of Antigone, the father and brother of those inevitably dead and warring brothers, and the father and brother of Antigone's sister Ismene.³

(Antigone, whose name is pronounced "an-TIG-oh-nee" and not, as I first read it, "anti-gone," as if it meant my mother's sister had departed, as if it meant to be against leaving.)

("I am no classicist and do not strive to be one."⁴)

1. Alberto Manguel, *Homer's the Iliad and the Odyssey: A Biography* 1 (Grove Press 2007) (discussing how these ancient ballads took their narrative shape).

2. Michael Clarke, *Thrice-Ploughed Woe (Sophocles, Antigone 859)*, 51 *The Classical Q.* 368, 373 (2001).

3. Robert E. Bell, *Antigone (1)*, in *Women of Classical Mythology* 47–48 (ABC-CLIO 1991); Michael Grant & John Hazel, *Antigone 1*, in *Who's Who in Classical Mythology* 33–35 (Oxford U. Press 1993).

4. Judith Butler, *Antigone's Claim: Kinship Between Life & Death* 2 (Colum. U. Press 2000).

Antigone does not appear in the fragments we have of Sappho, the poet of the Greek island of Lesbos who wrote circa 600 BCE.⁵

Or perhaps Sappho's paean to Antigone is lost? So much of Sappho's work is lost. Sappho's work once filled nine books—now only fragments survive.⁶

Perhaps Sappho would have been attracted to Antigone. They were both women for one thing—a thing that would have been important to Sappho—she was a Lesbian.⁷ They were both aristocrats, for another thing.⁸ And they both had those exceedingly troublesome brothers.⁹

Antigone is best known to us as a character in the eponymous tragedy by Sophocles, produced circa 441 BCE,¹⁰ about one hundred sixty years after Sappho and in the zenith of Athenian democracy.¹¹ Tragedy, it seems, is especially well-suited to the ideology of developing democracy.¹²

Or perhaps literature and democracy are always deeply intertwined: “No democracy without literature; no literature without democracy.”¹³

5. William K. Prentice, *Sappho*, 13 *Classical Philology* 347, 347 (1918) (available at <http://www.jstor.org/stable/262942>).

6. *Id.* at 347–348.

7. *Id.* at 350, 353.

8. *Id.* at 348, 353.

9. *Id.* at 347, 355.

10. Mary Ellen Snodgrass, *Voyages in Classical Mythology* 436 (ABC-CLIO 1994). There are disagreements concerning the correct dating of Sophocles' *Antigone*. See e.g. Scott Scullion, *Tragic Dates*, 52 *The Classical Q.* 1, 81, 85–86 (2002) (discussing the conventional dating of Sophocles' *Antigone* as 441 BCE, but arguing that *Antigone* could be “the earliest of the extant tragedies” of Sophocles and suggesting it should be dated circa 450 BCE).

11. See generally Prentice, *supra* n. 5, at 347 (concluding that Sappho lived approximately 600 years before Christ, in 600 BCE).

12. *Introduction*, in *Women on the Edge: Four Plays by Euripides* 1, 25 (Ruby Blondell et al., eds. & trans., Routledge 1999) [hereinafter *Women on the Edge*].

13. Jacques Derrida, *Passions: “An Oblique Offering”*, in *On the Name* 3, 28 (Thomas Dutoit ed., David Wood trans., Stan. U. Press 1995).

Democracy—*demokratia*—is widely considered exemplary.¹⁴ Perhaps it is surprising, then, that democracy is such a troublesome concept.

But we should have anticipated this. After all, Aristotle, the famous philosopher writing approximately three centuries after Sappho, did not necessarily believe that democracy was exemplary, preferring timocracy.¹⁵ *Kratia* in ancient Greek is translated as “government by,” but the difference is between *demos* and *timé*—the former meaning “people” and the latter meaning “honor,” or “worth” or “property-owners.”¹⁶

Do not, however, confuse “people” with “people.” People does not include women.

Aristotle explained that democracy (and its preferred form timocracy) is like the association of brothers.¹⁷

Brotherhood and friendship are conflated. This is named “fraternity” and “requires a law and names.”¹⁸ It requires men, and perhaps the exile of women who would otherwise dilute the fraternal State.

14. See Ruthann Robson, *Sexual Democracy*, 23 *South African J. on Human Rights* 409, 413 (2007) (discussing universal positive valence attributed to democracy).

15. Aristotle, *Nicomachean Ethics*, in *The Complete Works of Aristotle* vol. 2, 1729, 1834 (Book VIII, ch. 10) (Jonathan Barnes ed., W.D. Ross trans., J.O. Urmson rev., Princeton U. Press 1984).

16. *Oxford Dictionary of English Etymology* 255 (C.T. Onions et al. eds., Oxford U. Press 1966); *id.* at 924; see also Josiah Ober, *The Original Meaning of ‘Democracy’: Capacity to Do Things, Not Majority Rule 2* (Princeton/Stanford Working Papers in Classics, Paper No. 090704, June 10, 2009) (available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1024775) (outlining the original meaning of democracy).

17. Aristotle, *supra* n. 15, at 1834. Aristotle viewed “democracy” as a deviation or even “perversion” of timocracy or polity, the rule by property-owning men. *Id.* In discussing the other two forms of government, monarchy (with its perversion tyranny) and aristocracy (with its perversion oligarchy), Aristotle famously concludes that the best is monarchy and the worst is timocracy. *Id.* He does analogize all three forms of government to forms of household, with monarchy being like the rule of the father. Aristocracy is like the rule of the husband over the wife since “the man rules in accordance with merit.” *Id.* The “association of brothers is like timocracy” for the brothers are equal, unless they differ in age, and if they differ much in age, then “the friendship is no longer of the fraternal type.” *Id.*

18. Jacques Derrida, *Politics of Friendship* 149 (George Collins trans., Verso 1997).

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Aristotle and Sophocles were both men.¹⁹ Aristotle admired Sophocles, noting Sophocles described his own work as about men as they ought to be, while the work of another great playwright of Athenian democracy, Euripides, was about men as they were.²⁰

As for women, Aristotle was concerned about their appearance in tragedy—they should never be portrayed as manly or too clever.²¹ Whether this was derived from his ideas of women “as they ought to be” or women “as they are” is unclear.

Nevertheless, Aristotle’s assessment of the genius of Sophocles is not unique.

Sophocles—*Sophokles*—is widely considered exemplary.²²

Perhaps Sophocles is the greatest tragedian of ancient Greece, and perhaps *Antigone* is his greatest work.²³

But Sophocles does not have a monopoly on *Antigone*.

There is *Antigone* by Euripides.²⁴

There is *Antigone* by Jean Anouilh, first produced in Paris in 1944, approximately 2,544 years after Sappho.²⁵ Think: Nazi.

There is *The Island* by Athol Fugard in collaboration with John Kani and Winston Ntshona, first produced in Cape Town in

19. Aristotle, *Poetics*, in *The Complete Works of Aristotle* vol. 2, *supra* n. 15, at 2316, 2317 (ch. 2, ll. 1–6; ch. 3, ll. 26–27).

20. *Id.* at 2338 (ch. 25, ll. 32–36).

21. *Id.* at 2327 (ch. 15, ll. 20–25).

22. George Steiner, *Antigones* 1 (Yale U. Press 1984).

23. *Id.* (“Between c. 1790 and c. 1905, it was widely held by European poets, philosophers, scholars that Sophocles’ *Antigone* was not only the finest of Greek tragedies, but a work of art nearer to perfection than any other produced by the human spirit.”)

24. Snodgrass, *supra* n. 10, at 426 (recognizing that Euripides is attributed with writing *Antigone* sometime between 415 and 417 BCE).

25. Jean Anouilh, *Antigone*, in *Five Plays* 1, 1–53 (Lewis Galantière trans., Hill & Wang 1958). The front piece notes that *Antigone* was first performed in Paris in 1944. *Id.*

1973, approximately 2,573 years after Sappho.²⁶ Think: Apartheid.

There is *Tègònni: An African Antigone* by Fèmi Òsófisan, the Nigerian playwright, produced in the 1990s, almost 2,600 years after Sappho.²⁷ Think: Dictatorship.²⁸

(There is also, I will now admit, a cat I named Antigone.)

In the *Antigone* of Euripides, we do not know what happens. The play is lost.²⁹ There are rumors, however, that it has a happy ending.³⁰

In the *Antigone* of Jean Anouilh, the Chorus in its first appearance announces:

“When your name is Antigone, there is only one part you can play.”³¹

Yet Jean Anouilh changes the part that Antigone plays. His Antigone is a “tense, sallow, willful girl whose family would never take her seriously . . .”³² His Antigone is less beautiful than her sister Ismene.³³ His Antigone has spent her life cursing the fact that she is a girl.³⁴ His Antigone wonders if it hurts to die.³⁵ Al-

26. Athol Fugard et al., *The Island*, in *Statements* 45, 45–77 (Theatre Commun. Group 1986). The play was first performed on July 2, 1973. *Id.* at 46. For a discussion of the collaboration, see Wumi Raji, *Africanizing Antigone: Postcolonial Discourse and Strategies of Indigenizing a Western Classic*, 36 *Research in African Literatures* 135 (2005).

27. Fèmi Òsófisan, *Tègònni, An African Antigone*, in *Recent Outings* 5 (opon ifa readers 1999).

28. See Martin Meredith, *The Fate of Africa* 574–587 (Public Affairs 2005) (explaining that General Sani Abacha was the dictator of Nigeria from 1993–1998, responsible for the execution of Ken Saro-Wiwa in 1994, and the exile of Nobel Prize laureate poet Wole Soyinka in 1995).

29. James M. Paton, *The Antigone of Euripides*, in 12 *Harv. Stud. in Classical Philology* 267, 267 (1901) (available at <http://www.jstor.org/stable/310436>).

30. Steiner, *supra* n. 22, at 178.

31. Anouilh, *supra* n. 25, at 3.

32. *Id.*

33. *Id.* at 4.

34. *Id.* at 13.

35. *Id.* at 48.

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though, like Sophocles' Antigone, she does end up "immured," "they shove you in a cave and wall up the cave."³⁶

Perhaps there are many parts someone named Antigone can play. Perhaps a cat. Perhaps a cat with a happy ending.

In *Tègònni: An African Antigone* by Fèmi Òsófisan, there is an Antigone who appears to the friends and sisters of Tègònni.³⁷ Their names, it is noted, sound "almost the same."³⁸

When questioned about her identity, this Antigone says:

"There's only one Antigone."³⁹

But she also says:

"Antigone belongs to several incarnations."⁴⁰

And she also laughs when Tègònni's sister/friend expresses doubt this Antigone could be *that* Antigone from Greek mythology, since this Antigone is black, asking:

"What colour is mythology?"⁴¹

Perhaps mythology is colorless, but it is not sexless.

In *The Island*, the action is set on Robben Island, a fragment of rocky and cave-filled land off the coast of Cape Town, where the Apartheid state sent its black male political prisoners (the women of all races and the white men were housed elsewhere).⁴²

36. *Id.*

37. Òsófisan, *supra* n. 27, at 25.

38. *Id.* at 25.

39. *Id.* at 26.

40. *Id.*

41. *Id.* at 27.

42. Robben Island Museum, *History of Robben Island*, http://www.robben-island.org.za/index.php?option=com_content&view=article&id=9&Itemid=46 (accessed Feb. 23, 2010).

At the time the play was first produced, it was illegal to publicly discuss Robben Island.⁴³ Originally, the play was not named *The Island*, but was named *The Hodoshe Shift* or *Die Hodoshe Span*.⁴⁴ Hodoshe is the name of carrion-fly in Xhosa; Hodoshe was also the nickname of a particularly cruel guard in the play and on the island prison of the play.⁴⁵

The two characters in the play are named John and Winston; these are also the first names of the two collaborators with Athol Fugard on the play—John Kani and Winston Ntshona.⁴⁶ John and Winston are black; Athol is white.⁴⁷ All three are men.

John and Winston—the characters—are inmates who propose to stage a play, *The Trial and Punishment of Antigone*.⁴⁸ There is a little problem, however, during the “rehearsal” scene when Winston, dressed as Antigone in false breasts and a wig, provokes laughter and then a dropping of pants by his cell-mate, John.⁴⁹

Winston is angry, and says:

“No! You get this, brother, . . . I am not doing your Antigone! I would rather run the whole day for Hodoshe. At least I know where I stand with him. All *he* wants is to make me a ‘boy’ . . . not a bloody woman.”⁵⁰

In classical and democratic Athens, men—or perhaps boys—played the parts of women on stage, a practice of which Plato seemingly disapproved.⁵¹

43. Raji, *supra* n. 26 at 140.

44. *Id.*

45. See generally Iain Fisher, *Athol Fugard glossary, The Island*, <http://www.iainfisher.com/fugard/fugard-glossary.html#I> (accessed Oct. 18, 2009) (discussing *Hodoshe* and providing a glossary of terms used in the plays from various African dialects).

46. Raji, *supra* n. 26, at 139.

47. *Id.* at 152.

48. *Id.* at 140.

49. Fugard et. al, *supra* n. 26, at 59.

50. *Id.* at 60 (ellipses and emphasis in original).

51. Blondell et al., *supra* n. 12, at 63–64 (discussing male performers of women’s roles). The authors quote Plato’s *Republic*: “We will not allow those whom we say we care about, and *who must turn into good men, since they are men*, to imitate a woman . . .” *Id.* at 64 (emphasis added).

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However, who better to portray women—especially women as they ought to be?⁵²

Even in the Chorus, the actors were required to be citizens, and therefore male. Perhaps service in the Chorus was a responsibility that was akin to military service.⁵³

Offstage, democracy was not necessarily any better for women. The move from aristocracy to democracy was a move from family to polis, a move that moved women from a central stage to a closed interior.⁵⁴ Antigone illustrates this move. Antigone is a personification of women, of kinship, of an aristocracy that allowed at least some women to speak at least some of the time, to sing lyric poems, to rule.

Perhaps this is why Antigone must be sequestered in the quiet of the cave.

In democracy, man's territory is everything outside the cave: the law-court, the agora, the assembly, the gymnasium, and the battlefield.

Democracy is the land of the brothers.

Sappho would not have liked democracy.

Sappho, however, was reputed to like riddles.⁵⁵

Antigone, most likely, was not a friend of riddles. It could be said that it was a riddle that was responsible for the part she had to play, as Oedipus' daughter and half-sister. It was Oedipus who answered the riddle of the Sphinx, that huge, cat-like, recumbent

52. *Id.* at 63 (discussing a character in the contemporary play *M. Butterfly*, who explains that males take female roles "because only a man knows how a woman is supposed to act").

53. *Id.* at 39.

54. *Id.* at 49.

55. *Testimonia 25*, in *Greek Lyric I: Sappho and Alcaeus* 2, 27, vol. 1 (David A. Campbell ed. & trans., Harv. U. Press 1982) [hereinafter *Sappho*].

monster, who would devour all those who answered the riddle incorrectly.⁵⁶

Oedipus' answer was "man."⁵⁷ Perhaps this was not the right answer, but the Sphinx seemed sufficiently cat-like to accept it.⁵⁸

Perhaps democracy was only part of Antigone's problem. Creon assumed the crown because he was the closest male relative of Antigone's dead brothers, the warring brothers who killed each other, despite their promise to their father, Oedipus, to jointly rule their kingdom of Thebes.⁵⁹ If these brothers had been a bit more democratic, they would have shared their power. Or perhaps proposed a vote rather than a war. Or taken their cause to a jury.

And if Thebes had been a different sort of place, perhaps the crown would not have needed to pass only to a male relative. With the brothers dead, Antigone could have been Queen.

Perhaps this is why Creon says, "[w]hile I live a woman shall not rule!"⁶⁰

Creon is still alive at the end of Sophocles' play, although Antigone is not; although Haemon, Creon's son and Antigone's betrothed, is not; although Euridice, Creon's wife and Haemon's mother, is not.⁶¹

(Euridice is usually pronounced "yur-ID-ih-see" and is a combination of *Eur*, meaning wide (think: Europe) and *dike*, meaning justice.⁶² There may be as many as twelve women whose name is

56. Arlene W. Saxonhouse, *The Tyranny of Reason in the World of the Polis*, 82 *Am. Political Sci.* 1261, 1266 (Dec. 1988).

57. *Id.*

58. *Id.*

59. Sophocles, *Antigone*, in *Sophocles: Antigone, Women of Trachis, Philoctetes, Oedipus at Colonus* vol. 2, 1 (Hugh Lloyd-Jones ed. & trans., Harv. U. Press 1994).

60. *Id.* at 51.

61. *Id.* at 119–127.

62. Gabriel Zinn, Student Author, *Marginal Literature, Effaced Literature: Hogg and the Paraliterary*, 4 *Anamesa* 45, 49 (2006). Although the name "Euridice" could be more popular among new parents, Euridices are generally thought to be "pretty, exotic, cool, old-

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Euridice in Greek mythology, including not only Antigone's mother-in-law not-to-be, but also the nymph Orpheus failed to rescue from the "gloomy caverns of Hades."⁶³ It is unclear how many of these Euridices have a happy ending.⁶⁴)

Ismene, Antigone's sister, is alive at the end of Sophocles' drama,⁶⁵ but she is so easily forgotten. After all, Sophocles has Antigone refer to herself as the "last of the royal house" from Thebes,⁶⁶ now that her mother, father, and brothers are dead.⁶⁷ Is not Ismene her sister and also part of that royal house of Thebes?

Ismene escapes the cave,⁶⁸ but perhaps that is not the part she should have played.

(Ismene is usually pronounced "is meany.")

In *Tègònni*, there is no single Ismene, but a host of sister/friends who rescue Tègònni from the dungeon, and who die with her, protecting her at the end.⁶⁹

In *The Island*, there is no Ismene.⁷⁰ Antigone is obviously a man in a wig and false breasts; she has no friends.⁷¹

(On Robben Island, the former leper colony turned prison of Apartheid, turned Museum, the three and a half hour tour includes a forty-five minute bus tour with commentary from a guide, a visit to the island's infamous maximum security prison, a

fashioned, [and] wealthy." Jennifer Moss and BabyNames.com, *The One-in-a-Million Baby Name Book* 228 (Penguin Group 2008).

63. See Bell, *Eurydice (1)-(12)*, in *Women of Classical Mythology*, *supra* n. 3, at 199–201 (listing twelve different mythological Euridices).

64. *Id.*

65. Sophocles, *supra* n. 59, at 53–57, 77.

66. *Id.* at 91.

67. *Id.* at 87.

68. *Id.* at 53–59, 77.

69. Òsófisan, *supra* n. 27, at 138–141.

70. See Fugard et al., *supra* n. 26, at 46 (listing John and Winston as the play's only characters).

71. Sophocles, *supra* n. 59, at 85 ("Unwept, friendless, unwedded, I am conducted, unhappy one, along the way that lies before me! No longer may I, poor creature, look upon the sacred eye of the shining sun; and my fate, unwept for, is lamented by no friend.").

visit with an ex-political prisoner, and a return boat trip crossing Table Bay.⁷²)

(On Robben Island, I gazed across the quarry to the famous cave, where the prisoners are said to have plotted a future for democracy.)

In Sophocles' drama, there were grottos of democracy. The democratic Chorus acted as an extension of the Audience, witnessing the swirling world of their pre-democratic past; their roots, as it were.⁷³ It was a festival, a Mardis-Gras, a rock concert.⁷⁴

It was also a competition. Sophocles won at least eighteen prizes, more than any other competitor, including Euripides, at the Great Dionysia.⁷⁵

The Great Dionysia was the Olympics of drama.

The Olympics, which the Greeks also invented, was the Olympics of sport. There was chariot racing, the pentathlon, wrestling, and running.⁷⁶

The inhabitants of the birthplace of democracy relished competition. Democracy, after all, is a contest. The love of competition (*philoneikia*) coupled, perhaps, with the love of winning (*philo-*

72. Robben Island Museum, *supra* n. 42, at http://www.robben-island.org.za/index.php?option=com_content&view=article&id=10&Itemid=30.

73. See Blondell et al., *supra* n. 12, at 25 (noting that the chorus was comprised of "less powerful members of the community" whose dramatic function was to mediate between the tragedy's aristocratic heroes and the more democratic sentiments of its audience).

74. See *id.* at 29 (likening Greek tragedy to a "rock concert"); Philip Holt, *Polis and Tragedy in the Antigone*, 52 *Mnemosyne* 658, 687–688 (1999) (arguing that Greek theater was essentially a "festival activity" that "was closer to Mardi Gras" than to the stiff production of a modern theatrical experience).

75. See Blondell, et al., *supra* n. 12, at 65 (noting that while Euripides won only five first prizes at the festival, Aeschylus won thirteen and Sophocles at least twenty); Alfred Ferguson, *Politics and Man's Fate in Sophocles' Antigone*, 70 *The Classical Journal* 41, 41–42 (1975).

76. Nigel Spivey, *The Ancient Olympics: A History* 85 (Oxford U. Press 2004).

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nikia) could be said to be the ancient Greek worldview.⁷⁷ They adored the contest—the *agon*.⁷⁸ Think: agony.

There were even championship *agons* of lyric poetry, judged on the characteristics of “a good voice quality, an original composition, sung by the man who had composed it and accompanied it on the lyre.”⁷⁹

There is no indication that Sappho participated in the major competitions.⁸⁰ Perhaps this is attributable to her gender, but perhaps not. After all, her brother—Lesbian lyric poet Alcaeus—likewise does not seem to have competed.⁸¹

Agon is also the classical Greek word for lawsuit.⁸²

Perhaps the ancient Greeks—Sophocles, Aristotle, the other brothers—would have been surprised to know that a lawsuit over the name “Olympics” reached that Olympia of American justice, the United States Supreme Court in 1987, 2,587 years after Sappho.⁸³

77. *Id.* at 13–16. Although Spivey cautions that an attempt to homogenize ancient Greek society “risks oversimplifying,” he notes that the two Greek passions were “made lexically close to the point of conflation,” and he admits that the Greeks may have been “obsessed by or at least disposed towards a culture of contest.” *Id.* at 15–16.

78. *See id.* at 15 (acknowledging that the Greeks valued competition for its practical social benefits).

79. W.T. Henderson, *Criteria in the Greek Lyric Contests*, 42 *Mnemosyne* 24, 27 (1989).

80. *Id.*

81. *Id.* at 28.

82. Blondell et al., *supra* n. 12, at 42; Spivey, *supra* n. 76, at 12.

83. *S.F. Arts & Athletics, Inc. v. U.S. Olympic Comm.*, 483 U.S. 522 (1987). For legal commentary, see Kelly Browne, *A Sad Time for the Gay Olympics: San Francisco Arts & Athletics, Inc. v. United States Olympic Committee*, 107 S. Ct. 2971 (1987), 56 U. Cin. L. Rev. 1487 (1988) (arguing that the Court reduced the SFAA’s free speech rights without significantly enhancing the Committee’s property interest); Christopher W. Coffey, Student Author, *International Olympic Committee v. San Francisco Arts and Athletics: No Olympic Torch for the Gay Games*, 17 *Golden Gate U. L. Rev.* 129 (1987) (discussing the case as decided by the Ninth Circuit); Robert N. Kravitz, *Trademarks, Speech, and the Gay Olympics Case*, 69 *B.U. L. Rev.* 131 (1989) (arguing that the Court failed to properly balance trademark enforcement with free speech rights); Kellie L. Pendras, Student Author, *Revisiting San Francisco Arts & Athletics v. United States Olympic Committee: Why It Is Time to Narrow Protection of the Word “Olympic”*, 24 *U. Haw. L. Rev.* 729 (2002) (offering that the Court granted the Committee extraordinary power over the word “Olympic”).

The background is not difficult to excavate. The democratic body of the United States, Congress, passed a statute in 1978⁸⁴ that created the United States Olympic Committee⁸⁵ and allowed the Committee to prohibit others from using the words “Olympic” or “Olympiad” to “promote any theatrical exhibition, athletic performance, or competition.”⁸⁶ In 1981 or so, the Gay Olympics sought to have a nine-day competition in San Francisco with competitors from hundreds of cities throughout the world.⁸⁷ The United States Olympic Committee sued a character called “San Francisco Arts and Athletics” for promoting a competition named the “Gay Olympics.”⁸⁸

The Committee was worried about dilution.

Although the Committee seemingly did not sue “an array of theatrical and or athletic performances and competitions using ‘Olympic’ in their titles,” which had recently occurred in the United States⁸⁹ including the following:

International Police Olympics; Armenian Olympics; Olympic of Ballet; Olympics of the Mind; Senior Olympics; Golden Olympics; Firemen[']s Olympics; United States Skill Olympics; Virginia Golden Olympics; Wrist-Wrestling Olympics; Crab-Cooking Olympics; Dog Olympics; Nude Olympics; Rat Olympics; WackyOlympics; Xerox Olympics; Alcoholic Olympics.⁹⁰

Here is a riddle: When are the Olympics not the Olympics?

84. Amateur Sports Act of 1978, 36 U.S.C. §§ 371–396 (1982) (amended and recodified at 220501–220512, 220521–220529). The Committee had already received a trademark in the word “Olympic” in 1896, but the statute helped provide further protection against infringement. *S.F. Arts & Athletics, Inc.*, 483 U.S. at 561–562 (Brennan & Marshall, JJ., dissenting).

85. 36 U.S.C. § 371 (amended and recodified at 36 U.S.C. § 220502 (2006)).

86. 36 U.S.C. § 380(a) (amended and recodified at 36 U.S.C. § 220506 (2006)).

87. *S.F. Arts & Athletics, Inc.*, 483 U.S. at 525.

88. *Id.* at 525–527.

89. See Br. for Petrs. at **7–10, *S.F. Arts & Athletics, Inc.*, 483 U.S. 522 (Dec. 4, 1986) (available at 1986 WL 720599) (arguing to the Court that although the Committee maintained that it had brought legal actions against other organizations using the word “Olympic,” it had not filed any *civil* suits against any other nonprofit organization not already affiliated with the Committee for promoting an “Olympics”).

90. *Id.* at *8.

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In the competition known as oral argument, there are the minor riddles posed by nine sphinxes, in three acts, with speeches by the actor for the petitioner, then the actor for the respondent, and then the actor for the petitioner again, who is allowed a rebuttal.⁹¹ At one time, all the actors were required to be men, but this is no longer true.⁹²

Enter Mary Dunlap.⁹³

She is wearing a tuxedo and representing the San Francisco Arts and Athletics organization that desired to promote a gay Olympics.⁹⁴

This is what she said:

There's a very good and powerful reason for San Francisco Arts and Athletics having chosen the word, other than the U.S. Olympic Committee's good will and that is this; the word is ancient. It was first used in 776 [BCE] and it was

91. For a detailed discussion on how oral arguments influence the Court's decisions and how the Justices' questions may betray their positions, see Timothy R. Johnson et al., *Inquiring Minds Want to Know: Do Justices Tip Their Hands with Questions at Oral Argument in the U.S. Supreme Court?*, 29 Wash. U. J.L. & Policy 241 (2009).

92. For a general discussion, see Mary L. Clark, *The First Women Members of the Supreme Court Bar, 1879-1900*, 36 S.D. L. Rev. 87 (1999). When Belva A. Lockwood applied for membership in the United States Supreme Court bar in 1876, Chief Justice Morrison Waite had this to say:

By the uniform practice of the court, from its organization to the present time, and by the fair construction of its rules, none but men are admitted to practise [sic] before it as attorneys and counsellors. This is in accordance with immemorial usage in England, and the law and practice in all the States until within a recent period; and the Court does not feel called upon to make a change, until such a change is required by statute, or a more extended practice in the highest courts of the States.

Id. at 89 (quoting S. Ct. Or. (Nov. 6, 1876)). Lockwood would go on to become the first woman to argue before the Court. *Id.* at 104.

93. Mary Dunlap was a "leading lesbian feminist lawyer" and attorney for the San Francisco Arts and Athletics organization. Arthur S. Leonard, *Justice O'Connor, Gays and a Tribeca Law School*, 18.8 Downtown Express (July 15-21, 2005) (available at http://www.downtownexpress.com/de_114/justiceconnorgays.html).

94. *Id.*

Dunlap, known for her outspoken presentations, was a master appellate advocate. She dressed for the argument before the court in March 1987 by wearing the formal black tuxedo that male lawyers had traditionally worn for such arguments, which caused consternation among a few of the justices and likely made quite an impression.

Id.

used to identify a quadrennial athletic competition in a culture and in a place where some, at least, would argue, depending on your classic scholarship, homosexuality was more widely tolerated than in this culture.⁹⁵

Perhaps she sounds a bit like Antigone? Most of the Creons on the bench did not seem impressed. When it was opposing counsel's turn to take the stage, some judges had a reinterpretation of the riddle for him:

What's the difference between baseball and Olympics?

Enter John Kester.⁹⁶

He is representing the United States Olympic Committee and gave his answer:

[B]aseball is something that is much more universal than the Olympic Games. The Olympic Games are something very special, they are very simple, they are very unique.⁹⁷

Baseball (usually pronounced beys-bawl) is a sport played by two teams of nine players, usually men, for nine acts, which are called "innings" on a pyramid-shaped infield, in which the men run around on bases after hitting the ball (called a baseball) with a wooden phallus (called a bat).⁹⁸ It is mostly played in the United States.⁹⁹

When women play the game, the women are called dykes and the sport is renamed softball.¹⁰⁰

95. Transcr. Oral Argument at **9–10, *S.F. Arts & Athletics, Inc.*, 483 U.S. 522 (D.C., Mar. 24, 1987) (available at 1987 U.S. Trans. LEXIS 57).

96. Opposing counsel. *Id.* at *1.

97. *Id.* at *35.

98. Major League Baseball, *Official Rules MLB.com: Official Info*, http://mlb.mlb.com/mlb/official_info/official_rules/foreword.jsp (accessed Oct. 6, 2009).

99. See generally Baseball Almanac, *Major League Baseball Players by Birthplace*, <http://www.baseball-almanac.com/players/birthplace.php> (accessed Oct. 6, 2009) (providing a chart of the birthplace of each player to have played in the major leagues).

100. See generally Yvonne Zipter, *Diamonds are a Dyke's Best Friend: Reflections, Reminiscences, and Reports from the Field on the Lesbian National Pastime* (Firebrand Bks. 1988) (discussing "softball" in the United States).

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Here is the ending of the drama that was the oral argument in the gay Olympics case:

Mary Dunlap: . . . Let me address one more point of Counsel's argument, if I may.

Counsel said to this Court, "When people think of the Olympic Games, they are thinking of the creation of the U.S. Olympic Committee and not of something that happened under a mountain in ancient Greece."

I think at this point we have—

Chief Justice Rehnquist: Thank you, Ms. Dunlap. Your time has expired.

The case is submitted.¹⁰¹

Note that Mary Dunlap referred to John Kester, her opposing counsel, as counsel. This is not always the term used.

Sometimes the term is "Friend." As in:

- Friend on the other side,
- Friend for the (petitioner; respondent),
- Friend over (here; there),
- Friend to my (right; left),
- Friends at the other table,
- Colleague and friend,
- Friend (surname),
- Friend from (state, organization),
- Able friend,
- Distinguished friend,
- Good friend,
- Learned friend.¹⁰²

101. Transcr. Oral Argument at *50 (1987), *S.F. Arts & Athletics, Inc.*, 483 U.S. 522 (D.C., Mar. 24, 1987) (available at 1987 U.S. Trans. LEXIS 57).

102. See Memo. from Emily Reigel, Law Student, CUNY School of Law, to Prof. Ruthann Robson, Professor, CUNY School of Law, *The Use of "Friend" in Oral Arguments before the United States Supreme Court, 1979–Present* 1 (June 1, 2009) (copy on file with

This happens in more than three hundred oral arguments before the United States Supreme Court.¹⁰³

Perhaps that seems as if that is far too many friends? Are all those people, in the throes of an *agon*, really friends?

Perhaps it is not surprising that Aristotle has something to say about this, warning that true friendship should not be diluted. Those who have many friends might be said to have no friends.¹⁰⁴

And perhaps it is not surprising that Aristotle has a taxonomy of friends; best would be the “friendship of brothers,” because it is a friendship of likeness and equality, best suited to the best of democracy.¹⁰⁵

Counsel and the Justices in oral arguments in the United States Supreme Court also call each other “brother” almost as frequently as “friend.”¹⁰⁶

Here are some variations from the transcripts of oral arguments before the United States Supreme Court:

- Brother in bar,
- Brother at bar,
- Brother lawyer(s),
- Brother on the other side,
- Brother for the (respondent, petitioner),
- Brother counsel,

Stetson Law Review) [hereinafter *Friend memo*] (listing variations of “friend” used to describe attorneys arguing before the United States Supreme Court).

103. *Id.*

104. Aristotle, *supra* n. 15, at 1851 (Book IX, ch. 10, ll. 17–20).

105. *Id.* at 1835 (Book VIII, ch. 11, ll. 18–27) (using “timocratic” to describe the “Friendship of Brothers” as being appropriate for a timocratic form of government).

106. See Memo. from Emily Reigel, Law Student, CUNY School of Law, to Prof. Ruthann Robson, Professor, CUNY School of Law, *The Occurrence of the Word “Brother” in US Supreme Court Oral Arguments, 1979 to the Present* (June 1, 2009) (copy on file with *Stetson Law Review*) [hereinafter *Brother memo*] (noting instances where “brother” and “friend” were located in United States Supreme Court oral argument transcripts).

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- Brother (surname),
- Brother from (state, the state bar),
- Brother Justice (surname),
- Brother opponent,
- Learned brother.¹⁰⁷

Aristotle's notion of likeness and equality are operative; an attorney never refers to a Justice as a Brother, and a Justice never refers to an attorney as his own brother, only as a brother of counsel.

Here are two riddles from Justice David Souter, who retired from the Court in the Summer of 2009, twenty-six centuries after Sappho:

Justice Souter: I'm not saying whether that would be a classic exercise. Is that the only circumstance in which it can be exercised, or conversely, does Delaware have the authority to say no simply because it says no? I thought your answer the first time around finally was the latter. It can say no. And I think that's what my brother Scalia thought.¹⁰⁸

and

Justice Souter: In this connection, would you comment on—on your brother's argument that this case is like *Simmons* because in neither case was there a decree in so many words by a court that the individual was parole ineligible?¹⁰⁹

Chief Justice Roberts is exceptionally fond of the term "brother," and also very fond of the term "friend."¹¹⁰ He was de-

107. *Id.* at 1.

108. Transcr. Oral Argument at **44–45, *N.J. v. Del.*, 552 U.S. 597 (2008) (D.C., Nov. 27, 2007) (available at 2007 U.S. Trans. LEXIS 62).

109. Transcr. Oral Argument at *21, *Bobby Lee Ramdass v. Robert J. Angelone, Dir., Va. Dept. of Corrections*, 530 U.S. 156 (2000) (D.C., Apr. 18, 2000) (available at 2000 U.S. Trans. LEXIS 39).

110. *Brother memo, supra* n. 106, at 2 (discussing use of the word "brother" in oral arguments before the Supreme Court); *Friend memo, supra* n. 102, at 2 (discussing use of the word "friend" in oral arguments before the Supreme Court).

voted to “brother” when he was an advocate and remains devoted after he became Chief Justice in 2005.¹¹¹

Here he is posing a riddle in a case about the rights of a prisoner to sue:

Chief Justice Roberts: Doesn't the word, as your brother argues, doesn't “any” cut against you?¹¹²

And here he is as an advocate, arguing against a woman volleyball player who had sued for sex discrimination:

Mr. Roberts: Thank you, Your Honor.

First, I'd like to agree with both of my brothers that the Third Circuit decision was wrong.¹¹³

Roberts, either as Chief Justice or as merely “Mr.,” does not seem to avail himself of the term “sister” in the same way.

Certainly this is not because he does not value women, despite some comments he may have previously made. In response to Senator Diane Feinstein's recitation of some of these comments during his confirmation hearing for the Supreme Court,¹¹⁴ he had this to say:

111. *Brother memo*, *supra* n. 106, at 2 (discussing Justice John Roberts' use of the word “brother”).

112. Transcr. Oral Argument at *16, *Abdus-Shahid M.S. Ali v. Fed. Bureau of Prisons*, 522 U.S. 214 (2008) (D.C., Oct. 29, 2007) (available at 2007 U.S. Trans. LEXIS 51).

113. Transcr. Oral Argument at **53–54, *Natl. Collegiate Athletic Assn. v. Smith*, 525 U.S. 459 (1999) (D.C., Jan. 20, 1999) (available at 1999 U.S. Trans. LEXIS 8).

114. Confirmation Hearing on the Nomination of John G. Roberts, Jr. to be Chief Justice of the United States: Hearing Before the S. Comm. on the Judiciary, 109th Cong. 220–22 (2005) (questions of Sen. Dianne Feinstein, Member, S. Comm. on the Judiciary).

Feinstein: In a memorandum to Fred Fielding, White House counsel under President Reagan, about the nomination of a woman to be recognized for moving from homemaker to lawyer, and your response to nominating this woman for an award was this: “Some might question whether encouraging homemakers to become lawyers contributes to the common good, but I suppose that's for the judges to decide.”

In a memo responding to a letter from three Republican Congresswomen that raised concerns about the pay gap that women experience, you said, and I quote, “Their slogan may as well be ‘From each according to his ability, to each according to her gender.’”

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I was raised with three sisters who worked outside the home. I have a daughter for whom I will insist at every turn that she has equal citizenship rights with her brother.¹¹⁵

And certainly he is not alone in eschewing “sister.” While there are approximately three hundred uses of “brother” for counsel and fellow justices, there seem to be far fewer—only the same number as the toes on the front paw of my cat named Antigone—occasions of the use of “sister” as a reference to a woman attorney, never a reference to a woman Justice.

Perhaps the riddle of democracy is sisterhood.¹¹⁶

In *Tègònni*, the character of Antigone (mythological, black) and Tègònni (not mythological, black) call each other sisters.¹¹⁷ Sisterhood occurs after this exchange:

Tègònni: What’s that supposed to mean?

Antigone: That I am contaminated. This Antigone you see is not the one you know. Not the hero men remember, but one sullied by history.

Tègònni: Is that supposed to be a riddle?

You also wrote that the Congresswomen’s concerns “ignore the factors that explain that apparent disparity, such as seniority, the fact that many women frequently leave the workforce for extended periods of time,” et cetera.

In another memo, you implied that it is a canard that women are discriminated against because they received 59 cents, at that time, to every \$1 earned by men.

In a September 26th, 1983, memo to Fred Fielding, you rejected an alternative proposed constitutional amendment guaranteeing equal rights to women.

In 1982, you wrote a memo to then-Attorney General in which you refer to the task force which was to conduct a government-wide review to determine those laws which discriminate on the basis of gender as “the Ladies Task Force.”

I mention these examples to highlight what appears to be either a very acerbic pen or else you really thought that way. Did you really think that way, and do you think that way today? *Id.* at 221.

115. *Id.* at 222 (statements of Judge John G. Roberts, Jr. in response to questions from Sen. Dianne Feinstein, Member, S. Comm. on the Judiciary).

116. *Cf.* Derrida, *supra* n. 18, at 149 (“And the sister? . . . Would she be a case of fraternity?”).

117. Òsófisan, *supra* n. 27, at 127.

* * *

Antigone: Give up, I would have said. Because I've learnt from history, and I have grown wise. Freedom is a myth which human beings invent as a torch to kindle their egos.¹¹⁸

When Tègònni persists in her defense of freedom, Antigone confesses:

"I was testing you."¹¹⁹

Perhaps women must test each other to determine if they are sisters. After all, the riddles posed by democracy are not simply solved when there is a woman present.

Sister Sandra Day O'Connor dissented in the opinion in the *Olympics* case, at least in part, ruling for her sister in the tuxedo, saying that her sister should have a chance to prove that the United States Olympic Committee, established by a Congressional statute, might have sufficient connection with the State (in the form of the federal government) so that it should be held to constitutional standards.¹²⁰ Brothers Brennan and Marshall, sometimes thought of as twin brothers despite their different colored complexions,¹²¹ were even more favorable to the cause of the Gay Olympics. They concluded that the Act violated the First Amendment by allowing the Committee to make sociopolitical content determinations, such as the acceptability of "Junior Olympics" and "Special Olympics" and the unacceptability of "Gay

118. *Id.* at 125–126.

119. *Id.* at 127.

120. *S.F. Arts & Athletics Inc.*, 483 U.S. at 548 (O'Connor, J., dissenting in part and concurring in part).

121. Harvey Gee, *Book Review*, 26 Thurgood Marshall L. Rev. 243, 244 (2001) (footnotes omitted).

To be sure, Brennan was Marshall's closest friend and ally on the Court. Their jurisprudence would prove that Justice Brennan and Justice Marshall shared similar views on race and social policy, even though their backgrounds were as different as their skin color. According to Howard Ball, "Marshall was literally [Brennan's] partner in these doctrinal fights, [and] he let Brennan, who was the acknowledged master, do the negotiating and the dealing. Brennan could almost count on Marshall's vote. Clearly, in civil liberties, criminal justice, and civil rights cases, the two men voted as one."

Id.

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Olympics,” and by giving the Committee sole ownership over the word “Olympic,” despite the word’s “deep history” in Western culture.¹²²

The majority of the other Brother Justices did not agree.¹²³ These brothers seemed to think that the torch was one of the important touchstones for their conclusion that the contemporary Olympics are “unique”:

The ancient Olympic Games lasted 5 days, whereas the modern Olympics last for 10 days. The ancient Games always took place in Olympia in southern Greece; the modern Olympic Games normally move from city to city every four years. (As an effort to reduce nationalism, cities, as opposed to countries, host the modern Olympic Games.) In ancient Greece there may have been a burning fire for religious sacrifice, since the Olympic Games were part of a religious festival. . . . The torch relay, however, was an innovation of the modern Olympic Committee. The closest parallel to the modern opening parade was the opening of the ancient Games with the chariot race. As the chariots entered the arena and passed the judges, a herald called out the names of the owner, his father, and his city. . . . There was no general parade of athletes by locality, as in the modern Games, and the athletes were naked, not uniformed. Athletes were eligible only if they were male, freeborn Greeks. There is no indication that the ancient Olympics included an “Olympic anthem” or were organized by an entity called an “Olympic Committee.” The awards in ancient Greece were wreaths of wild olive, rather than the gold, silver, and bronze medals presented at the modern Olympics.¹²⁴

This was in a footnote, those choral interventions of modern judicial opinions. The Brothers Brennan and Marshall, dissenting, also had a chorus singing in their footnotes, including their conclusion that there was no evidence that the use of “Gay Olym-

122. *S.F. Arts & Athletics Inc.*, 483 U.S. at 569–571 (Brennan, J., dissenting).

123. *Id.* at 522–548.

124. *Id.* at 541 n. 18.

pics” would cause reputational harm to the United States Olympic Committee’s image.¹²⁵

After all—they did not say, but perhaps they should have—the reputation of the original Olympics was decidedly homoerotic.¹²⁶

Perhaps the riddle of democracy is male homosexuality.

If so, it has a simple answer:

[T]here was indeed a link between homosexuality and democracy, because the former was part of the tradition of the men’s associations that formed the basis of the latter.¹²⁷

Or perhaps that is too simple? Perhaps the riddle of democracy is the anxiety about (male) homosexuality?

In *The Island*, when John drops his pants at the sight of his cell-mate Winston, dressed as Antigone in false breasts and a wig, Winston becomes angry over being treated like a “bloody woman.”¹²⁸ “[G]et this, brother,” he says to John,¹²⁹ it is better to be a boy, even if one can be killed by Hodoshe, another man, on an island of rock.¹³⁰

One answer, in the democratic South Africa where Robben Island is a tourist destination¹³¹ rather than a prison is a constitutional provision and decisions from the nation’s Olympia of the judiciary, the Constitutional Court.¹³²

125. *Id.* at 572 n. 36 (Brennan, J., dissenting).

126. See Spivey, *supra* n. 76, at 47–51, 106 (reviewing the homoerotic suggestiveness of gymnasia).

127. Christian Meier, *Athens: A Portrait of the City in Its Golden Age* 139 (Robert Kimber & Rita Kimber trans., Metropolitan Books 1993).

128. Fugard et al., *supra* n. 26, at 60.

129. *Id.*

130. *Id.*

131. Anouk Zijlma, *Robben Island Museum Tour*, <http://goafrica.about.com/od/capetowntravelguide/a/robbenisland.htm> (accessed Oct. 12, 2009).

132. See generally Robson, *supra* n. 14, at 418–424 (discussing South African law on sexuality).

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Perhaps a riddle needs a simpler answer: Not words in constitutions, not litigation and arguments in which people call each other “friends” when they are not friends after all, not judgments and edicts.

Oedipus was saved by his simple response to the Sphinx: “man.”¹³³

Oedipus was not saved by his solution to the riddle because, although the Sphinx did not devour him, his prize for winning the competition was the hand (and presumably the rest of the body) in marriage of the Queen, Jocasta, who had recently lost her dear husband, Laius, killed on the road.¹³⁴

Oedipus, after all, married his mother, after having killed his father.¹³⁵

Accidents, but after all

Perhaps the riddle of democracy is the anxiety about incest.¹³⁶ For if all men are brothers, then perhaps all homosexuality is incest. And if women and men can be related by blood, then perhaps all heterosexuality risks incest. And if Antigone had cared more for her betrothed, Haemon—who sometimes seems as if he must be related to her, a second-cousin at least—then she would not have been so passionate about her brother.

As one respected classicist, writing about Sophocles’ *Antigone*, admits in a footnote:

133. Saxonhouse, *supra* n. 56, at 1266. After Oedipus answered “man,” the Sphinx threw herself off a cliff to her death. *Id.*

134. P.H. Vellacott, *The Guilt of Oedipus*, 11 *Greece & Rome* 137, 137 (Oct. 1964).

135. Meier, *supra* n. 127, at 475–476. Oedipus did not recognize his parents because he was taken from them right after birth and brought up by other parents. *Id.* at 476.

136. See Butler, *supra* n. 4, at 6, 15–19, 22–23, 47, 57, 60, 64, 66, 76–77 (discussing incest in the context of Antigone); Ruthann Robson, *Assimilation, Marriage, and Lesbian Liberation*, 75 *Temp. L. Rev.* 709, 758–766 (2002) (discussing anxieties regarding incest in the context of homosexuality, including same-sex marriage).

The problematic but critical role that *eros* plays in this drama is beyond the scope of this paper.¹³⁷

Perhaps anxieties about accidental incest explain Aristotle's incessant categorizations: just as there are two types of friendships of utility between men, there are two kinds of justice, that which is unwritten and universal and that which is written in a specific law.¹³⁸ Using Sophocles' *Antigone*, Aristotle makes it clear that the unwritten law, Justice, can be set as superior to a particular man-made law, such as Creon's edict that one of the brothers not be buried.¹³⁹ It is not that Aristotle contends that this should be true; he is merely analyzing "persuasion and dissuasion," "accusation and defence."¹⁴⁰

Justice—Dike—is widely considered exemplary.

Although, much like brothers and democracy, justice is problematic, especially when it is named Dike. That name, or a name that sounds almost the same, became the subject of a legal contest, an *agon*.¹⁴¹

137. Helene Foley, *Tragedy and Democratic Ideology: The Case of Sophocles' Antigone*, in *History, Tragedy, Theory: Dialogues on Athenian Drama* 131, 148 n. 56 (Barbara Goff ed., U. Tex. Press 1995).

138. Aristotle, *supra* n. 15, at 1837 (Book VIII, ch. 13, ll. 22–23).

139. See Butler, *supra* n. 4, at 6–7 (discussing Antigone's crime of burying her brother after her uncle condemned such a burial).

140. Aristotle, *Rhetoric*, in *The Complete Works of Aristotle*, *supra* n. 15, at 2190 (Book I, ch. 15, ll. 25–35).

[L]et us take laws and see how they are to be used in persuasion and dissuasion, in accusation and defence. If the written law tells against our case, clearly we must appeal to the universal law and to equity as being more just. We must argue that the juror's oath 'I will give my verdict according to my honest opinion' means that one will not simply follow the letter of the written law. We must urge that the principles of equity are permanent and changeless, and that the universal law does not change either, for it is the law of nature, whereas written laws often do change. This is the bearing of the lines in Sophocles' *Antigone*, where Antigone pleads that in burying her brother she had broken Creon's law, but not the unwritten law. . . .

Id.

141. For legal scholarship discussing the litigation, see Todd Anten, *Self-Disparaging Trademarks and Social Change: Factoring the Reappropriation of Slurs into Section 2(A) of The Lanham Act*, 106 Colum. L. Rev. 388 (2006); Llewellyn Joseph Gibbon, *Semiotics of the Scandalous and the Immoral and the Disparaging: Section 2(A) Trademark Law after Lawrence v. Texas*, 9 Marq. Intell. Prop. L. Rev. 187, 222 (2005).

When your name is Dike or Dyke and you ride a chariot, perhaps there is more than one part that you can play.

Dikes on Bikes, also known as Dykes on Bikes, is now more properly named Dikes on Bikes® and Dykes on Bikes®.¹⁴² But that little ® was not so easily obtained. Dikes, or even Dykes, is, after all, offensive.

The mythic background is not all that difficult to excavate. “In 1976 a small group of 20–25 women motorcyclists gathered at the head of the San Francisco Pride Parade and, unbeknownst to them, a tradition began. One of these women coined the phrase ‘Dykes on Bikes®’ and the San Francisco Chronicle picked it up and ran with it.”¹⁴³ The loosely affiliated organization became known in various cities,¹⁴⁴ and women on motorcycles were often prominent at LGBT events, such as pride parades and the Gay Games that are not-the-Olympics.¹⁴⁵

In July 2003, the San Francisco group became aware that a woman in Wisconsin was attempting to trademark “dykes on bikes” for commercial use as the name of a clothing company and decided the group should trademark the name.¹⁴⁶ The application was filed later that month,¹⁴⁷ and in February of the next year, an examining attorney with the Patent and Trademarks Office denied the application.¹⁴⁸

The examining attorney was a woman and this is what she said:

142. Dykes on Bikes®, *Mission Statement*, http://max-inc.com/testsites/dykes_on_bikes/dob_final/1_about.html (accessed Oct. 12, 2009).

143. *Id.* at *SF Dykes on Bikes® Womens Motorcycle Contingent History*.

144. See e.g. Dykes on Bikes-Atlanta, *Welcome*, <http://home.earthlink.net/~dykesonbikes/index.html> (accessed Oct. 6, 2009) (listing events in Atlanta, Birmingham, and Macon).

145. Last Combat, *Dykes on Bikes vs. Outlaws MC*, http://www.lastcombat.com/Dykes_on_Bikes_vs_Outlaws_MC.html (accessed Oct. 15, 2009).

146. Dykes on Bikes®, *supra* n. 142, at *SF Dykes on Bikes® Womens Motorcycle Contingent History*.

147. U.S. Pat. & Trademark Off., Serial No. 78281746, *Application*, July 31, 2003, <http://tportal.uspto.gov/external/portal/tow> (accessed Oct. 12, 2009) [hereinafter *Application for Serial No. 78281746*].

148. U.S. Pat. & Trademark Off., Serial No. 78281746, *Office Action Outgoing*, Feb. 20, 2004, <http://tportal.uspto.gov/external/portal/tow> (accessed Oct. 12, 2009).

Registration is refused because the proposed mark consists of or comprises matter which may disparage or bring into contempt or disrepute to the lesbian, bisexual and transgender communities.¹⁴⁹

Perhaps this was a test of sisterhood. Perhaps she wanted to pass, and although she was no classicist and did not strive to be one, she knew that dyke/dike was not some ancient Greek term like Aphrodite or *eros* or even Antigone.¹⁵⁰ Perhaps she had heard it one night when she was lost in the dangerous caverns of the city, wielded by boys like her troublesome brothers, the word buzzing like a carrion-fly in the otherwise silent darkness.

She did her research. She attached a print-out to her denial entitled “WordNet 2.0 Vocabulary Helper: *dyke*,” which under the subheading “Coordinate Terms (sisters) of the verb dyke” it said:

butch, dike, dyke (offensive terms for a lesbian who is noticeably masculine).¹⁵¹

She also attached another print out, this one seemingly from Allwords.com, which does not seem as supportive to her conclusion because it not only included as a definition “[a] vertical or semi-vertical sheet of igneous rock that cuts across the layering or bedding planes in the surrounding rock,” but after the “dike (offensive)(slang)” included:

Etymology: 20c: now probably used positively by gay women to describe themselves.¹⁵²

149. *Id.* at 2. This action was based on 15 U.S.C. § 1052 (2006):

No trademark by which the goods of the applicant may be distinguished from the goods of others shall be refused registration on the principal register on account of its nature unless it—(a) Consists of or comprises immoral, deceptive, or scandalous matter; or matter which may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs, or national symbols, or bring them into contempt, or disrepute; . . .

150. Dykes on Bikes®, *supra* n. 142, at http://max-inc.com/testsites/dykes_on_bikes/dob_final/1_archive.html (claiming one theory is the word “dyke” came from the Greek goddess Dike).

151. *Application for Serial No. 78281746*, *supra* n. 147, at Attachment 1.

152. *Id.* at Attachment 2.

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It was this “20c” meaning, twenty-six centuries after Sappho, that formed the basis of the arguments against the examining attorney’s determination:

A “Response to Office Action,” which consisted of a seven-page, single-spaced memo discussing the reasons why “dyke” was not disparaging, but positive, accompanied almost seventy pages of exhibits.¹⁵³

DENIED.¹⁵⁴

A twenty-six page, single-spaced “Request for Reconsideration” memo with twenty-four exhibits in “three packages” including declarations of various academics, writers, and editors, and various dictionary, newspaper, and book excerpts.¹⁵⁵ Exhibit Seven is by a declarant named “Rebecca Bodfish,” who affirms she conducted research and includes as Attachment A fifty “different magazines, videocassettes, and books,” which use “dyke” in their title, all in a positive manner. One of these books is about baseball/softball.¹⁵⁶

DENIED.¹⁵⁷

The examining attorney played her part:

After careful consideration of the law and the facts of the case, the examining attorney must deny the request for reconsideration and adhere to the final action as written since no new facts or reasons have been presented that are significant and compelling with regard to the point at issue.

Dictionary definitions alone may be sufficient to establish that a proposed mark comprises scandalous matter, where

153. U.S. Pat. & Trademark Off., Serial No. 78281746, *Paper Correspondence Incoming*, Aug. 23, 2004, <http://tportal.uspto.gov/external/portal/tow> (accessed Oct. 12, 2009).

154. U.S. Pat. & Trademark Off., Serial No. 78281746, *Office Action Outgoing*, Oct. 28, 2004, <http://tportal.uspto.gov/external/portal/tow> (accessed Oct. 12, 2009).

155. U.S. Pat. & Trademark Off., Serial No. 78281746, *Paper Correspondence Incoming*, April 28, 2005, <http://tportal.uspto.gov/external/portal/tow> (accessed Oct. 12, 2009).

156. *Id.* at Ex. 7, 106–109; *Id.* at Ex. 7, Attachment A, 110–113.

157. *Id.* at Ex. 7, 106–109; *Id.* at Ex. 7, Attachment A, 110–113.

multiple dictionaries, including at least one standard dictionary, uniformly indicate that the word is vulgar, and the applicant's use of the word is limited to the vulgar meaning of the word. . . . As demonstrated by the evidence previously and presently submitted by the examining attorney, the term DYKE is considered vulgar, offensive and/or disparaging. The fact that a certain segment of the disparaged group has adopted the term and now seeks to obviate the vulgar context of the term does not overcome the Section 2(a) refusal.¹⁵⁸

The examining attorney attached two print outs to this opinion.¹⁵⁹ One was entitled "Spanish Slang, Expressions, and Idioms," which had under "Vulgar Nouns" the English "Dyke Lesbian" with three Spanish translations (*Lesbiana*, *Machua*, and *La tortillera*).¹⁶⁰ Other "Vulgar [n]ouns" in the English column included "Breasts," "Condom," and "Virgin."¹⁶¹

The other was a one-page print out from the "online dictionary," indicating a search for "lesbian + dyke + vulgar."¹⁶²

Here is the result for the term "lesbian":

- (1) Of or pertaining to the island anciently called Lesbos, now Mytilene, in the Grecian Archipelago. [1913 Webster]
- (2) Amatory; erotic;—in allusion to the reputed sensuality of the Lesbian people and literature; as, Lesbian novels. [archaic] [Webster 1913 Suppl.]
- (3) Homosexual;—applied to female homosexuals. [PJC]

• • •

Syn: dyke [vulgar, deprecatory].¹⁶³ [PJC].

158. *Id.*

159. *Id.* at 3–11.

160. *Id.* at 3–5.

161. *Id.* at 5, 7.

162. *Id.* at 10.

163. *Id.* at 11.

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Then there is an appeal, with a request for remand for additional evidence.¹⁶⁴ A remand.¹⁶⁵ A two-sentence success.¹⁶⁶

But as in any good tragedy, even one with a happy ending that might render it a comedy, there are more twists and turns.

Enter Michael McDermott, a minor character, perhaps.¹⁶⁷

Perhaps he read about the contest in his local newspaper. Perhaps he was someone's brother and that is how he learned. Perhaps he just did not want any woman to rule while he was alive and believed that women belonged inside, not out on the streets with their noisy chariots. He filed a notice of opposition to the registration of "Dykes on Bikes," arguing that it was part of an "Anti Male Hate Riot" and the Patent and Trademark Office was acting as a "Political Agent of the Misandry Lobby."¹⁶⁸ McDermott was denied standing by the Board.¹⁶⁹

AFFIRMED.¹⁷⁰ CERTIORARI DENIED.¹⁷¹

The United States Government has answered the riddle. "Dyke" or "dike" is not offensive when it is used by the people to pertain to themselves and when they are on motorcycles.¹⁷²

164. Applicant's Req. to Remand for Additional Evid., *In re Application of S.F. Women's Motorcycle Contingent*, Serial No. 78281746 (U.S. Pat. & Trademark Off., Trademark Tr. & App. Bd. Sept. 15, 2005) (available at <http://ttabvue.uspto.gov/ttabvue/ttabvue-78281746-EXA-13.pdf>).

165. Ltr. from Clara Vela, Paralegal Specialist, U.S. Pat. & Trademark Off., to Gia L. Cincone, Townsend & Townsend & Crew LLP, *In re Application of S.F. Women's Motorcycle Contingent*, Serial No. 78281746 (U.S. Pat. & Trademark Off., Trademark Tr. & App. Bd. Nov. 2, 2005) (available at <http://ttabvue.uspto.gov/ttabvue/ttabvue-78281746-EXA-15.pdf>).

166. E-mail from Sharon A. Meier, Trademark Atty., U.S. Pat. & Trademark Off., *In re Application of S.F. Women's Motorcycle Contingent*, Serial No. 78281746 (U.S. Pat. & Trademark Off., Trademark Tr. & App. Bd. Dec. 6, 2005, 7:40 p.m.) (available at <http://ttabvue.uspto.gov/ttabvue/ttabvue-78281746-EXA-16.pdf>).

167. *McDermott v. S.F. Women's Motorcycle Contingent*, 81 U.S. Pat. Q. 2d 1212 at *1 (U.S. Pat. & Trademark Off., Trademark Tr. & App. Bd. 2006).

168. *Id.*

169. *Id.* at *7.

170. *McDermott v. S.F. Women's Motorcycle Contingent*, 240 Fed. Appx. 865, 868 (Fed. Cir. 2007) (unpublished).

171. *McDermott v. S.F. Women's Motorcycle Contingent*, 128 S. Ct. 893, 893 (2008).

172. *Supra* nn. 141–172 and accompanying text. *See also* *McDermott*, 81 U.S. Pat. Q. 2d

Enter: My sister, or sort-of my sister, but definitely a woman who did not agree with this answer to the riddle.

She told me that the name of my cat, Antigone, was offensive. Perhaps this was because she did not say Antigone. Never mind Tègònni. What she said was “Afro-dike-y.”

Perhaps she was thinking the problem was that the cat was black.

Although the cat had a little white mark, like a flame, on the paw with the six toes. My sort-of-sister decided she would call the cat “Torch.”

I suggest “Aphrodite” as a compromise. But there is no compromise with women like her.

I should have—I confess—named my cat Sappho.

Perhaps it is as likely that Sappho was black as that she had a brother.

“In appearance she seems to have been contemptible and quite ugly, being dark in complexion and of very small stature.”¹⁷³ Or so pronounces an ancient source—ancient to us, but nevertheless nine hundred years after Sappho,¹⁷⁴ and so perhaps not based on eyewitness testimony?

But surely the brother is fact?

Here is Sappho herself, or what we believe to be a fragment of Sappho, a fragment usually numbered as fragment five:

at *6 (discussing the fact that McDermott lacks standing to oppose the United States Patent and Trademark Office’s registration of the word “dyke,” as McDermott is not himself a “dyke” and cannot show that the word is generally offensive to a category of people of whom he is a member, namely men).

173. *Sappho*, *supra* n. 55, at 3.

174. *Id.* at 3–5.

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35

*O [Cyprian] and Nereids, grant
that my brother come hither unharmed
and that as many things as he wishes in
his heart to come about
are all brought to pass,*

*And that he atones for all his former errors,
and is a joy to his [friends],
a [pain] to his enemies; but for us
let there be no misery.*

*May he wish to do honor to his sister
. . . painful suffering . . .
. . . millet seed . . . of the citizens*

* * *

. . . but you, Cyprian, setting aside

* * *175

And here is another translation from the Ancient Greek:

*(Cypris) and Nereids, grant that my brother arrive
here unharmed and that everything he wishes in his
heart be fulfilled, and grant too that he atone for all
his past mistakes and be a joy to his friends and a
bane to his enemies, and may no one ever again be
a grief to us; grant that he may be willing to bring
honour to his sister . . . grievous sufferings . . .
formerly sorrowing . . . hearing . . . millet-seed
. . . (accusation?) of the citizens . . . and do you,
(august?) Cyprian, putting aside (your former en-
mity?) (free him?) from evil (suffering?).¹⁷⁶*

175. Jane McIntosh Snyder, *Lesbian Desire in the Lyrics of Sappho* 98–99 (Colum. U. Press 1997).

176. *Sappho*, *supra* n. 55, at 61–63.

And here is a third:

*O Kypris and Nereids, undamaged I pray you
grant my brother to arrive here.
And all that in his heart he wants to be,
make it be.*

*And all the wrong he did before, loose it.
Make him a joy to his friends,
a pain to his enemies and let there exist for us
not one single further sorrow.*

*May he willingly give his sister
her portion of honor, but sad pain*

*]grieving for the past
]
]millet seed
]of the citizens
]once again no
]
]
]but you Kypris
]setting aside evil [
]¹⁷⁷*

The Nereids were nymphs of the sea, numbered at fifty,¹⁷⁸ and perhaps one was named Euridice.

Cyprian, Cypris, and Kypris are all different names for the same person—the same goddess—who we know better as Aphrodite.¹⁷⁹ Perhaps when your name is Aphrodite, goddess of love,¹⁸⁰ you need more than one name.

177. Anne Carson, *If Not, Winter: Fragments of Sappho* 13 (Random House 2002).

178. Encyclopædia Britannica Online, *Nereid*, <http://www.britannica.com/EBchecked/topic/409429/Nereid> (accessed Oct. 17, 2009).

179. See Bell, *Aphrodite*, in *Women of Classical Mythology*, *supra* n. 3, at 53 (listing “Cypria” among numerous surnames); Michael Grant & John Hazel, *Aphrodite*, in *Gods and Mortals in Classical Mythology: A Dictionary* 40 (Dorset Press 1985) (noting that Aphrodite was also known as Cypris, the Cyprian); Snyder, *supra* n. 175, at 98–99 (discussing Sappho’s poem being addressed to the Cyprian, Aphrodite).

180. Bell, *Aphrodite*, in *Women of Classical Mythology*, *supra* n. 3, at 53.

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But when your name is Antigone, you need only one name. But perhaps Antigone is the name of more than one woman, one person, one myth.

Perhaps we should consult a dictionary of myth.

We could learn that there is another entry for Antigone.¹⁸¹ And another.¹⁸² And perhaps another.¹⁸³

Perhaps even when your name is Antigone, there is more than one part you can play. Although it seems it is very difficult to have a happy ending.¹⁸⁴

Sappho, likewise, is not allowed a happy ending.

Sappho—Psappho—was once widely considered to be exemplary, but her reputation soon began to suffer; perhaps it would be unfair to blame democracy.

But the poet Sappho became a courtesan who jumped from the heights of a rocky cliff in despair about a man; the rumors of “Sappho’s leap” might be rumors or might be another woman named Sappho, or indeed, another man named Phaon who was the unloving beloved who occasioned the suicidal leap.¹⁸⁵

There is a competition amongst stories.

And even when we have the stories, the fragments, there is a competition amongst translations.

181. Grant & Hazel, *Antigone*, in *Gods and Mortals in Classical Mythology*, *supra* n. 179, at 37.

182. *Id.* at 39.

183. *Id.*

184. See Bell, *Antigone*, in *Women of Classical Mythology*, *supra* n. 3, at 48 (describing the tragic ends of three out of four different Antigones); Grant & Hazel, *supra* n. 179, at 38–39 (describing the hangings of two different Antigones and a third Antigone turned into a stork by the gods as punishment for comparing her beauty with that of Hera).

185. See *Sappho*, *supra* n. 55, at 7 (describing another Sappho who threw herself off of the cliff of Leucates, drowning herself, because of her love for Phaon and also stating “that there was in Lesbos another Sappho, a courtesan, not a poetess”); Margaret Reynolds, *The Sappho Companion* 71 (Palgrave 2000) (noting Phaon is another name for Adonis, a lover of Aphrodite, a goddess in whose persona Sappho wrote).

For fragment five of Sappho, indeed, for all of Sappho, there are even more classicists who could enter this translation Olympics—or perhaps I should say Olympic-like and torch-less event of multiple games involving words in ancient Greek, lest I be sued.

I do not want to judge a competition in which I cannot perform the feat myself. After all, as I have confessed, I do not know Greek.

The winner is always the absence, the omissions, the missing pieces of the fragments.

After all, there are other women whose work is even less than fragmented; it is unwritten.

But it isn't only Sappho, is not only women, whose work is riddled with absence. We believe that there were hundreds of plays of the great triumvirate of the dramatists of democratic Athens: Sophocles, Euripides, and Aeschylus.¹⁸⁶ Nineteen plays of Euripides are preserved to us.¹⁸⁷ And only seven of Aeschylus.¹⁸⁸ And only seven of Sophocles.¹⁸⁹

Perhaps one can say that Euripides is the winner of this competition despite his lackluster showing in the Greater Dionysia, that Olympics of tragedy,¹⁹⁰ and despite the rumor that Euripides lived in a cave.¹⁹¹ And despite the reputation of Sophocles as the greatest tragedian who authored the greatest tragedy, *Antigone*, beloved not only by Europeans by also Africans, and so stellar it contributed to Sophocles' election as a general.¹⁹²

186. Blondell et al., *supra* n. 12, at 84.

187. *Id.* at 85.

188. *Id.*

189. *Id.*

190. *Supra* nn. 73–75 and accompanying text (describing the Great Dionysia competition as the “Olympics of drama”); *see also* Blondell et al., *supra* n. 12, at 65 (describing Euripides' winning only five first prizes in the Great Dionysia competition, compared to Aeschylus' thirteen and Sophocles' twenty).

191. Blondell et al., *supra* n. 12, at 65.

192. Leonard Woodbury, *Sophocles among the Generals*, 24 *Phoenix* 209, 209 (1970).

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This election should not be confused with the election of 413 BCE in which “a certain Sophocles” was elected to a “[c]ommission set up to deal with the desperate situation of that year,” but who may have been “another bearer of the name” of Sophocles.¹⁹³

But at least one classicist is convincing on the matter of the election of the real Sophocles, the famous author of *Antigone*, as a real general in a real war, in which Sophocles the tragedian now military-man sailed off to Lesbos.¹⁹⁴

Although this was approximately one hundred and seventy years after Sappho wrote of her brother, in a fragment-poem we call number five, and so we would not expect that Sophocles would have met Sappho or killed her brother.¹⁹⁵

Perhaps Sappho was using “brother” metaphorically, in the sense of a brother in her practice of lyric poetry rather than a brother at the bar.

But classicists generally assume she had a brother.¹⁹⁶

And what a brother he was! The poem fragment number five, perhaps coupled with other fragments,¹⁹⁷ is widely interpreted as referring to Sappho’s brother Charaxus, a wine merchant who traveled to Naucratis in the Nile Delta, and who fell in love with a woman named Doricha, or perhaps named Rhodopis, who was a slave, or perhaps a prostitute, or perhaps merely an independent, attractive, and sexually-secure sort of woman.¹⁹⁸ The dalliance is not indulged by Sappho, perhaps because the aristocratic Charaxus is consorting beneath his class, or perhaps he is being profligate (in one version, he purchases her freedom from slavery), or

193. *Id.* at 216.

194. *Id.* at 209.

195. See Snyder, *supra* n. 175, at 98–99 (discussing fragment 15).

196. *Id.* at 100.

197. See *e.g. id.* at 100–101 (discussing fragment 15).

198. *Id.*

perhaps because his lover is a darker foreigner, all of which makes it seem a matter of honor. Poor Sappho is embarrassed.¹⁹⁹

But unlike Antigone—who is, after all, named Antigone and thus seems to have no other choice than to turn the shame of her brother's traitorous death into an occasion for her own autonomy—Sappho is named Sappho and writes a poem in her signature Sapphic stanzas, although perhaps even the Sapphic stanzas are misnamed.²⁰⁰ And although we have only fragments, we easily reach our verdict regarding Sappho's troublesome brother.

But perhaps, after all, it is not so simple.

Perhaps: that dangerous, difficult demand of the future.²⁰¹
Perhaps. Perhaps.

After all: that recurrence, resignation, recapitulation of the past. After all. After everything, or everything that we know.

Perhaps, after all, we are not analyzing a poem (or a fragmented poem) of Sappho, but a reconstruction, a “stage in the fifth-century [BCE] reception of Sappho and her poetry,”²⁰² all of our conclusions filtered through the unreliable witness of Herodotus, writing “some one hundred and twenty-five years after Sappho's time,”²⁰³ with his own interests, as well as some other commentators such as Strabo and Diodorus, with their own interests, most of which seem to be the pyramids, especially those built of black stone, similar to the stone found in Thebes,²⁰⁴ the Thebes of Antigone, of her warring brothers, of her father/half-brother

199. See *id.* at 98–101 (discussing traditional reading of fragment 15); see also Margaret Williamson, *Sappho's Immortal Daughters* 138–139 (Harv. U. Press 1995) (discussing “usual interpretation” of fragment, but also hypothesizing that the dishonor relates to the “complex maneuverings of Lesbian politics”).

200. *Sappho*, *supra* n. 55, at 33. On this view, the Sapphatic stanza was invented by Alcaeus, a male poet on Lesbos. *Id.*

201. See e.g. Derrida, *supra* n. 18, at 26–48. Derrida's chapter, “Loving in Friendship: Perhaps—the Noun and the Adverb,” is an extended exploration of “perhaps” in the context of (male) friendship.

202. Joel Lidov, *Sappho, Herodotus, and the “Hetaira”*, 97 *Classical Philology* 203, 203 (2002).

203. Snyder, *supra* n. 175, at 99.

204. Lidov, *supra* n. 202, at 216.

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Oedipus, of the now-king uncle Creon—Kreon—who was her uncle as her mother's brother, and not the purity of patriarchal lines, after all.²⁰⁵

So that we should deconstruct this reconstruction—for after all, there is “no democracy without deconstruction” and “no deconstruction without democracy.”²⁰⁶

Perhaps “my brother” is simply a metaphor, without colour but with a gender, the brother who departs on the high salty seas.

Perhaps “my brother” is not a particular brother or a single brother, but the distillation of all her brothers: both of the dead, warring brothers who murdered each other, and her father/brother,²⁰⁷ that man Oedipus, sufficiently clever to solve the riddle of the Sphinx but not to evade his own fate.

To think Antigone is only concerned with one brother is to dilute her passion, although even Aristotle seemed to believe this passion was somehow not natural, demanding explication:

Where any detail may appear incredible, then add the cause of it; of this Sophocles provides an example in the *Antigone*, where Antigone says she had cared more for her brother than for [the possibility of] husband or children, since if the latter perished they might be replaced,

But since my father and mother in their graves
Lie dead, no brother can be born to me.²⁰⁸

What is natural and requiring of no explanation is that a sister's role is to remain home, even if she must bear the brunt of the citizens.

The citizens who are always male.

205. Holt, *supra* n. 74, at 677.

206. Derrida, *supra* n. 18, at 105.

207. See Butler, *supra* n. 4, at 79 (speculating about Antigone's grief over the loss of her father and brothers).

208. Aristotle, *Rhetoric*, in *The Complete Works of Aristotle* vol. 2, *supra* n. 15, at 2263 (Book III, ch. 16, ll. 28–33) (citing Sophocles, *Antigone* ll. 911–912).

Even on the island of Lesbos—archaic, pre-democratic Lesbos.

Lesbos, the island that gave its name, like an answer to an unasked riddle, to the women we call Lesbians, and less commonly Sapphists, who are said to love other women, and not only like sisters.²⁰⁹

Remember, this is offensive to some.

Forget dykes and their dike/justice; that is only relevant to motorcycles.

There is confusion, dilution, vulgarity, and too many incarnations.

When your name is Lesbian, it should not require one of three choices:

- (1) Of or pertaining to the island anciently called Lesbos, now Mytilene, in the Grecian Archipelago. [1913 Webster]
- (2) Amatory; erotic;—in allusion to the reputed sensuality of the Lesbian people and literature; as, Lesbian novels. [archaic] [Webster 1913 Suppl.]
- (3) Homosexual;—applied to female homosexuals. [PJC]²¹⁰

When your name is Dimitris Lambrou, and you live on the rocky island of Lesbos, and you edit a magazine devoted to ancient Greece named *Davlos* (The Torch), and you are tired—so tired—of being the object of laughter as if you are a woman although you do not wear false breasts or a wig, you know only the first answer is correct.²¹¹

209. See John Walsh, *Who Are the Real Lesbians?*, *The Independent* (May 6, 2008) (available at <http://independant.co.uk/news/world/europe/who-are-the-real-lesbians-821610.html>) (accessed Oct. 16, 2009) (discussing the history and connotations associated with Sappho).

210. See *supra* n. 163 and accompanying text.

211. Walsh, *supra* n. 209.

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You have a specific complaint: “My sister can’t say she’s a Lesbian.”²¹²

Here is the riddle:

“When is a lesbian not a Lesbian?”²¹³

Perhaps you think you know the correct answer, but the problem is that the world does not believe you. You need a Sphinx to enforce the solution, and in these contemporary times the part of that monster is played by a judge. It is necessary, however, that there be another contestant, so you bring a claim against OLKE, the Greek Gay and Lesbian Union, seeking to prevent them from using the term “lesbian” except to refer to women—and men!—from the rocky island of Lesbos.²¹⁴ You have a statute and you have Article 5, Section 1 of the Greek Constitution which provides:

All persons shall have the right to develop freely their personality and to participate in the social, economic and political life of the country, insofar as they do not infringe the rights of others or violate the Constitution and the good usages.²¹⁵

The judge, Maria Pestali, was not sympathetic to the claim of the nonlesbian Lesbians.²¹⁶ She ruled that, though the word “Lesbian” might be controversial, it was not an insult to “an individual’s personality, nationality[,] or social standing, and should not be taken as an individual or collective insult [to] the people of Lesbos.”²¹⁷ She also judged costs against Dimitri Lambrou in her opinion written in Greek.²¹⁸ There are very few translations of it,

212. *Id.*

213. *Id.*

214. *Id.*

215. Constitution of Greece, art. 5(1) (English translation available at <http://www.hri.org/docs/syntaxma/artcl25.html>) (accessed Oct. 16, 2009).

216. Paul Anast, *Lesbos Islanders Lose Lesbian Ban Court Case*, Telegraph (July 22, 2008) (available at <http://www.telegraph.co.uk/news/worldnews/europe/greece/2445282/Lesbos-islanders-lose-lesbian-ban-court-case.html>) (accessed Oct. 16, 2009).

217. *Id.*

218. A copy of the opinion in Greek is available at: <http://freedomisland.wordpress.com/2008/07/22/> (left hand column).

no translation contest seemingly having occurred, although it is not in fragments.²¹⁹

But, perhaps for me, and for all the other lesbians who do not read Greek (but who could have named our cats Sappho, but decided on some other Greek name, or even some name like Muriel or Derrida or Robben), Paul Thymou, resident of the island of Lesbos, appeared outside the court for a photographic opportunity, with his sign in English that read:

SILENT NO MORE:
IF YOU ARE NOT FROM LESBOS
YOU ARE NOT A LESBIAN²²⁰

In democracy, perhaps no one should be silent and perhaps a word should only have one meaning. Although if literature is democracy (and democracy is literature), perhaps we might consider this poem, written by a female poet circa 1978, at the zenith of American democracy:

Long afterward, Oedipus, old and blinded, walked the roads. He smelled a familiar smell. It was the Sphinx. Oedipus said, "I want to ask one question. Why didn't I recognize my mother?" "You gave the wrong answer," said the Sphinx. "But that was what made everything possible," said Oedipus. "No," she said. "When I asked, What walks on four legs in the morning, two at noon, and three in the evening, you answered, Man. You didn't say anything about woman." "When you say Man," said Oedipus, "you include women too. Everyone knows that." She said, "That's what you think."²²¹

The riddle is to think beyond the Sphinx.

219. Using web-based translation services yields a serviceable translation of the opinion; however, I have not been able to locate a professional English translation of the entire opinion.

220. See Anast, *supra* n. 216 (displaying a photograph of a banner reading "IF YOU ARE NOT FROM LESBOS YOU ARE NOT A LESBIAN").

221. Muriel Rukeyser, *Myth*, in *The Collected Poems of Muriel Rukeyser* 490, 498 (McGraw Hill 1978).

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In our democracy-to-come, which will not arise from the troublesome brotherhood that “requires a law and names,”²²² we will become equal to the demands of the “perhaps,” the recuperation of our past “after alls.”

We will have located Sappho’s lost fragment for Antigone:

*if you want democracy,
my brothers,*

*] the ocean
] the goddess of millet-seed*

*] Antigone [
you must have eros*

*] you must adore sisters
] understanding that they
love each other²²³*

Sappho’s Antigone has a chariot, a motorcycle, and seven brothers who have not gone to war against Thebes, against Vietnam, against Grenada, or Afghanistan or Iraq, against each other, or even against women. Sappho’s Antigone does not die sequestered in a cave; she does not bemoan being friendless. She is troublesome, perhaps, but after all, all good friends are a bit of trouble.

Sappho’s Antigone is exemplary, but she is not singular.

And perhaps we could locate Sappho’s lost poem to Ismene?

Sappho’s Ismene wears brightly coloured clothes, sings loudly, races long and hard, plays baseball, and would rather be a bloody woman than a mere boy. Her poem surely means that democracy would have arrived with its recognition for the supporting cast, beyond an olive branch for sisterhood.

222. Derrida, *supra* n. 18, at 149.

223. This footnote is intentionally left blank.

For what lesbian or Lesbian has ever named her cat Ismene?

Sappho's Ismene is exemplary, but she is not a silence.

Perhaps—perhaps we should be more dangerous, difficult, and demanding of the past, as well as the future. Perhaps Ismene is no character in someone else's writing, perhaps her name is Ismene and her role is that of writer. And not merely any writer, but the winner of the competition not to compete; eschewing the *agon*, the Olympics, the United States Supreme Court with or without her tuxedo; rejecting the ownership of trademarks or names; overruling the answers to previous riddles; working on her drama.

In her play, set on an island but in no particular nation, she shows women not as they ought to be, and not even women as they are, but women as they could be, if they were not entombed in the male fraternity that they have sometimes—and perhaps, after all, mistakenly, named *demokratia*, or even democracy.