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# A Critique of Antiphon's Justice through the Lens of Socrates' Position on Nomoi and Phusis

Mohammed Hossain

## ABSTRACT

Inquiries on justice, law, and natural order can often incite interesting debate and discussion. Questions such as “what is justice” and “what is the role of law and natural order in relation to justice” are among these inquiries. Although they can have many implications for contemporary issues, these inquiries are certainly not just *modern* problems by any means. In fact, these are fundamental questions about society that have been posed since the days of Plato, Socrates, and pre-Socratic philosophers of Ancient Greece. Antiphon and Plato, in particular, have interesting views on natural order and law, and they both offer opposing perspectives. I will elaborate on both of their arguments about justice with respect to its relationship to the law and natural order, as well as justify my position in support of Plato's view—that Antiphon's justice does not lead to a good life.

In Plato's *Crito*, Antiphon and Socrates provide interesting perspectives on life, justice, and the relationship between laws and members of a society. Both discuss a seemingly opposing relationship between laws that are written to govern a society and the fundamental nature of people who are not inclined to follow these laws. A distinction is drawn between what Antiphon dubs *nomoi* and *phusis*. *Nomoi* represents laws that are made by individuals of a society in order to establish social order. They are made by mutual agreements between people to set limitations on conduct. *Phusis*, on the other hand, represents the natural order of the world and how people function naturally. Although Socrates does not explicitly use Antiphon's language, he certainly seems to develop arguments about the nature of people, laws created by individuals, and the criteria for a good and just life. Overall, it is Socrates who provides a better justification for the employment of *nomoi* in living a good and just life. He posits a better method for allowing members of a society to coexist with each other while discouraging the possibility of acting unjustly and harming one another. Socrates' account provides a more plausible argument for a good life as opposed to merely accounting for a free life with the possibility of acting unjustly. In order to fully explain this conclusion, I will discuss essential qualities of

*nomoi* and *phusis*, then discuss arguments provided by both Antiphon and Socrates with regard to the relationship between the two laws.

Fragments from Antiphon's writing suggest that *nomoi* is fundamentally different from *phusis* in both origin and application. *Nomoi* are described as “products of agreement, not of natural growth” and “extra additions,” while *phusis* is juxtaposed as “products of natural growth, not agreement” and “necessary” (Antiphon, 2011, p. 156). In other words, *nomoi* is a result of conventions and parameters created by individuals, while *phusis* is intrinsic to the nature of the individuals themselves. In terms of their application, *nomoi* is treated as “important in the presence of witnesses,” while *phusis* is “treated as important while alone and with no witnesses present” (Antiphon, 2011, p. 155). Under *nomoi*, individuals are “free from penalty” if crimes are not noticed (if they are noticed then crimes are punishable under the law), while *phusis* is unaffected by observation. The reason for this is that disputes cannot be easily settled by the law if testimony is not provided by anyone other than the accuser and the accused; hence, the presence of witnesses becomes important in order to make one case more persuasive than another in court. From these competing testimonies, justice is



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maintained by making punishments and amends accordingly. On the other hand, *phusis* is unaffected by the presence of witnesses because it functions on the will of an individual alone. According to *phusis*, people should be able to do what they wish, and if they are truly just then they will not do harm to another individual. The harm is not decided by testimony in court, but rather by the circumstances and will of the individuals involved. This is why it is said that under *phusis*, people are only harmed “as a result of truth” (Antiphon, 2011, p. 156). The nature of *nomoi* is to set bonds on *phusis*. If *phusis* functions under the utility of life, then *nomoi* is a restriction on that utility in order to establish social order.

Moreover, Antiphon claims that we live from what is advantageous and die from what is not advantageous, but the advantage of *nomoi* is simply generated from bonds on *phusis*—this is perhaps where Antiphon begins to move away from a semantic explanation of *nomoi* and *phusis* and shifts towards developing arguments concerning the importance of *phusis* in living a good and just life. The advantages of *nomoi* that establish social regularity (namely, creating laws against theft, misdemeanor, violence, etc.) are only possible by limiting the freedom of human nature which often functions contrary to these bonds. A problem arises, however, when assuming that *nomoi* prevents harms from being inflicted on members of a society. Although it may seem like laws can prevent crime, upon inspection, *nomoi* does not prevent the cause of harm, but merely provides the possibility of punishment and recourse towards a crime inflicted. As Antiphon (2011) puts it:

...justice that stems from *nomoi* is insufficient to aid those who submit. In the first place, it permits the one who suffers to suffer and the wrongdoer to do wrong, and it was not at the time of the wrongdoing able to prevent either the sufferer from suffering or the wrongdoer from doing wrong. And when the case is brought to trial for punishment, there is no special advantage for the one who has suffered and that he is able to exact the penalty. And it is open to the wrongdoer to deny it.... However convincing the accusation is on behalf of the accuser, the

defense can be just as convincing. For victory comes through speech (p. 157).

To illustrate this concept, if a business were to be robbed of its merchandise, *nomoi* could not stop the crime from actually occurring but merely punish the thief and assist the victim. For this reason, it is argued by Antiphon that *nomoi* is not truly advantageous; it does not prevent harm or cause benefit. Furthermore, punishment for the criminal and recourse for the victim are not guaranteed. They are largely dependent on the persuasiveness of arguments presented in court and not the truth. In this sense, it may be reasonable to see how *nomoi* fails to bring a good and just life to anyone in a society.

Socrates offers a very different view than Antiphon on *nomoi* and *phusis*, starting with a disagreement on Antiphon's notion of an advantageous life. As stated before, Antiphon asserts that *phusis* should be preferred over *nomoi* due to the fact that *nomoi* does not give one an advantageous life and *phusis* gives one access to the full utility of one's life. In direct opposition Plato's (2002) character Socrates states that the “...important thing is not life, but the good life” (p. 48). This statement implies that a good life is one in which individuals do not harm each other because “doing people harm is no different from wrongdoing” (Plato, 2002, p. 49). In other words, living a good life is distinct from merely living life as a utility, and the distinction stems from the unwillingness of an individual to harm others. This starting point is crucial for understanding why Socrates provides a better justification for the employment of *nomoi* in living a good and just life. By breaking bonds made with *nomoi*, an individual cannot live a just life because he is doing harm to the city itself. As Socrates puts it, a city can be destroyed if “...its courts have no force” and if laws are “...nullified and set at naught by private individuals” (Plato, 2002, p. 50). Societies can be destroyed if individuals choose to ignore *nomoi* and purely follow *phusis*, which is not just or good in any way. Furthermore, Socrates may disagree with Antiphon's belief that there are no advantages to a life led by *nomoi*. He cites numerous examples of advantages that Athens had provided him, such as the marriage of his parents leading to his birth and his education. Socrates states: “It is impious to bring violence to bear against your mother or father; it is much more so to use it against your country,” imply-

ing that every person has a duty to the well-being of their state, and any actions that prove contrary would be impious, harmful, and ultimately unjust as well (Plato, 2002, p. 51). Finally, he answers Antiphon's argument concerning nomoi "binding" phusis by stating these duties one has (to their state) do not bind or enslave people because they have the option to either leave the state (through exile) or accept its terms.

In sum, Socrates provides a more plausible account of living a good and just life by first arguing that a good life is more important than living one free of nomoi and then demonstrating how nomoi fulfills the necessary criteria for providing one with a good life, while phusis lacks in this respect. Antiphon's notion of justice is one in which phusis is used to live one's life to its fullest utility, but taking Socrates' account of justice may prove this idea to be problematic. Antiphon's notion of justice does not practically prevent individuals in a society from inflicting harm upon each other; full utility of one's actions implies possessing the autonomy to do harm. This is not justice, at least when considering Socrates' notion of goodness. In order to promote a good and just life, there must be parameters established in order to prevent people from harming each other. Perhaps one could argue that locking up all the citizens of a society in isolated jail cells would prevent harm, but paradoxically, this would be very far from a just society. The next best option, then, is to set rules and limitations on the population, which may be enforced through a series of punishments used to discourage socially unacceptable actions through nomoi. The key notion that Antiphon seems to skim over in his criticism of nomoi is the utility of the laws to act as a practical deterrent of harmful actions. This can be seen as Socrates' answer to Antiphon's major criticism of nomoi (that it does not prevent harm but only punishes after the fact, resulting in no advantage): that it should not only serve as a guideline delivering judgments in court, but also guide our daily actions in order to have everyone within a state function accordingly. The result advances the good of everyone in the state as a whole, which is ultimately how a just state and its individuals should function.

For argument's sake, let us suppose that Antiphon may have considered that laws act as a deterrent. Given his previous position in support of phusis, perhaps

he would argue that some people have a natural inclination to break laws because they are contrary to their nature, and therefore, adopting civility on the basis of phusis might be more desirable. I believe that an answer to this issue may simply be that Socrates knew this to be true at times and supported nomoi for this very reason. If people naturally possess an inclination to act contrarily to the benefit of a state as a whole, then their actions must be limited in order to ensure that harm is not done. Such an objection would not be problematic for Socrates' support of nomoi. In fact, nomoi can be seen as more meaningful because of the very reason that it acts to limit natural ways in which people may harm each other. Another possible objection to Socrates' position may be that if nomoi is sometimes unjust, then obedience to laws becomes unjust. One would then be required to act unjustly if obeying the laws of a state, and would be punished for acting justly in defiance of the law. An example illustrating this argument may ironically be Socrates' unjust conviction. My answer to such a scenario would simply be that nomoi is not necessarily a static set of rules, but can change and adapt to circumstances based upon the will of members of the society that establish laws; therefore, such unjust nomoi would eventually change to become just. For example, if an individual was convicted of a crime under an unjust law, nomoi would dictate that this individual would be sent to a court to be judged by members of the society (the judge, jury, etc.). If a compelling argument is made that the law does not represent the values of a good and just society, then the court could plausibly rule to change the laws itself and free the convicted man. Practical examples of this would be many Supreme Court decisions (such as *Brown v. Board of Education* and *Plessy v. Ferguson*), which have been used to overrule previous laws that were unjust. In sum, the dynamic nature of nomoi would mean that unjust laws would eventually come to change.

Considering the situation that Socrates was in (being sent to his death due to a false conviction), it would have been understandable for him to agree with Antiphon. After all, if justice had functioned flawlessly under nomoi, he would not have been charged with impiety or corrupting the youth. Nonetheless, Socrates fulfilled his duty as a citizen of Athens by refusing to run away and drinking the hemlock tea. Per-

haps Socrates realized that although justice is often difficult to define, we should not be hasty to assume that there is something fundamentally problematic with the idea of agreed limitations on conduct, especially if it is advantageous for the whole of a society. Instead, we should work to have truth reveal itself through discussion and argumentation in court, just as many philosophers do through dialogue and academic disagreement.

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