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NOMOS AND PHUSIS IN ANTIPHON'S Περὶ Ἀληθείας*

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The central importance of Antiphon, the author of the tract *On Truth*, for students of philosophy and history alike, needs no argument. Not only is he the earliest Athenian sophist intelligible to us, but he is also the most explicit exponent of the *nomos-phusis* controversy which emerged in Athens in the 420s and was to prove seminal in the development of Western thought; for the historian, its author presents the tantalizing problem whether he is or is not identical with the politician who, according to Thucydides (8.68.1), orchestrated the oligarchical revolution of 411 B.C. Moreover, the publication in 1984 of a new fragment by Maria Serena Funghi¹ has renewed interest in both author and tract.²

This spate of recent publications, when added to the formidable array of earlier discussions by a formidable array of scholars,³ may make the addition of yet another interpretation a foolhardy enterprise. Yet it seems possible to show that a new perspective on the tract can be gained, which not only places it more closely into the context of contemporary discussions of *nomos* and *phusis* but also takes greater account of the fragmentary nature of the tract, and attempts to do greater justice to *POxy. 1797* (now commonly labelled C), which is believed by some to belong to a different book of this tract.

The following translation, adapted from that by Jonathan Barnes,⁴ is based on the new text published in the first fascicle of the *Corpus dei papiri filosofici greci e latini* by F. Deleva Caizzi, who accepts, largely on the basis of papyrological arguments adduced by M. S. Funghi,⁵ an inversion of the sequence of fragments A and B as adopted by Diels.⁶ The translation of fragment C is based on Diels' text.

A. (= *POxy. 1364 & 3647*) [= fr. B DK⁶]

[**Col. 2**] ... (of more familiar societies) we understand and respect; those of distant societies (5) we neither understand nor respect. This means that we have become barbarians in our relations with one another, (10) for by nature we are all equally equipped in every respect to be barbarians and Greeks.

(15) This is shown by examining those factors which are by nature necessary among all human beings and (20) are

provided to all in terms of the same capacities; it is in these very factors that none of us is (25) differentiated as a [294]barbarian or a Greek. We all breathe into the (30) air with our mouths and with our nostrils, and we all laugh when there is joy in our [Col. 3] mind, or we weep when suffering pain; we receive sounds (5) through our hearing; we see when sunlight combines with our faculty of sight; we work with our hands (10) and we walk with our feet...[gap] [Col. 4] ... each group of men came to an (5) agreement on terms of their liking and enacted the laws...

B. (= *POxy. 1364*) [= fr. A DK⁶]

[Col. 1] ... (6) So justice consists in not transgressing the regulations (*νόμιμα*) of the city (10) of which one is a citizen. Thus a human being is likely to use justice to his own (15) best advantage, if he stresses the importance of the laws in the presence of witnesses, (20) but when he is alone and there are no witnesses (follows) the dictates of nature (*τὰ τῆς φύσεως*). For the dictates of the laws (*τὰ τῶν νόμων*) are (25) adventitious, whereas the dictates of nature are inescapable; dictates of the laws, based on agreement as they are, are not natural growths, whereas the dictates of nature (*τὰ τῆς φύσεως*), being natural growths, are not based on agreement.

[Col. 2] So he who transgresses the regulations (*τὰ οὖν νόμιμα παραβαίνων*) (5) is free from shame and penalty, if he remains undetected by those who are a party to the agreement; but this is not the case (10) if he is detected. However, if someone should try the impossible, namely to violate what is connate with nature, even if (15) he remains undetected by all men, the adverse effect will be no less, and if all see him, (20) it will be no greater. For he is not harmed through opinion but through truth.

The reason for our inquiry into (25) these matters is that the majority of things sanctioned as just in terms of the law are enactments inimical (*πολεμίως*) (30) to nature. For laws have been enacted⁷ for the eyes telling them what they must [Col. 3] see and what they must not; for the ears what they must hear and what (5) they must not; and for the tongue what it must say and what it must not; and for the hands (10) what they must do and what they must not; and for the feet where they must go and where (15) not; and for the mind what it must desire and what not. So the things from which the laws turn men away are in no way (20) less congenial and less close to nature than are the things they

(25) turn us towards. For to live belongs to nature and also to die, and living results (30) from things advantageous for them, while dying comes from things that are not [Col. 4] [295]advantageous. The advantageous things that have been enacted by the sanction of the laws are fetters (δεσμοί) on nature, but those sanctioned by nature are free.

Consequently, what brings discomfort does not, (10) by correct reasoning, profit nature more than what brings gladness; it follows that what brings pain could not be (15) advantageous to a greater degree than what brings pleasure. For things truly advantageous (20) must not bring harm but benefit. Those things, however, which are of advantage through nature ... [short gap] ... (31) and those who fight only to [Col. 5] defend themselves when attacked and do not themselves initiate action; and those who treat (5) their parents well despite the bad treatment they receive from them; and those who (10) put others on oath without themselves swearing an oath.⁸ One might find many of the things (15) I have enumerated inimical to nature (πολέμια τῇ φύσει); what characterizes them is the suffering of more discomfort, when it is possible to (20) suffer less, and the experience of less pleasure when it is possible to have more, and undergoing bad treatment when it is possible not to undergo it.

(25) Now, if the laws would afford some protection (ἐπικούρησις) to those who let themselves be subjected to this kind of treatment (30) and would handicap those who do not let themselves be subjected to it but oppose it, [Col. 6] obedience that ties us to the laws would not be without benefit.⁹ But in fact it turns out that (5) for those who subject themselves to such treatment the justice that derives from law is inadequate to protect them; it allows (10) the victim to suffer in the first place and the perpetrator to act, and it did not attempt at the crucial moment (15) to prevent the victim from suffering nor the perpetrator from acting. And in administering (20) punishment it is no more partial to the victim than to the perpetrator, (25) for he must persuade those who will inflict the punishment that he has been a victim, or he must be able to obtain (30) justice by fraudulence. The same means are also at the disposal of the perpetrator, if he chooses [Col. 7] to deny ... [short gap] ... the (6) defendant has as much opportunity to make his defense as the plaintiff has to make his accusation; (10) persuasion available to victim balances persuasion available

to perpetrator. For victory can also be attained (15) through verbiage and...¹⁰

C. (= *POxy. 1797*)

[**Col. 1**] when what is just is taken seriously, testifying truthfully for another (5) is conventionally thought to be [296]just and no less useful for men's pursuits. (10) Still the person who does this will not be just, if we accept the proposition that it is just not to wrong anyone, unless he is (15) wronging you; for when a person testifies—even if his testimony is truthful—he must necessarily wrong another person in some way (20) and at the same time be wronged later for the evidence he gave. This is inherent in the fact that the testimony given by him (25) leads to the conviction of the person he testified against and makes that person lose his property or his life because of someone whom he (30) is not wronging in any way. This means that he wrongs the person against whom he has testified in that he does wrong to a person who is not (35) wronging him; he is himself wronged by the person he testified against, because he incurs his hatred for having [**Col. 2**] given truthful testimony—and not only is he wronged by hatred, but also because for the rest (5) of his life he must be on guard against the man he testified against: he has a constant enemy (10) ready to say and do whatever evil he can do to him. Now, these wrongs turn out to be not inconsiderable, (15) neither those he suffers nor those he inflicts. For it is not possible that these acts are just and that at the same time (20) it is just neither to do wrong nor to be wronged oneself. On the contrary, it is necessarily true either that only one of them is just or that (25) they are both unjust. It is evident also that sitting in judgment, passing verdicts, and acting as an arbitrator are not just, whatever the result (30) may be. For what benefits some harms others. And this means that those who profit are not wronged, (35) but those who are harmed are wronged....

We do not have a date for the tract. But internal evidence leaves no doubt that it was written at a time when *nomos* had already become the hallmark of a rigid establishment mentality, most graphically expressed in Cleon's remark, dated by Thucydides in 427 B.C., that "a state is stronger when it enforces inferior *nomoi* which are inviolable than when it has good laws which lack authority" and in his praise of "those who feel diffident about their own insight and are content to be less well-informed than the *nomoi* and less competent to find fault with the argument of a sensible speaker" (Thuc. 3.37.3-4);¹¹ and when

physis, which originally described the provenance, true being, physical appearance, or normal behavior of natural phenomena, things, and persons, had come to be more closely associated with human beings, their moral and personal qualities, and the forces to which all humans are equally subject.¹² Moreover, since our earliest evidence for the *nomos-physis* antithesis, which pervades the second fragment of Antiphon's tract, comes from Aristophanes' [297]comedies and Euripidean tragedies datable in the 420s, it is safe to assume a period not far removed from this for Antiphon's *On Truth*.¹³

Since an understanding of Antiphon's treatment of the *nomos-physis* antithesis is crucial to an understanding of the tract as a whole, we shall begin with it. Remarkably enough, *nomos* and *physis* occur in only two of the papyrus fragments of *On Truth*: neither of these terms nor any of their cognates appears in *POxy.* 1797, which is believed to belong to a different book of this tract, and one has shown up in the new papyrus, *POxy.* 3647, which enlarges our knowledge of fragment A of *POxy.* 1364. In all its ten occurrences *nomos* has the prescriptive sense which dominates its use from the late fifth century on: it never describes a practice.¹⁴ Antiphon does not make it clear, however, whether and to what extent he associates *nomos* with written statutes. A number of passages leave little doubt that he wrote against a background of the positive written law: the mention of witnesses in whose presence the importance of the laws should be stressed (B.col.1.16-20), the use of verbs meaning "enact" in connection with *nomos*, e.g., τὰ πολλὰ τῶν κατὰ νόμον δικαίων πολεμίως τῆι φύσει κέλται· νενομοθέτηται γὰρ κτλ.,¹⁵ and especially the statement that the laws afford no protection (ἐπικούρησις) to persons who let themselves be deprived of advantages by acting more morally than the laws demand (B.col.5.25-col.6.30). Yet even these passages suggest that Antiphon is thinking of *nomos* as encompassing all social and behavioral norms, of which the legal *nomoi*, too, form an integral part. The *nomoi* to be exalted in the presence of witnesses are balanced not by φύσις but by τὰ τῆς φύσεως, "the dictates of nature," observed when a person is alone, hinting that not only the statutes are envisaged but all rules which lay down proper social conduct (B.col.1.16-24). Similarly, "the majority of things sanctioned as just in terms of the law" cannot possibly be confined to legal injunctions as to what the eyes must and must not see, what the ears must and must not hear, etc., but must include also moral injunctions imposed by society (B.col.2.26-col.3.18).¹⁶ In fact, in two passages the use of τὰ νόμιμα instead of οἱ νόμοι or τὰ τῶν νόμων shows that all social, religious, and behavioral norms (and not merely the statutes) are being considered. The first of these, at the beginning of the intelligible fragment, defines justice as "not transgressing the *nomima* of the city of which one is a citizen" (B.col.1.6-11), and the second states that "he who transgresses the *nomima* is free from shame and penalty, if he remains undetected by those who are a party to the agreement" (B.col.2.3-9). Clearly, the *nomima* in the former encompass all rules prevalent in the society which is the city, while in the latter the juxtaposition of shame (αἰσχύνῃ) with penalty

(ζῆμιά) shows that the offense has been committed against a moral as well as against a legal order.¹⁷

Two further points can be extracted from the two *nomima* passages. First, the *nomima* discussed — and presumably, therefore, also the *nomoi* — are confined to a particular society, “the city of which one is a citizen” (B.col.1.7-10); unlike *physis*, they are not universally valid. Secondly, the character of that society is identified in the second passage as “those who are a party to the agreement” (B.col.2.5-6). Their identity becomes intelligible through the passage that precedes it: “The dictates of the laws (τὰ τῶν νόμων), based on [298]agreement as they are, are not natural growths, whereas the dictates of nature (τὰ τῆς φύσεως), being natural growths, are not based on agreement” (B.col.1.27-col.2.3). The importance of this statement cannot be overestimated. Not only is it the earliest explicit statement of a contract theory which has come down to us from the Greeks, but it is also unlike contemporary accounts of *nomos* (such as that of Protagoras or of the *Sisyphus* fragment) in that it does not appeal to a historical development to explain the character of *nomos*.¹⁸ On the tacit assumption that all *nomoi* are man-made, it takes an agreement among the citizens for granted as their basis, whether as an original theory or as a view borrowed from a predecessor we do not know.

That the notion of “agreement” is first articulated for us by Antiphon does not mean that it was not already inherent in the concept *nomos* at the time. Cleisthenes’ introduction of the principle of *isonomia* into the government of Athens as “equality of rights and power” had made the validity of all political decisions contingent upon their acceptance by the people as a whole, and had in this way introduced a principle of consent of the governed into the Athenian political system.¹⁹ In the course of the fifth century, this had led to a full development of popular sovereignty under Ephialtes, which spread from the political life of the city into its religious and social life.²⁰ Antiphon’s definition of the “dictates of *nomoi*” as “based on agreement” (B.col.1.28-30) creates, therefore, the strong presumption that the *nomoi* of the Athenian democracy are his model, and the fact that these had become by the 420s a hallmark of an establishment mentality explains why he calls “the majority of things sanctioned as just in terms of the laws” “inimical” (πολεμίως) to nature (B.col.2.26-30), and why he describes the advantageous things enacted by the laws as “fetters” (δεσμοί) on nature (B.col.4.1-6). For him, evidently, *nomos* has none of the liberty-giving qualities which it still had in Herodotus (7.104.4-5): it only restricts and stifles.

It is likely that this attitude reflects a certain upper-class bias against the Athenian democracy. We know, primarily from Aristophanes’ comedies, that from at least the 420s, the upper classes were frequent targets of the lower classes in the lawcourts, especially in proceedings arising from the *euthunai* of elected officials. Only the upper classes were eligible for high elective office in Athens and they served without pay; but at the *euthunai*, which they had to face at the end of their term, it was open to any citizen, however lowly, to lodge accusations against their conduct in office. Upon conviction severe penalties,

including fines, exile, or death, could be and actually were imposed. No wonder, then, that disenchantment with democratic processes and the *nomoi* embodying them is attested for the upper classes from the 420s on.

Antiphon defines the qualities of *nomos* at every step by contrasting them with those of *phusis*, which occupy his attention slightly more: contrasted with ten occurrences of νόμος and two of νόμιμα, φύσις is found in the tract fourteen times, the verbal adjective φύντα twice, and the verb φύω and the compound adjective ξύμφυτος once each. There is little doubt about its meaning: just as *nomos* encompasses all social and political norms of a given society in this tract, so *phusis* embraces all those qualities which are physiologically and genetically ingrained in all mankind. The *phusis* of [299]external nature, which dominates Presocratic thinking, has no interest for Antiphon. Like his contemporaries Thucydides, Euripides, and Aristophanes, his “nature” is universally human.²¹ This is shown most unequivocally in the statements that “to live belongs to nature and also to die” (B.col.3.25-8) and that “by nature we are all equally equipped in every respect to be barbarians and Greeks,” as evidence for which the argument is adduced that “we all breathe into the air with our mouth and with our nostrils, and we laugh when there is joy in our mind” (A.col.2.10-20 and 27-35, and col.3.1-12). The qualities of this universal nature diminish the authority of everything associated with *nomos*. As in Aristophanes' *Clouds* (1075) and in Thucydides' Melian Dialogue (5.105.2), what is determined by *phusis* is unavoidable and ineluctable (ἀναγκαῖα) (B.col.1.25-7, A.col.2.16-20); in contrast, what is determined by *nomos* is adventitious and can be added or subtracted at will (ἐπίθετα, B.col.1.23-5). Natural qualities are congenital and ineradicable (φύντα); they do not depend on agreement as the strictures of the laws do (B.col.1.27-col.2.3). What the laws lay down can be transgressed with impunity, if one remains undetected; attempts to do the impossible and contravene what is connate with nature, on the other hand, are not acts of transgression but of violence (βιάζηται); whether detected or undetected by mankind, they lead to evil (κακόν), because they do not constitute an offense against public opinion (δόξα) but against inescapable truth (ἀλήθεια) (B.col.2.3-23). Attempts to legislate against nature by telling eyes, ears, tongue, hands, feet, and mind what to do or not to do are ludicrous, because such *nomoi* are neither congenial nor close to nature (B.col.2.26-col.3.25). The advantages which the laws bring us restrict nature; the advantages we derive from nature make us free (B.col.4.1-8).

There remains one last passage (B.col.4.31-col.5.17; col.5.25-col.7.15) in which *nomos* and *phusis* are indirectly contrasted with one another. When a person does not initiate aggression but merely defends himself when attacked; when he treats his parents well, even though they treat him badly; and when he puts others on oath without himself taking an oath, his actions are, according to Antiphon, “in many cases inimical to nature” (πολέμια τῇ φύσει), and if he is injured by these acts the laws provide no protection, because the law cannot prevent the victim from suffering nor the agent from acting. Moreover, when

the matter comes to court, the victim has no greater privileges than the agent, since he has to establish his claim by persuasion, and the same avenue is open to the agent to deny what he has done. The question here concerns actions which are neither legal nor illegal, but which are, though Antiphon does not explicitly say so, morally highly commendable.²² Why are such acts “inimical to *phusis*”? Is *phusis* opposed to moral conduct? Antiphon’s answer is illuminating: these acts contravene nature, because they involve shouldering a greater amount of discomfort in a situation in which a lesser amount is possible, a smaller of pleasure when a larger is possible, and suffering when that could be avoided (B.col.5.17-24). In other words, avoidance of pain and maximization of pleasure seem to be predicated here of a life that conforms to *phusis*. But they are not yet developed into the kind of hedonistic principle into which they were to be transformed a century later by Eudoxus and the Epicureans.²³

[300] That Antiphon is not enunciating a pleasure principle seems confirmed by the only other passage in the tract in which pleasure and pain are discussed. An examination of this passage will, I believe, lead us to the heart of Antiphon’s concern in the tract as a whole:

τὸ γὰρ ζῆν ἐστὶ τῆς φύσεως καὶ τὸ ἀποθανεῖν, καὶ τὸ μὲν ζῆν αὐτοῖς ἐστὶν ἀπὸ τῶν ξυμφερόντων, τὸ δὲ ἀποθανεῖν ἀπὸ τῶν μὴ ξυμφερόντων. τὰ δὲ ξυμφέροντα τὰ μὲν ὑπὸ τῶν νόμων κείμενα δεσμοὶ τῆς φύσεως ἐστὶν, τὰ δ’ ὑπὸ τῆς φύσεως ἐλεύθερα. οὐκ οὖν τὰ ἀλγύνοντα ὀρθῶι γε λόγῳ ὀνύνησι τὴν φύσιν μᾶλλον ἢ τὰ εὐφραίνοντα· οὐκ οὖν ἂν οὐδὲ ξυμφέρουτ’ εἴη τὰ λυποῦντα μᾶλλον ἢ τὰ ἥδοντα· τὰ γὰρ τῶι ἀληθεὶ ξυμφέροντα οὐ βλάπτειν δεῖ, ἀλλ’ ὠφελεῖν. τὰ τοίνυν τῆι φύσει ξυμφέροντα τούτων.... (B.col.3.25-col.4.24)

The statement begins with the assertion that life and death are determined by *phusis* and that life is supported by what is advantageous (ἀπὸ τῶν ξυμφερόντων). There can be no question that by “advantageous” Antiphon means things which are conducive to the well-being of man, a meaning which the term has also in one of the first sentences of fragment B. There Antiphon states that “a human being is likely to use justice to his own best advantage, if he stresses the importance of the laws in the presence of witnesses” (B.col.1.12-20). The advantage here is clearly that of man and the dative δικαιοσύνηι makes the best sense if taken with χρῶιτ’ ἄν as expressing the means by which it can be attained.²⁴ Similarly, in the passage under discussion, things must be advantageous to man, if they sustain life; if they are not advantageous to man, they bring death, which is every bit as “natural” as life. Antiphon’s next step is to divide things advantageous because conducive to life into those established by the sanction of the laws and those which belong to nature. The fact that the former inhibit nature, whereas the latter are free, does not make the advantages accruing to us from either any less advantageous. It merely means that to be able to enjoy the advantages provided by the laws we have to sacrifice something of our nature. That something, as the next sentence goes on to

explain, is the discomfort we take upon ourselves and the gladness we forego in accepting the advantages provided by the laws. The conclusion drawn from this is that a thing is not to be counted advantageous *per se* because of the pain or pleasure it brings: what is truly advantageous are things which bring us no harm but benefit. With this Antiphon seems to end his discussion of the advantages we derive from the laws, and the final intelligible words of fragment B: τὰ τοίνυν τῆι φύσει ξυμφέροντα τούτων (col.4.22-4) suggest that he turned next to a discussion of pain inherent in what is advantageous to us in terms of nature. The particle τοίνυν introduces “a fresh item in a series: a new example, or a new argument.”²⁵

If this interpretation is correct, if it is not merely the momentary pleasure or pain we experience but the long-term benefit of sustaining life which is advantageous, we can understand a little better what is “inimical to nature” in [301]many morally commendable acts (B.col.5.5-17). The sacrifices in discomfort gained and pleasure lost, which the sanction of the laws imposes on us, leave us still with advantages; but the sacrifices in pleasure and pain to which we submit when acting morally are not only often in excess of those demanded by the laws—and are for that reason in many instances “inimical to nature”—but also leave us with none of the advantages which the law can offer, since it will provide no protection against the unpleasantness which we have voluntarily taken upon ourselves in acting morally. The means it makes available to the victim to demonstrate his innocence are equally available to the perpetrator to inculpate him.

To what extent the advantages offered, respectively, by *nomos* and *phusis* entered into the rest of Antiphon's discussion we cannot know, unless new texts are found to provide us with new evidence. That the hope for such a possibility is not completely unrealistic is proved by the recent publication of *POxy.* 3647, which, though it adds little of substantive doctrine to what was already known, has enabled us to improve and expand the text of the final preserved portion (fr. B in DK⁶ = fr. A Caizzi) of the first part of *On Truth*. We know that in it Antiphon continued his discussion of *nomos* and *phusis*. The fact that the bulk of what has been preserved states that nature (*phusis*) makes no distinction between Greek and barbarian (A.col.2.10-15, 23-27) has caused at least one scholar to praise Antiphon for his “philosophical anarchism” and to make him into an apostle of liberalism, who, in enlisting a doctrine of the biological equality of all mankind in a total onslaught on the legal apparatus, preaches a new morality, whose cardinal principle is abstinence from aggression against a fellow human being.²⁶ While the expression πρὸς ἀλλήλους βεβαρβαρώμεθα (“we have become barbarians in our relations with one another,” A.col.2.8-10), which introduces this passage, makes it likely that a polemic is involved, it is by no means clear that the polemic involves a complete rejection of all *nomoi*. On the contrary, there are good reasons to believe that the attack is not directed at *nomoi* as such but at people who, in attributing too absolute a value to their own *nomoi*, fail to consider the fact that *phusis* accords no higher rank to one society or ethnic group over another.²⁷ We find some corroboration of this

interpretation toward the end of this fragment. The reading “each group of men came to an agreement on terms of their liking...and enacted the laws” (A.col.4) suggests that reasons for the enactment of *nomoi* followed the *phusis* passage, perhaps by way of introducing an account of the origin of organized society.

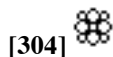
It is difficult to determine how that part of the tract which is preserved in *POxy.* 1797 fits into the whole, and especially how its themes are to be related to the themes struck earlier. Apart from one occurrence of *νομίζεται* (col.1.5), this fragment contains no references either to *nomos* or to *phusis*, and no mention is made of *τὰ ξυμφέροντα*. Nevertheless, its general sense can be integrated with what has preceded. It deals with the problem of justice in the testimony of a witness. Although truthful testimony is generally regarded as just, Antiphon says, there is an element of injustice in it, since it may injure a person who has not wronged the witness, and may incur for the witness the enmity and hatred of the person condemned by his testimony. The lack of a [302]context makes the role of this argument in the tract as a whole escape us. However, we will not go far wrong in guessing that it is somehow related to what is said about justice toward the beginning of the earlier fragment, and that it is possibly intended to show that the advantages which conform to a *nomos*-based justice not only encroach on those which conform to nature, but may also be at variance with one another. The final sentence suggests the conclusion that profit is the ultimate standard of right and wrong (col.2.30-36). If that is the case, the tenor of the second fragment will not seriously differ from that of the first and will not affect its interpretation.

This brings us to the question of the meaning of the whole. The fragmentary state of what has been preserved makes certainty unattainable, and within the scope of our investigation it is impossible to do more than single out a few from among the many interpretations offered by modern scholars.²⁸ The relatively short history of the interpretations to which the fragments have been subjected since the publication of the two major fragments moves from an emphasis on the negative statements on *nomos* (and a consequently more favorable valuation of *phusis*) to a more balanced view of the relation between the two. Bignone ascribed to Antiphon a utilitarian kind of hedonism which, starting from the perception that the written laws are unable to protect man and are opposed to nature, tried to develop a morality based on a humanitarian view of a *phusis* which sees no difference between Greek and barbarian.²⁹ Luria was blinded by what he regarded as exhortations to respect the laws of the state only in the presence of witnesses, not to come to the assistance of wicked parents, and to give equal rights to the upper and the lower classes, to Greeks and barbarians, and by the rejection as unjust of the activity of judge, jury, witness, or public prosecutor. Consequently, he believes the tract *On Truth* to preach political anarchism.³⁰ An emphasis on these same features made Havelock, as we saw, treat Antiphon as a liberal preacher of a “philosophical anarchism” which opposes man’s aggression towards man.³¹ More recent critics have been reluctant to attribute any positive doctrine to Antiphon at all. Moulton still believes with Havelock that a “criticism of *nomos* that is essentially ethical” is

“the principal argument to be extracted with certainty from the fragments.” In the footsteps of Havelock he regards the thesis that “the law can do nothing to prevent the fact of aggression” to be Antiphon’s complaint against *nomos* and the rationale for his position on the split between *nomos* and *phusis*; but, unlike Havelock, he does not regard Antiphon’s critique as radical or anarchistic.³² Kerferd takes a further step in the direction of denying that the preserved tract has a doctrine: “what Antiphon is doing is to proceed, like Socrates, to the successive examination of different views of the just taken from tradition or contemporary polemics or modified from such materials.” He discusses the views of others, he does not present his own. Kerferd’s special merit is to be the first to recognize that *phusis* “as far as Antiphon himself is concerned is not being set up as a norm of action nor as the ultimate good”; rather, it acts as Antiphon’s criterion in assessing the views of others in the guise of τὸ τῆι ἀνθρώπου φύσει ξυμφέρον.³³ Some of Kerferd’s followers, however, have reverted to earlier attempts to read into Antiphon’s *On Truth* doctrines which require us to see in the text either more or less than is [303]warranted. T. J. Saunders argues that Antiphon was searching for some kind of “natural” law which would get away from the defective general principles inherent in the existing laws and bring with it automatic punishment for transgression.³⁴ D.J. Furley attributes to Antiphon the negative view that justice, as commonly understood, is not one of the things “good for us” (ξυμφέροντα), overlooking the fact that the fragment clearly envisages the existence of advantages to be derived from justice (B.col.1.12-16) as well as “advantageous things that have been enacted by the sanction of the laws” (B.col.4.1-5), in terms of which “justice” is defined in the fragment.³⁵ Closer to Kerferd’s views are the statements of Jonathan Barnes and John Dillon. Barnes believes that these fragments “contain the earliest essay written in the light of the distinction between *nomos* or convention and *phusis* or nature. To accept that distinction does not imply a preference for *phusis* and a leaning to anarchism: Antiphon’s *Truth* ... contains no moral or political recommendations at all. It is, in part, a sociological work; but not even a sociologist need preach distasteful doctrines—for he need not preach at all.”³⁶ For Dillon, “Antiphon, despite the apparent intensity of his attack on *Nomos*, is not to be viewed as an advocate of the ‘Might is Right’ school of the type of Plato’s Callicles, or of the Athenian delegation in Thucydides’ Melian Dialogue, but rather as a dispassionate observer of society, whose rhetorical training leads him to express the tension between *Nomos* and *Phusis* in pointedly antithetical terms.”³⁷

The view to which this examination of the role of *nomos* and *phusis* in the fragments has led me is close to those of Kerferd, Barnes, and Dillon. I believe, as they do, that Antiphon is not arguing for the primacy of one over the other. However, I do not think that he was as dispassionate an observer of social attitudes as these three scholars make him out to be. There is too much fervor in what the preserved parts of the tract say about *nomos* to believe Antiphon to have been content, like a modern sociologist, merely to register the views of others without presenting an opinion of his own.³⁸ Kerferd and his followers

have shown that Antiphon's criticism of *nomos* does not constitute a wholesale condemnation and does not make him an unequivocal champion of *phusis*. To this we can add the observation that the adversative *τοίνυν* at B.col.4.22 makes it plausible that the lacuna of at least five lines which followed it may have discussed instances in which the advantages (*ξυμφέροντα*) conferred by *phusis*, which he had just enumerated, were balanced by disadvantages in pain to which they may lead. In view of this possibility, I am not convinced by Dillon that the basic theme of the tract was the contrast between Appearance (*δόξα*) and Truth (*ἀλήθεια*) in conventional and natural values, respectively, adopted by human society. It rather looks as if Antiphon's theme was to delineate the advantages that accrue to a human being from following, respectively, the dictates of society and those of nature. Partial truth is to be found in both, and, if that is so, his aim was to help humans find a way to attaining the good life. If this analysis is correct, Antiphon's goal resembles that of Socrates and Plato, even if, unlike them, his reality is more mundane than theirs was to be. His encounters with Socrates, reported in Xenophon's *Memorabilia* 1.6, may well have a kernel of historical reality in them.³⁹



NOTES

*I wish to record here my thanks to Dorothea Frede and to the editors for helpful comments on this paper. Responsibility for remaining infelicities is exclusively my own.

1. POxy. 3647 in *The Oxyrhynchus Papyri* 52 (1984) 1-5.
2. Of special importance are four articles by Fernanda Decleva Caizzi: (1) "Le fragment 44 D.-K. d'Antiphon et le problème de son auteur: quelques reconsiderations," in *Ἡ ἀρχαία σοφιστική—The Sophistic Movement. Papers read at the First International Symposium on the Sophistic Movement Organized by the Greek Philosophical Society, 27-29 Sept. 1982* (Athens 1984) 96-107; (2) "Ricerche su Antifonte," *Studi di Filosofia preplatonica* (Naples 1984) 191-208; (3) "Il nuovo papiro di Antifonte. POxy LII, 3647," in F. Adorno, F. Decleva Caizzi, F. Lasserre, F. Vendruscolo, eds., *Protagora, Antifonte, Posidonio, Aristotele. Saggi su frammenti inediti e nuove testimonianze da papiri* (Florence 1986) 61-69; (4) "'Hysteron Proteron': la nature et la loi selon Antiphon et Platon," *Revue de Métaphysique et de Morale* 91 (1986) 291-310. I wish to express my thanks to Signora Decleva Caizzi for having made these articles available to me. In addition, the following articles appeared in *Ἡ ἀρχαία σοφιστική—The Sophistic Movement*: C. Georgiadis, "Aristotle's criticism of Antiphon in *Physics*, Book II, Chapter I" (pp. 108-14); C. Hadjistephanou, "Euripides and Antiphon the Sophist" (pp. 115-26); J. M. Dillon, "Euripides and Antiphon on *Nomos* and *Phusis*: some remarks" (pp. 127-36). Further: M. Nill, *Morality and Self-interest in Protagoras, Antiphon, and Democritus* (Leiden 1985) 52-74; B. Cassin, "Histoire d' une identité: Les Antiphons," *L'Écrit du Temps* 10 (1985) 65-77; G. Pendrick, "Once again

Antiphon the Sophist and Antiphon of Rhamnous," *Hermes* 115 (1987) 47-60; and J. Barnes, "New light on Antiphon," *Polis* 7 (1987) 2-5.

3. The most important contributions are those of E. Bignone, "Antifonte Oratore ed Antifonte Sofista" (1917) and "Le idee morali di Antifonte Sofista" (1923), republished in *Antifonte Oratore ed Antifonte Sofista* (Urbino 1977) 7-20 and 61-67, respectively; S. Luria, "Eine politische Schrift des Redners Antiphon aus Rhamnus," *Hermes* 61 (1926) 343-48, and "Antiphon der Sophist," *Eos* 53 (1963) 63-67; E. A. Havelock, *The Liberal Temper in Greek Politics* (New Haven 1957) 255-94; G. B. Kerferd, "The moral and political doctrines of Antiphon the Sophist. A reconsideration," *PCPS* N.S. 4 (1956-7) 26-32, and *The Sophistic Movement* (Cambridge 1981) 115-17; J. S. Morrison, "Antiphon," *PCPS* N.S. 7 (1961) 49-58, and "The Truth of Antiphon," *Phronesis* 8 (1963) 35-49; C. Moulton, "Antiphon the Sophist, 'On Truth,'" *TAPA* 103 (1972) 329-66; T. J. Saunders, "Antiphon the Sophist on natural laws (B44 DK)," *Proceedings of the Aristotelian Society* N.S. 78 (1977/78) 215-36; J. Barnes, *The Presocratic Philosophers* 2 (London 1979) 207-10; D. J. Furley, "Antiphon's case against justice" in G. B. Kerferd, ed., *The Sophists and their Legacy* (*Hermes Einzelschriften* 44, 1981) 81-91; C. H. Kahn, "The origins of social contract theory," *ibid.* 92-108; H. C. Avery, "One Antiphon or two?," *Hermes* 110 (1982) 145-58.

4. Barnes (*supra* n. 3) 207-10.

5. See Funghi (*supra* n. 1) 1.

6. I am indebted to A. A. Long for making an advance copy of the new text available to me. See now *Corpus dei papiri filosofici greci e latini*. Parte 1: Autori Noti, vol. 1 (Florence 1989) 176-222 (by Fernanda Decleva Caizzi with Guido Bastianini).

[305]7. B.col.2.27-32: τὰ πολλὰ τῶν κατὰ νόμον δικαίων πολεμίως τῆι φύσει κείται νενομοθέτηται γὰρ...

8. The situation envisaged here is apparently that of one litigant putting the other on oath without himself taking an oath. The result would be that the jurors will incline to believe the person who has tendered the oath and pass judgment in disfavor of the one who has not sworn. For the language in προκλήσεις ἐς ὄρκον, see J. H. Lipsius, *Das attische Recht und Rechtsverfahren* (Leipzig 1905-15) 895 with n. 123.

9. There may be a pun in the use of πείσμα, which means both "persuasion" and "tow-rope," "hawser."

10. The last sentence is based on Diels' restorations.

11. For a full discussion, see M. Ostwald, *From Popular Sovereignty to the Sovereignty of Law* (Berkeley 1986) 250-55.

12. *Ibid.* 263-66.

13. *Ibid.* 260-73.

14. For the distinction, see *ibid.* 93-108.

15. B.col.2.26-32; cf. also the expressions τὰ μὲν ὑπὸ τῶν νόμων κείμενα at B.col.4.3-5, and τοὺς νόμους ἔθεντο at *POxy.* 3647, col.4.9-10. I cannot agree with Furley (*supra* n. 3) 85 with n. 5 that κείμενα at B.col.4.4-5 is also to be understood with τὰ δ' ὑπὸ τῆς φύσεως (7-8). The point is, on the contrary, that the sanctions of the laws are artificial enactments, while those of nature are not (ἐλεύθερα).

16. F. Decleva Caizzi, "Ricerche su Antifonte" (*supra* n. 2) 192-94, believes that religious sanctions are involved here.

17. Cf. Pericles' Funeral Oration at Thuc. 2.37.3, where αἰσχύνη ὁμολογουμένη is brought about by the infraction of ἄγραφοι νόμοι, which are distinct from the statutes.

18. This does not mean that a historical development may not have been used in other parts of the tract. In fact, B.col.4 suggests that this may have been the case. But it means that Antiphon seems not to have been interested in explaining the origin of νόμοι

in terms of a historical development as does, e.g., Protagoras. If Protagoras' myth in Plato's *Protagoras* reflects genuine Protagorean doctrine, laws will have resulted from man's inability to cope with wild animals and with one another, and will have been the result of *αἰδώς* and *δίκη* dispensed from Zeus by Hermes (*Prot.* 322b-d); if Archelaus had a doctrine of *nomos*, it will have been part of a theory of cultural development (see Ostwald [supra n. 11] 262 with n. 228); the *Sisyphus* fragment (88 B25 DK) explains the first enactment of *nomos* by humans as due to the disordered, beast-like, and violent life prevalent previously; and Glaucon, in Plato *Rep.* 2.359a, regards the earliest enactment of *nomoi* as a compact (*συνθήκη*) to inhibit men from injuring one another, as they are naturally prone to do. A similar view appears in Democritus (68 B245 DK): the absence of *nomoi* would give free rein to envy and bring about *stasis*. Socrates' argument in the *Crito* is not germane to this issue, since it treats *ὁμολογία* as a unilateral commitment of the citizen to the *nomoi* and not of one citizen to another (Plato *Crito* 49e, 50a2 and c5, 51e3, 52a7-8, c2 and d2-3, 54c3-4). See Kahn (supra n. 3) 92-108.

19. See M. Ostwald, *Nomos and the Beginnings of the Athenian Democracy* (Oxford 1969) 155-60.

20. For this development, see Ostwald, *Popular Sovereignty* (supra n. 11) chapters 2-3.

21. See *ibid.* 262-66. Cf. also Moulton (supra n. 3) 350-66, and on Euripides, Hadjistephanou and Dillon (supra n. 2).

22. See Kerferd, "The moral and political doctrines" (supra n. 3) 29-30.

23. See Moulton (supra n. 3) 338.

[306]24. Furley (supra n. 3) 83 translates "would be treating justice" rather than "would be using justice," equating justice with obedience to the law and opposing it to the claims of nature. This correct perception is, however, vitiated by his failure to see that here, as elsewhere in the tract, justice is not treated as an absolute moral value but as contingent upon the impression a given mode of conduct conveys to others. This is confirmed by its association with *δόξα* at B.col.2.21, and by its opposition to the *ἀλήθεια* associated there with *φύσις* (23). As a consequence, he denies (p. 85) that any *ξυμφέροντα* can be derived from obedience to the laws at all, since they are only "fetters on nature." This, however, goes clearly against Antiphon's language here and at B.col.4.1-5. Furley's translation of *τὰ ξυμφέροντα* as "what is good for you" is slightly misleading in that it takes the term in too narrowly a medical sense, neglecting the political sense of "advantageous," "expedient," immortalized in Thucydides' Melian Dialogue (5.90, 98, 105.4, 107). In that sense, there can be no question but that a person can derive advantages from the laws and from conveying the impression (*δόξα*) that he obeys them, so long as his actions do not contravene the dictates of nature.

25. See J. D. Denniston, *The Greek Particles*² (Oxford 1954) 575.

26. Havelock (supra n. 3) 255-94, esp. 256-66.

27. This point is made by Caizzi, "Il nuovo papiro..." (supra n. 2). The *τοὺς δὲ* at A.col.2.3 makes it virtually certain that a masculine noun in the accusative plural must have preceded the restored portion of A.col.1.35. *τοὺς μὲν νόμους* has been recognized as the most probable reading in view of the *τοὺς δὲ* of *POxy.* 3647 (Caizzi p. 4).

28. For good bibliographies, see Moulton (supra n. 3) 329-30 nn. 1 and 2, and Furley (supra n. 3) 91. To the works listed there Dillon and Nill (supra n. 2) must now be added.

29. Bignone (1923) (supra n. 3) 61-127.

30. Luria (1926) (supra n. 3) 343.

31. See n. 26 above.

32. Moulton (supra n. 3) 331 and 340.
33. Kerferd (supra n. 3) (1956-7) 31-32, (1981) 115-17.
34. Saunders (supra n.3) 215-36.
35. Furley (supra n. 3).
36. Barnes (supra n. 3) 214.
37. Dillon (supra n. 2) 132.
38. Whether the discussion of the advantages offered by nature, which we posit, was informed by a similar fervor must remain a moot point at this juncture.
39. For an opposite view, see Pendrick (supra n. 2) 47-60, esp. 48-49.