The Classical Roots of Enlightenment Social Contract Theory

Master’s Thesis

Presented to

The Faculty of the Graduate School of Arts and Sciences
Brandeis University
Graduate Program in Ancient Greek and Roman Studies
Professor Joel Christensen, Advisor

In Partial Fulfillment
of the Requirements for the Degree

Master of Arts
in
Ancient Greek and Roman Studies

by
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May 2018
Acknowledgments
I would like to thank Prof. Joel Christensen for guiding me through this process. To spend a year researching a difficult topic is highly rewarding. It brings with it, however, both joys and struggles. Prof. Christensen helped me through it all. I would also like to thank professors Ann Koloski-Ostrow, Cheryl Walker, and Patricia Johnston for being my readers.
The purpose of this work is to investigate the classical roots of Enlightenment Social Contract Theory. It is not an analysis of Enlightenment philosophy, but rather an attempt to reconstruct the intellectual framework that served as the foundation upon which the Enlightenment thinkers developed their own theories of the social contract. In order to do this, I had to answer two main questions: (1) can an idea exist in practice before it exists as a neatly defined semantic unit; and (2) how can I test such a proposition. I looked for evidence of theories of the social contract developing alongside φύσις and νόμος, two terms I argue merge over time to form a raw concept of Natural Law. I argue evidence of such a dual movement is the backbone of Enlightenment Social Contract Theory. To find such evidence I turned to the Presocratics for evidence of a semantic merger between φύσις and νόμος, the Sophists for a description of the first theory of the social contract built upon these Presocratic notions of φύσις and νόμος, and Plato for a critique of Sophistic Social Contract Theory. Through this process I was able to find strong evidence for such a thing as classical Social Contract Theory. Furthermore, I was able to answer definitively that a raw form of a concept can indeed exist before it has developed into its own semantic unit.
# Table of Contents

Acknowledgments..........................................................................................................................iii  
ABSTRACT...................................................................................................................................iv  
Chapter 1: Introduction....................................................................................................................1  
Chapter 2: An Intellectual Framework............................................................................................8  
Chapter 3: The Unethical Social Contract.....................................................................................27  
Chapter 4: The Ethical Social Contract........................................................................................58  
Chapter 5: Conclusions..................................................................................................................83  
Works Cited...................................................................................................................................89
Chapter 1: Introduction

John Locke in his Second Treatise of Government summarizes Social Contract Theory in the phrase, “Being all equal and independent, no one ought to harm another in his life, health, liberty, or possessions” (Locke [1689] 1980, 2.6). Within this statement is the argument that an individual has certain unalienable, unchanging, natural rights simply because he or she is human, which was a radical thought for the 17th century. According to Locke, outside of society there is no way of guaranteeing that these natural rights will not be transgressed. Locke suggests that human beings, however, since we are led by reason—a faculty which tells each of us to make decisions based upon self-preservation—eventually emerge from the “State of Nature” to establish laws for the very purpose of protecting against the infraction of these “Natural Rights.” Political society established on the basis of Social Contract Theory, therefore, properly exists on the foundation of Natural Law, the idea that universal moral principles guide human conduct.\(^1\)

Locke, however, did not develop Social Contract Theory alone. Rather, Social Contract Theory is a coherent idea that many of the Enlightenment political thinkers such as Thomas Hobbes, Jean-Jacques Rousseau, and Immanuel Kant, developed through individual efforts\(^2\). Enlightenment Social Contract Theory became the new foundation for just and legal government.\(^3\) The Declaration of Independence, for example, is a document written with

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\(^2\) See citations in footnote no. 2. Also see Riley 1973, 543-62 where he discusses the coherency of the Enlightenment Social Contract Theory

Enlightenment Social Contract Theory in mind. The Declaration postulates at its core two main points: (1) that governments derive their “just powers” from the consent of the governed; and (2) because of the origin of governmental powers, government exists in order to protect each citizen’s Natural Rights. Therefore, in the eyes of the colonists it was just to revolt against the Crown because Great Britain was transgressing its own subjects’ life, liberty, health and possessions, and therefore was violating the social contract.

Thus, for great reason, it is part of the standard university curricula in ‘Modern Political Philosophy’ to teach that the Enlightenment thinkers are responsible for Social Contract Theory; I have already provided some evidence of this. But what if the concept had already been developed much earlier and had existed without a name? What if the Enlightenment thinkers were picking up where other philosophers had left off? Put another way, does the language necessary to express such a theory arise out of thin air, in the matter of a few decades, or is a concept, as André Laks argues, not “furnished by the existence of the corresponding word,” but part of a process of “inertia” (Laks 2018, 43). I argue in this thesis that just because the term “Social Contract Theory” is traditionally attached to the Enlightenment thinkers does not mean that the concept could not have existed before them. In fact, my goal is to show that a raw form of the theory did indeed exist long before the Enlightenment philosophers.

Evidence of such a proposition comes from the fact that the Enlightenment thinkers were students of the Classics. Their work is riddled with references to the great thinkers of Ancient Greece and Rome. The influential Enlightenment thinker Charles-Louis de Secondat, Baron de La Brède et de Montesquieu is a wonderful example of this. In an effort to discover the ancient

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4 See Riley 1982; Pettit 1997; and Gough 1936
roots of republican government Montesquieu’s *The Spirit of the Laws*, a text cited throughout the American founding, contains whole discussions of the pros and cons of the Athenian and Spartan governments (Montesquieu [1748] 1989, 12-15). Jean-Jacques Rousseau also, in his *Discourses on the Arts and Sciences*, engaged deeply with Sparta and even came to prefer their austerity to Athens’ commitment to materialism. If the evidence shows that the Enlightenment philosophers looked to antiquity for at least some of their material, we should be able to find evidence of Social Contract Theory in the ancient tradition. One might be surprised, but evidence for the concept arises quickly just by briefly glancing at the earliest piece of Western literature we have, the *Iliad*.

**Early Social Contract Theory in Homer**

How far back do such questions go? Evidence in the *Iliad* suggests that people have been thinking about Social Contract Theory long before it had a name. One does not need to look far in the *Iliad* to find some possible inspiration for the theory. In the opening scene of the *Iliad* Achilles calls an assembly of the people (λαόν) in order to discuss how to stop Apollo’s punishment (1.54). The god has been killing the Danaans with his arrows in answer to the disgruntled priest Chryses’ prayers; Agamemnon had denied the priest’s request for his daughter Chryseis to be returned. In this assembly scene the λαός does not vote in the modern sense or make the decisions, as that is for heroic men like Agamemnon and Achilles to do; neither, however, are they completely compliant, absent, or even silenced (Hammer 2002, 150). For example, after Chryses beseeches the “son of Atreus,” the text says, “Then, all the rest of the Achaeans shouted their approval, that they should be in awe of the priest and accept the splendid 

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5 Also see Hamilton, Madison, and Jay [1788] 1961, 298 for Montesquieu’s influence on the Federalist Papers.  
6 See Mehta 2016, 205-225  
7 All English translations of the *Iliad* come from Verity 2011, and all Greek text comes from Homer 1924.
ransom” (ἐνθ’ ἄλλοι μὲν πάντες ἐπευφήμησαν Αχαιοὶ/ αἰδεῖσθαί θ’ ἱερὴ καὶ ἄγλα δέχθαι ἄποινα, 1.22-33). Although, as has already been mentioned, the people are clearly not the ultimate arbiters, there are social standards in place that grant them the opportunity to persuade their leaders. In this example the people have the right to make a recommendation, and therefore presumably have the right to disagree with their leaders as well. David F. Elmer actually goes so far as to say that the verb ἐπευφήμησαν shows us that the assembly has been assigned “not merely an active role in the process of deliberation but a determinative one” (Elmer 2013, 64).

The cultural significance of these standards is brought to light by the fact that punishment directly follows the leader’s inability to follow them. Because of Agamemnon’s emotionally-centered decision-making, Apollo punishes the Achaeans; “For nine days the god’s shafts ranged throughout the camp, and on the tenth Achilles summoned the people to an assembly” (ἐννῆμαρ μὲν ἀνὰ στρατὸν ᾤχετο κῆλα θεοῖο,/ τῇ δεκάτῃ δ’ ἀγορὴν δὲ καλέσσατο λαὸν Αχιλλεύς, 1.53-54). This punishment would suggest, firstly, that in the process of decision-making it was considered foolish to ignore completely the people’s recommendation. Secondly, although a penalty is not dealt from the institution itself (the god’s job is to enact justice), Apollo’s wrath makes it necessary for Achilles to call an assembly in order to discuss the political questions which arise from the devastation in the camp.

The assembly is the place in the Iliad, then, where political questions are asked and both the people and their leaders participate in answering them. In fact, as Walter Donlan puts it, in the Iliadic assembly a “special kind of reciprocity” exists that develops between the heroes and the collective “people,” one that evolves into “a quasi-formal contract” that expresses the

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8 See Gish 2010, 1-32 where he refers to assembly scenes throughout the Iliad as examples of nascent federalism. Also see Hammer 1998, 14-15; Also see Elmer 2013, 24 where he says that “Deliberative contexts are usually indicated by lexical markers like are, “assembly,” or boule, “council.”
“mutual rights and obligations of the abstract ‘people’ (demos/laos) and the abstract ‘figure of the leader’ (basileus)” (Donlan 1997, 42-43). According to Donlan the assembly represents a place where an established code of rights between the people and their leaders exists, one which is clearly political. Thus, the Iliad is engaged in critical reflection and this reflection is political in nature. Without using the term “Social Contract Theory,” the Iliad engages in a discussion of the concept, albeit an extremely raw form.

There is a whole school of scholars, however, such as M.I. Finley, John Halverson, Wilhelm Hoffman, Eric Havelock, and their intellectual primogenitor Aristotle, who would dispute this argument. They believe that the Iliad and Odyssey must be read entirely devoid of working political institutions. Such scholars argue that these works are inherently ‘pre-political’ because they were composed before the polis had fully emerged. They are essentially arguing, then, that abstract, philosophic, concepts are more substantive than concrete particulars of human action. By this I mean to say that they are willing to ignore what looks like descriptions of political action within these works because they do not fit their pre-political theory. This willingness to ignore what looks like political actions has caused scholars such as Dean Hammer to consider them as such.

Hammer, in his influential book, The Iliad as Politics: The Performance of Political Thought, analyzes in great detail the role of the assembly in Homer’s Iliad. Hammer suggests that as the story of the Iliad unfolds so too does a clearer picture of a society that participates in complex political actions. His hypothesis is that the custom of the assembly, although not written

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9 Also see Haubold 2008
11 See Aristotle 1932, 1253a
12 Hammer gives full credence to the fact that Walter Donlan trail-blazed much of the work he has devoted himself to.
law, suggests that we see in the *Iliad* “not the settled institutional vestiges of politics—a system—but the *performance* of politics” (Hammer 2002, 48).

According to Hammer, the flaw in most of the political scholarship concerning the *Iliad* is that, traditionally, politics has been tied to the “emergence of specific structures and institutions in which one could identify functions that were exclusively (or primarily) political” (Hammer 2002, 14). While looking for “institutional vestiges” within the *Iliad* is a more traditional ontological approach, it ignores the performance of politics occurring in the poem. If an eye is given towards the latter Hammer urges that an entire “political field” opens up, a place where “questions of community organization are raised, determined, and implemented” – questions such as: “‘What do we value and how are these values expressed in the goals of community life and organization?’ ‘What binds us together?’ and ‘On what basis are social relationships, including issues of leadership and authority, organized?’” (Hammer 2002, 14). In this political field, in the assembly of the second half of eight century BCE before the *polis* had fully emerged, evidence of the ancients grappling with the *performance* of Social Contract Theory has emerged.

**Looking Forward**

Briefly grappling with Homer has shown that if one wishes to understand Social Contract Theory fully one must go back farther than the Enlightenment philosophers. For, surely, if evidence of the performance of the basic concepts of Social Contract Theory exists before the *polis* even emerged in the second half of the eight century BCE, then the philosophical roots of the concept could begin much earlier than traditionally taught. Although there is much evidence

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13 Also see Barker 2011 and Elmer 2012
14 See Blome 1984, 9-21; Antonaccio 1995, 5-27
to be unearthed by analyzing the performance of politics in Ancient Greek literature, the point of this exercise has only been to show that a concept can exist well before it is cemented in language.

In this thesis I argue that the foundation for Social Contract Theory, which provided the intellectual background for the modern articulation, was largely “crystallized” during a process of linguistic “inertia,” that is, the process by which language catches up to societal conceptual advances, which took place from the time of the Presocratic Philosophers to Plato (sixth-fourth centuries BCE) (Laks 2008, 4). In doing so I explore the idea that a theory’s existence is not bound by the shackles of language, but rather must exist in a raw form before being polished.

In order to get to the point of being able to suggest that a raw form of Social Contract Theory existed during the time frame which I have set, I take three analytic steps: (1) I provide the intellectual framework for the concept of a raw form of Natural Law (I have already said Social Contract Theory as we are discussing it can not exist without this) by analyzing Presocratic uses of φύσις and νόμος; (2) I show that Sophistic Social Contract Theory rejects the idea that φύσις and νόμος can exist in a symbiotic relationship, and that this creates an unethical social contract; and (3) I analyze how Plato’s theory of the social contract creates a space where φύσις and νόμος bolster each other to create an ethical social contract.15 I conclude that Plato’s theory of the social contract, which is the truest to the Presocratic conception of Natural Law, is ultimately what provided the intellectual framework for Enlightenment Social Contract Theory.

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15 I have chosen to analyze φύσις and νόμος because of their semantic potential. It is my belief that Presocratic Natural Law is an amalgamation of the concepts of φύσις and νόμος.
Chapter 2: An Intellectual Framework

I have already turned back to Homer to show evidence of the ancients struggling through some of the same political concepts that we find ourselves struggling through today. It is my contention that if we wish to understand Enlightenment Social Contract Theory, then we must look for more evidence of the sort touched upon in the introduction. Homer, however, belongs to literature. The question arises, what do we find if we turn back to some of the earliest philosophers in Western thought? I answer such a question using the Presocratics, who were active in the 6th and early 5th centuries BCE. The writings of the Presocratics mainly exist in fragmentary form, but what has been left to us provides a window into their thought. Therefore, they will be the focus of this chapter.

The Presocratics, as far as I can tell, did not explicitly write about Social Contract Theory. They are an appropriate starting point for this thesis, however, because of the intellectual framework they created for later conceptualizations of Social Contract Theory. Their methodology led them to believe that everything in the universe is governed by natural laws.

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16 See Kirk and Raven 1966, p.ix-x where they imply that a proper list of the Presocratic philosophers should include the following: Thales of Miletus (c. 624- c. 546 BCE), Anaximander of Miletus (c. 610- c. 546 BCE), Anaximenes of Miletus (c. 585- c. 528 BCE), Xenophanes of Colophon (c. 570- c. 475 BCE), Heraclitus of Ephesus (c. 535- c. 475 BCE), Pythagoras of Samos (c. 570- 495 BCE), Alcmaeon of Croton (c. fifth century BCE), Parmenides of Elea (c. early fifth century BCE), Zeno of Elea (c. 490- 430 BCE), Melissus of Samos (c. fifth century BCE), Philolaus of Croton (c. 470- c. 386 BCE), Eurytus of Croton (fl. 400 BCE), Empedocles of Acras (c. 490- c. 430 BCE), Anaxagoras of Clazomenae (c. 510- c. 428 BCE), Archelaus of Athens (fl. fifth century BCE), Leucippus of Miletus (fl. fifth century BCE), Democritus of Abdera (c. 460- c. 370 BCE), and Diogenes of Apollonia (fl. fifth century BCE). A quick glance reveals a timespan of roughly two centuries starting with Thales in the early sixth century BCE and culminating in the Atomism of Democritus. Although these great minds are grouped together as ‘Presocratic philosophers’ their writing cannot be said to constitute a unified theorem. Rather, they are given the title of ‘Presocratics’ because they represent a shared approach to investigating the world around them, one that was paradigmatic and did not change until the time of Socrates.
which are ascertainable through observation and human reason. By extension the Presocratics came to understand certain man-made laws and customs as explanatory of natural processes, too. They thought that the same laws that governed the seasons also governed mankind (Cohen 2014, 7-8).

The Enlightenment thinkers, as well as Plato (as I show in Chapter 4), argue that just laws are laws that are in harmony with the basic tenets of nature. Therefore, although the Presocratics did not develop their own theory of the social contract, I show in this chapter that through their use of φύσις and νόμος, in particular, they developed the necessary semantics for later political philosophers to do so. The purpose of this chapter, then, is to utilize relevant linguistic theory to show that the Presocratics developed a raw form of Natural Law. This raw form of Natural Law is what allowed later philosophers like the Sophists and Plato to construct the first theories of the social contract which I analyze in the following chapters.

How Presocratic Natural Law is a Result of Their Methodology

The Presocratic view of the world is inherently tied to their methodology—they were the first scientists. As F.M. Cornford notes, they undertook “the pursuit of knowledge for its own sake, not for any practical use it can be made to serve” (Cornford [1932] 1962, 5). The Presocratics, instead of devoting time to learning metallurgy in order to furnish better weapons, for example, chose to attempt to understand, as many of their works aptly state, “the nature of things” (peri phusis). They were scientists because they set strict standards for themselves in their pursuit of knowledge. This not only allowed them to see certain patterns appearing where only superstition used to be, but also to seek out potentially universal truths whether or not such truths were useful for the material demands of life.
Cornford describes these Ionian scientists as representing a less intellectually developed world view than Socrates and the philosophers who preceded him. He likens the Presocratics to teenagers who, having become rebellious, begin to observe the world around them with a newfound skepticism (Cornford [1932] 1962, 9-10). Furthermore, Cornford, Laks, and Nietzsche describe Presocratic thought as specifically a reaction to the mythology and animism of more traditional avenues (e.g. Homer and Hesiod); their thought performs a corrective function within their own society.\(^\text{17}\) I would like to focus on this corrective function. The understanding of this function reveals that a knowledge of Presocratic uses of φύσις and νόμος is essential for working with ancient conceptions of Social Contract Theory.

The Presocratics chose to look at natural phenomena not as being the work of gods hiding right in front of their eyes, but rather processes of Nature capable of being understood with the aid of human reason. In fact, Cornford classifies this epoch as the very “discovery of Nature.” By this, Cornford means to say that their methodology ushered in the revelation that

> the whole of the surrounding world of which our senses give us any knowledge is natural, not partly natural and partly supernatural. Science begins when it is understood that the universe is a natural whole, with unchanging ways of its own—ways that may be ascertainable by human reason, but are beyond the control of human action (Cornford [1932] 1962, 8).

This was a paradigmatic shift in the way in which we viewed the world. It quite literally changed the whole landscape of the universe. Whereas the pre-scientific age was characterized by the preoccupation of intelligence with the practical needs of action in dealing with an object, as well as the belief in unseen, supernatural powers, behind or within that object, the new scientific age was characterized by the preoccupation of intelligence with the makeup and laws of an object (Cornford [1932] 1962, 8). By making Nature wholly ‘natural,’ everything became an extension

of that Nature. Thus, as I try to show, man-made laws were also seen as an avenue towards the truths found in Nature.

In order to ascertain these universal principles, Presocratics wrote “cosmogonies.” A cosmogony is a history of the universe, from the beginning (arkhê) to the present state. The mental exercise of writing such scientific discourses allowed the Presocratics their fair share of attempts at answering two fundamental philosophical questions: First, how did the world we see come to be arranged as it is: the heavens above us, the water beneath our ships, the volcanoes, all of it? Second, how did life arise within this order? (Cornford [1932] 1962, 18). These two questions are categorically dissimilar to seemingly unobtainable questions like what is the meaning of life? Or, what happens when we die? Answers to the former set can be empirically determined by looking at the world as made up of a fabric of unchangeable physical laws; the latter set belongs to the realm of faith.

The question of “how did life arise within this order?”, in particular, has certain relevance to political questions that are at the heart of this thesis. If the Ionian scientists were pondering how life came to be, more specifically human life—then wouldn’t they have also spent time pondering how man emerged from Nature—how he became political? More specifically, if the purpose of writing cosmogonies that span from the beginning (arkhê) to the present is to ascertain certain universal truths, is it farfetched to think that they would have entertained the notion that certain man-made laws or customs could reveal such universal truths, too? The existing corpus of Presocratic fragments, indeed, hints at this very proposition.

By looking at all the remaining fragments I have determined that the Presocratics, over time, developed the semantics of what we would today call Natural Law—what I argue in the
introduction is the foundation of Social Contract Theory. I show that it was through their use of φύσις and νόμος—φύσις (nature) in their writing coming to mean both the architect of all universal truths as well as a scientific term-of-art for ‘essence’ or ‘substance,’ and νόμος (custom/law) being that order which man is left to ascertain as well as particular customs and laws—that the Presocratics began the linguistic process of inertia necessary to communicate the ideas of Social Contract Theory. Thus, as a consequence, I argue that the Presocratics, who have largely been overlooked as such, were political theorists in their own right.

*Establishing the Two Taxonomies*

Two taxonomies emerge from the process of categorizing Presocratic instances of φύσις and νόμος in their various morphologies: the first is what I would like to call the *specific*, the second, the *abstract*. Uses of φύσις and νόμος that fall into the specific taxonomy leave no room for any interrelation of meaning. Uses that fall into this category are technical in meaning; for instance, φύσις may be used to discuss the anatomy of a flower, or νόμος the custom of cremation. On the other hand, uses of φύσις and νόμος that fall into the abstract taxonomy become progressively interchangeable throughout Presocratic writing, until the time of Democritus in the fourth century BCE when the two words merge to create a single semantic unit that mirrors the Presocratic ideal that the whole universe is made up of laws of Nature. The analysis of the first taxonomy is necessary because it demonstrates *how* the Presocratics went about using φύσις and νόμος to analyze the world. The second, however, is of greater significance because it demonstrates the development of a raw concept of Natural Law within the

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18 See Cornford 2015, 251 where he makes the argument that, “Natural Law must be distinguished from Divine Law, as there is a tendency to confuse or blur the two. First and foremost, the Presocratics were atheists who espoused a doctrine of materialism by the very fact that they were replacing the religion of the time with the idea that nothing was real except tangible bodies composed of atoms.” Yes, Natural Law espouses that there are universalities, but it does not espouse that these universalities were created by a divine being.
language of the Presocratics. This raw concept stood as the intellectual framework upon which subsequent philosophers could build theories of the social contract. On another level, the identification of this dual movement allows me to argue that a group of disparate philosophers with a shared methodology are able to develop concepts just by engaging in similar material.19

This diachronic development between concept and language is well explored in the field of linguistics. In order to better represent what is happening, a decent, although controversial, place to start is with ‘Linguistic Relativity’ (LR), also called the ‘Sapir-Whorf Hypothesis.’ This theory postulates that the language one speaks potentially structures and conditions the way that individual analyzes the “raw data of sense experience” (Crawford 1982, 217).

LR is controversial, and during the 1960s was largely abandoned in favor of the study of the universal nature of human language and cognition (linguists who argue that language does not shape thought but rather is part of thought, and that thought is not relative but rather universal). An example of the stronger version of the hypothesis can be found in the following from Whorf: “We cut nature up, organize it into concepts, and ascribe significances as we do, largely because we are parties to an agreement to organize it in this way - an agreement that holds throughout our speech community and is codified in the patterns of our language” (Whorf 1956, 213). According to Whorf, it is in our nature to classify our surroundings and that the way we classify is pre-determined exclusively by the language we speak. The weaker version, however, called ‘Linguistic Influence,’ proposes that language provides constraints in some areas of cognition, but that language is by no means determinative. This latter version still has many proponents today, such as Guy Deutscher, Brent Berlin and Paul Kay. Berlin and Kay, for

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19 By “dual movement” I mean both terms simultaneously became more technical on the one hand, and more philosophical on the other.
example, in their 1969 book *Basic Color Terms: Their Universality and Evolution* argue that rules exist for how all people label colors, and that as languages evolve cultures acquire new basic color terms in a strict chronological sequence\(^{20}\). Therefore, the way in which people label colors is not only pre-determined and universal, but also can be influenced by other cultures.

I would like to suggest that LR is not so much useful for its conclusion that language potentially acts as a strait-jacket on our thought processes, however, but rather for many of the logical steps that led Sapir and Whorf to reach such a conclusion—steps that give strength to the diachronic development between concept and language proposed above. There are, of course, some obstacles to my argument. Undeniably, the Presocratics spoke various idiolects of Greek; and in my analysis I jump sometimes over 200 years to different parts of the Mediterranean\(^{21}\). Although the various dialects of Ancient Greek made it a pluricentric language, that is, a language with several standard versions, they never became autonomous languages (Stewart 1968, 534). Ancient Greek is the conglomeration of these various dialects. I argue that Sapir and Whorf’s work allows me to suggest that the objections above are specious, and that as a group the Presocratics were able to develop a raw concept of Natural Law through the shared semantic development of φύσις and νόμος.

The first of these logical steps is an idea that Sapir himself established, that language is not a biological faculty, such as walking, but rather an inorganic invention that is made possible through the combined effort of various organs not designed for the task of speaking. This suggestion is perhaps another obstacle to my argument. One might object that there is a certain base level of “animal language” present in all living things. I would suggest, however, that

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\(^{20}\) See Ahearn 2011, 69; Livingstone 2014

\(^{21}\) An “idiolect” is the distinctive speech habits particular to a specific person.
Aristotle’s *Politics* provides support for Sapir’s assertion. For example, in *Politics* 1253a.2-3 Aristotle argues famously that the city-state is a natural growth, “And that man by nature is a political animal.” καὶ ὅτι ὁ ἄνθρωπος φύσει πολιτικὸν ζῷον (1253a.2-3)22. It is due to this political nature that Nature gave humans the faculty of speech. Because of this, Aristotle argues in 1253a.10-18,

> ἥ μὲν οὖν φωνὴ τοῦ λυπηροῦ καὶ ἡδέος ἐστὶ σημεῖον, διὸ καὶ τοῖς ἄλλοις ὑπάρχει ζῷος (μέχρι γὰρ τούτου ἡ φύσις αὐτῶν ἐλήλυθεν, τὸ ἔχειν αἰσθήσιν λυπηροῦ καὶ ἡδέος καὶ ταῦτα σημαίνειν ἄλληλοις). ὁ δὲ λόγος ἐπὶ τῷ δηλοῦν ἐστὶ τῷ συμφέρον καὶ τῷ βλαβερόν, ὡστε καὶ τὸ δίκαιον καὶ τὸ ἁκομόν· τοῦτο γὰρ πρὸς τὰ ἄλλα ζώα τοῖς ἀνθρώποις ἴδιον, τὸ μόνον ἁγαθὸν καὶ κακοῦ καὶ δικαίου καὶ ἁδικοῦ καὶ τῶν ἄλλων αἰσθήσεων ἔχειν, ἢ δὲ τῶν κοινωνία ποιεῖ οἰκίαν καὶ πόλιν.

“Indeed, the voice is a sign of pain and of pleasure, wherefore also it arises in other animals (for their nature has increased up to such a thing, to have a sensation of pain and of pleasure and to point out such things to one another), but speech is to show what is beneficial and what is harmful, so as also to indicate what is right and wrong: for this thing pertains to men against other animals, that he alone has a sense of what is good, evil, right, wrong, and of other things, and the partnership of these things makes a home and city-state.”

Here Aristotle makes the claim that there is a difference between φωνή (‘voice’) and λόγος (‘speech’). Voice is biological, it allows all living things to indicate pain and pleasure. Speech, however, is particularly developed in humans and allows us to elaborate on pain and pleasure, to give us a sense of what is good, evil, right, and wrong. Therefore, Aristotle would certainly agree with Sapir’s assertion that speech is a non-biological function.

By returning to Sapir’s own thoughts about the non-biological function of speech we see a development in his thinking that provides evidence for much of the argumentation in this thesis; that is the idea that speech is a cultural function. Sapir writes, “Eliminate society and there is every reason to believe that he [man] will learn to walk, if, indeed, he survives at all. But it is just as certain that he will never learn to talk, that is, to communicate ideas according to the

22 All Greek for Aristotle comes from Aristotle 1932; translations of Aristotle are my own
traditional system of a particular society” (Sapir 1921, 2). Language, being extrinsic, becomes
(1) distinctively tied to the culture in which it is spoken, and (2) necessarily developed through a
communal process (Whorf 1966, 213)23. In other words, “speech is a non-instinctive, acquired,
‘cultural function’” (Sapir 1921, 2). This aspect of speech means that, in order to develop a
concept, a collaborative effort must take place within a specific culture. The Presocratics, in my
opinion, constitute a culture of thought because of their methodology and shared language.
Therefore, each Presocratic thinker contributed bit by bit to the semantics of φύσις and νόμος by
using these terms both technically and philosophically. If one Presocratic disagreed with the
other, it did not matter; over time they helped conglomerate a nascent theory of Natural Law just
by using the terms. This process becomes even more clear by looking at another step Sapir and
Whorf took in their thinking.

As has already been mentioned, language develops through man’s accumulation of the
“raw data of sense experience.” As raw data are cogitated, according to LR, the community’s
already existing language pre-conditions how those data are processed over time. If a community
sees gods in all things, they will continue to do so until their language slowly develops in a
different direction. By logical extension, rawer forms of a concept should exist latently in a
culture before the synthesized concept can be expressed in a neat and tidy “element of language”
(Sapir 1921, 11)24. As Sapir writes, the “birth of a new concept is invariably foreshadowed by a
more or less strained or extended use of old linguistic material; the concept does not attain to

23 Whorf argued this aspect of speech by showing that the Hopi Tribe in the Americas had a completely different
concept of time from the Europeans. By studying the Hopi language, Whorf found that instead of dividing time up
into intervals like speakers of European languages do, the Hopi view time as one whole continuous unit and thus had
no nouns available for such divisions. This varying world view was distinctively tied to their language. See Whorf
1956, 125-159
24 See also Knox 1993 where he argues that “a name does not need to exist for its referent to be conceptualized”
(Mifsud, 10, following from Knox 1993, 41).
individual and independent life until it has found a distinctive linguistic embodiment” (Sapir 1921, 16). This “element of language,” or “distinctive linguistic embodiment,” is the symbol that is tied to experience. Through time the element of language becomes associated with whole groups, delimited classes, of experience, rather than with the single experiences themselves (Sapir 1921, 11). An element of language is the work of many minds and many generations; it exists in practice before it becomes fully intelligible. In this way, we should be able to identify early evidence of φύσις and νόμος becoming a “distinctive linguistic embodiment,” in my opinion a raw concept of Natural Law.

The Specific Use of Φύσις and Νόμος

The work of Sapir and Whorf suggests that if we want to find a rawer form of a concept in the midst of its development, then we should examine the use of language central to that concept. With this in mind I now show that a specific use of the words φύσις and νόμος developed during the time of the Presocratics. The ability to show this specificity helps support my theory that a similar semantic development occurred for an abstract use of φύσις and νόμος. The latter movement, however, merged the two words, whereas the former completely separated them.

The purported fragments that come from Heraclitus of Ephesus, writing not long after Thales in c.535- c. 475 BCE, provide us with an excellent example of a specific use of φύσις. Again, the specific uses of φύσις and νόμος remain, and almost become increasingly, distinct, so much so that by the time of Democritus any interchangeability between the words becomes impossible. Such rigidity is seen from the beginning. Fr.106.1-5 reports that “Heraclitus disparaged Hesiod for thinking that some days are good, others bad, saying that he did not know that the nature of every day is one” (῾Ηράκλειτος ἐπέπληξεν ῾Ησιόδωι τὰς μὲν ἀγαθὰς
Heraclitus, by saying that the “nature of every day is one” uses φύσις in a proto-technical way. In this instance φύσις means something like ‘essence,’ or ‘substance’; “every day is one” because the essence of a day is always the same. I say this is a proto-technical use of the word because its definition has the potentiality to become more useful for describing the ‘essence’ or ‘substance’ of trees, or mountains, or limbs for example. And this is exactly what we will see. Furthermore, at this point in the semantic history of φύσις it is already inconceivable to replace the word with νόμος; “the law of every day is one” might sound like a pithy way to start a maxim, but it does not make sense in the context of the fragment. This distinction tells us that the intellectual community of Presocratic scientists were developing a multi-faceted understanding of the concepts of φύσις and νόμος. Although the specific usage does not reveal much useful information on its own for this thesis, per se, its existence provides evidence of the semantic evolution that was taking place during the introduction of the Presocratic paradigmatic view of the world.

If we look to Heraclitus of Ephesus’ use of νόμος in the specific taxonomy, we come to see the same proto-technicality. For example, Heraclitus allegedly said “It is also a law to obey the plan of just one man” (νόμος καὶ βουλῆι πείθεσθαι ἑνός, fr. 33.1). In this instance it makes the most sense to understand νόμος as meaning something like ‘custom’ (in Latin mos). If this is done, νόμος provides very little room for broadening the definition—it becomes proto-technical, bound for something like man-made law. Charles H. Kahn suggests that ἕνος should be construed as masculine rather than neuter, meaning we should obey the counsel of “one man” (Kahn 1979, 181). This provides more evidence for the specificity of νόμος. Further evidence for

25 All fragments cited in this chapter come from the TLG, and are numbered according to their system; English translations of Heraclitus are from Laks and Most 2016.
such a specific reading comes when fr. 33 is analyzed in tandem with fr.44. In fr.44 Heraclitus allegedly said “The people must fight for their law just as for their city wall” (μάχεσθαι χρῆ τὸν δῆμον ύπὲρ τοῦ νόμου ὄκωσπερ τείχεος). Here, like in fr. 33, νόμος is highly specific—a citizenry must fight for the laws particular to it, just as they would defend the walls of that particular city. Also, just like the specific instance of φύσις mentioned above, it is difficult to have any interchangeability between φύσις and νόμος in this instance. This lack of interchangeability is significant because it provides evidence of the semantics of the two concepts developing within the writings of the Presocratics. Evidence of the specific taxonomy helps legitimize what will be shown to occur for the more significant abstract taxonomy.

In fact, the specificity of φύσις and νόμος continues with later Presocratic authors. Parmenides, who flourished in the early fifth century, used φύσις and νόμος in an even more technical way than Heraclitus. In the specific taxonomy φύσις becomes less and less to mean ‘nature’ as rather strictly to mean ‘substance’ or ‘essence,’ again more of a technical term.

Parmenides allegedly said (fr.10.9-15),

εἴση δ’ αἰθερίαν τε φύσιν τά τ’ ἐν αἰθερί πάντα σήματα καὶ καθαρὰς εὐαγέος ἀμπλοχα εἰσαμίλος ἀλήθεια ζητήσας ἐξεγέροντο, ἔγγα τε κύκλωσις πεύσης περίφοιτα σελήνης καὶ φύσις, εἰρήνης δὲ καὶ ὑφανδρόν ἀμφίτης ἔχοντα ἐνθέν [μὲν γὰρ] ἐπον τε καὶ ὃς μὲν ἰγκουσί(α) ἐπεδήσας ἐν ἀμβρότητι πείρατ’ ἠχοιν ἀστρών

You will know the aethereal nature, and in the aether all the signs, and of the pure torch of the brilliant sun the blinding works, and from where they are born, and you will learn the recurrent works of the round-eyed moon and its nature, and you will also know from where the sky, which is on both sides, was born and how necessity led and enchained it to maintain the limits of the heavenly bodies26.

Here we see that Parmenides makes φύσις a scientific term-of-art. He speaks of φύσις in relation to the sky and moon. When he uses φύσις here, he means what the sky and moon are made up of, how they work, why they are arranged the way they are (i.e., their substance or essence). Further

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26 All English translations of Parmenides come from Laks and Most 2016
evidence for this technical reading of φύσις is found in fr. 16.4, where Parmenides allegedly said “for it is the same that the nature of limbs apprehends in humans, both in all and in each” (τὸ γὰρ αὐτὸ ἐστὶν ὁπερ φρονέει μελέων φύσις ἀνθρώποισιν καὶ πᾶσιν καὶ παντί). What exactly Parmenides was discussing does not matter in this case; all that matters is how φύσις is used. Here, like above, he uses φύσις as a technical term to discuss what limbs are made up of, how they work, and why they are arranged the way they are. To replace φύσις here with νόμος would produce an insensible sentence.

We see the same separation occurring with νόμος in Empedocles, who flourished c. 490-c. 430 BCE, and thus was one of the last Presocratics. In fr. 9.6, Empedocles allegedly said “They do not call these things as is right, but I follow the custom and speak thus myself” (ἡ <γε> θέμις <οὐ> καλέουσι, νόμωι δ’ ἐπίφημι καὶ αὐτός)\(^\text{27}\). Regardless of what Empedocles is saying people do not call “right,” we can see here that νόμος has to mean ‘custom’ in order for the sentence to make sense. If we were to substitute φύσις the sentence would fall apart. Thus from the first to the last Presocratics we see that a specific taxonomy of φύσις and νόμος developed in which the terms were used in a purely technical manner. This linguistic development is significant because it shows that within the philosophy of the Presocratics consistent semantic meanings were developed in a collaborative manner and with uniform results. With this in mind, I now turn to the abstract taxonomy to show that the Presocratics collaboratively developed a nascent concept of Natural Law that was inherent in the merger that took place between φύσις and νόμος in the abstract taxonomy.

\(^{27}\) Translations of Empedocles come from Laks and Most 2016.
The Abstract Use of Φύσις and Νόμος

We have seen that, as a group, the Presocratics developed φύσις and νόμος into technical terms with consistent semantic meanings over time. We have not yet explored, however, if such a semantic shift could occur in the opposite direction, that is, to merge into one single unit. It is my goal to demonstrate this latter movement in order to reveal that a raw form of Natural Law existed long before the Enlightenment; Social Contract Theory is built upon this raw form. By looking at instances of φύσις and νόμος that are used more abstractly, we find such a semantic shift happening.

Starting off with Heraclitus again, we see that uses of φύσις in the abstract taxonomy stand in for something like a divine architect. In fr. 10.1-3 Heraclitus allegedly said, "But perhaps nature longs for opposites; perhaps it is from them that she creates harmony, and not from similar things" (ἴσως δὲ τῶν ἐναντίων ἡ φύσις γλίχεται καὶ ἐκ τούτων ἀποτελεῖ τὸ σύμφωνον, οὐκ ἐκ τῶν ὁμοίων)\(^{28}\). In context, this quotation is taken from Heraclitus’ theory of the unity of opposites, which says that things are both the same and not the same over time. For Heraclitus, “Opposites are a reality, and their interconnections are real, but the correlative opposites are not identical to each other”\(^{29}\). Here, Heraclitus uses φύσις in the nominative case to show that “Nature,” not “nature” longs for (γλίχεται) opposites. At this point in time one could attempt to replace φύσις with νόμος and the sentence would not fall apart, but to do so would be a bit stressed. What is striking, however, is that the potentiality to do so exists. In my opinion this shows that there is semantic overlap that the Presocratics built upon over time.

In Heraclitus’ abstract use of νόμος we see this same semantic overlap. Νόμος can mean for Heraclitus, just like φύσις, something similar to a personification of universality. This overlap

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\(^{28}\) This particular translation of Heraclitus is my own.

\(^{29}\) Graham 2015
shows that as early as Heraclitus ambiguity existed between the meanings of φύσις and νόμος within the abstract taxonomy. This ambiguity is inherent in fr.114 where Heraclitus allegedly said,

ξὺν νόωι λέγοντας ἰσχυρίζεσθαι χρὴ τῶι ἥξυνιοι πάντων, ὁδωπερ νόμωι πόλις, καὶ πολὺ ἰσχυροτέρως. τρέφονται γάρ πάντες οἱ ἀνθρώπειοι νόμοι ὑπὸ ἕνος τοῦ θείου· κρατεῖ γὰρ τοσοῦτον ὡκόσον ἐκεῖοι καὶ ἔξορκει πάσι καὶ περιγίνεται

Those who speak with their mind must rely on what is common for all, just as a city does on its law, and much more strongly. For all human laws are nourished by one law, the divine one: for it dominates as much as it wants to, and it suffices for all, and there is some left over.

Here, we see that Heraclitus utilizes both the specific and abstract taxonomies simultaneously. He first uses the specific definition, binding the word to have a connotation with man-made law (ἀνθρώπειοι νόμοι). In the process, however, of giving his reasoning for why a city’s duty is to follow the law, he then utilizes an abstract meaning of the word. He says that all “man-made” law is fed by “one divine law.” Thus, the second time he uses the word he gives it the potentiality to become something similar to a divine architect. Further evidence of such potentiality comes from the fact that one could replace the abstract use of νόμος here with φύσις. Like Heraclitus’ use of φύσις, however, this too would be a bit stressed. The meanings here are aided by the adjectives ἀνθρώπειοι and θείου. The potential interchangeability is significant because it shows, regardless of the Presocratics’ agency, that these Ionian scientists were in the throes of developing a concept of φύσις that required a semantic merger with νόμος, and vice versa. This raw form of Natural Law which is developing is the backbone upon which Social Contract Theory is built.

If we turn now to Philolaus, a Presocratic who flourished c. 470- c. 386 BCE, we see that φύσις and νόμος now can effortlessly be replaced with one another. In fr.6.3-8, Philolaus allegedly said,
With regard to nature and harmony, this is how things are: the being of things, which is eternal, and nature itself admit knowledge that is divine and not human, except that it would have been impossible for any of the things that exist and are known by us to come to be if the being of the things out of which the world is constituted, both the limiting ones and the unlimited ones, did not exist.30

Robert Scoon argues that the general topic of this passage is φύσις καὶ ἁρμονία (Scoon 1922, 355). In line with what has been argued in this thesis, Scoon says that in fr.6 φύσις “is a generic word for the real essence or nature of the world,” and that it is immediately defined “in a Pythagorean sense by the addition of ἁρμονία, which according to the fragments was the active, creating, regulating force in nature” (Scoon 1922, 355). Therefore, in fr.6 φύσις is not in any sense a technical term, but rather the very fabric of the universe. Scoon argues that Philolaus uses the term to say that

“we really know only things that have number, that is, measurable form; and hence we cannot know the underlying substance of these things, for that does not admit of human measurement. But, though we do not know it, we may be said to know about it, and we may be theoretically certain that it forms the basis of existing knowable objects, since these objects could not exist without substance” (Scoon 1922, 356).

Philolaus’ argument that we can know anything that has substance is a microcosm of the argument in this chapter. I say this because it is an express articulation of a raw form of Natural Law where φύσις could just as easily be replaced with νόμος and the same concept would arise: the laws of Nature can be ascertained through reason.

If what has been argued in the Philolaus fragment is not enough, by the time we get to Democritus at the end of the Presocratic movement we continue to see a full semantic merger between φύσις and νόμος in the abstract taxonomy. Democritus’ alleged fragments show that the

30 All English translations of Philolaus comes from Laks and Most 2016.
linguistic process of merger within the abstract taxonomy continued through the end of the
Presocratics. For example, Democritus in fr. 245.1-3 allegedly said “The laws would not prevent
each person from living as he pleased, if one man did not do harm to another” (οὐκ ἂν ἐκώλυον
οἱ νόμοι ζῆν ἕκαστον κατ’ ἰδίην ἔξουσίην, εἰ μὴ ἑτερος ἑτέρον ἐλυμαίνετο)\(^{31}\). The context in
which this is found is a discussion of the permissibility of animals to kill one another.
Democritus makes an argument built on the ground of a raw form of Natural Law: it is natural
for there to be murder; thus we need laws to prevent it. Just as in the Philolaus fragment, the raw
concept of Natural Law coincides with a complete ability to switch νόμος with φύσις. Here, as
above, this can be done and the fragment retains the same meaning. This nascent form of Natural
Law is the foundation upon which we will come to see both the Sophists and Plato attempt to
construct their own forms of Social Contract Theory.

*Looking Forward*

What I have gathered by analyzing the Presocratic fragments is also supported by Laks
and Cohen. Laks argues that it is no wonder that φύσις and νόμος merge because φύσις can refer
“not only to the process of genesis and corruption, that is, to the visible or official aspect of the
inquiry into nature,” but also to the ‘nature’ that exists through what Aristotle will come to call
the “principle” (arkhe) or “substrate” (hupokeimenon) “of which all beings are made, that from
which they arise at the beginning and into which they return at the end” (Laks 2018, 11). It is
what Laks calls “the originary ‘nature,’” the former description of nature, that ontologically
equates the word to “what truly is” (Laks 2018, 11-12). This concept of “what truly is,” what I
have called the “abstract,” directs the study of nature to political questions that deal with

\(^{31}\) All English translations of Democritus come from Laks and Most 2016.
universal truths, a raw form of Natural Law. Social Contract Theory is a form of this quest for universal truths; it seeks to understand the nature of society and how it comes to be. The Presocratics laid the ground work for later philosophers to come to more drastic conclusions, one way or another.

Furthermore, Cohen tells us that a distinction between φύσις and νόμος becomes “absent or slurred” in Presocratic thought because “for the early Greeks, the human estate is understood in terms of nature and the realm of nature is explained by principles that we have learned to restrict to the human realm” (Cohen 2014, 7-8). Because of this Greek inclination to “restrict” the principles of nature to the “human realm,” Cohen argues that the Presocratics were unconsciously “pressing” the idea of man-made law (νόμος) into “merely metaphorical service” as explanatory of natural processes, and that over time it became the “same principle of justice which regulates the movements of nature and of humankind” (Cohen 2014, 7-8). It is because of this world-view that the Presocratics by extension “conceived the order in social life, the regularity, as more like the order in the movement of the stars or the tides, with the former being a special case of the latter, since society is a part of nature” (Cohen 2014, 7-8). Thus, the Presocratics viewed the political world and its laws as an extension of Nature and her laws.

Through an analysis of Presocratic uses of φύσις and νόμος I have been able to demonstrate that a raw concept of Natural Law emerged. This idea that φύσις and νόμος can be interchangeable, that they complement each other to reflect a universal design, is what both the Sophists and Plato took in their own directions. I now turn to the Sophists to show that there was (1) an acceptance of this notion that φύσις and νόμος were deemed complementary in Presocratic thought, and (2) a denial by the Sophists that νόμος could really bolster φύσις. I argue that because of this latter position the Sophists constructed a theory of the social contract solely built
upon the premise of φύσις. I show that the relegation of νόμος ushered in an empty social contract; for how can a compact of laws exist upon a theory that deems those laws devoid of any real power?
Chapter 3: The Unethical Social Contract

I have shown that the Presocratics possibly developed a semantic unit that encompassed both φύσις and νόμος. By essentially merging the two over time, the Presocratics came to use φύσις and νόμος as a stand-in for a raw concept of Natural Law. This new concept became the foundation upon which the next generation of thinkers would build theories of the social contract. The Sophists were the first to take up the Presocratics’ torch. During the second half of the fifth century BCE until the time of Socrates’ suicide in 399 BCE, the Sophists simultaneously further idealized the Presocratic concept of φύσις by making it the only standard of truth and weakened the objective standards upheld by νόμος (Pownall 2004, 13). Thus, I show in this chapter that whereas the Presocratics should be credited for “discovering Nature,” the Sophists should be similarly ‘honored’ for turning it into a political weapon. In order to do this I (1) lay out the cultural and historical context in which the Sophists emerged, (2) examine Antiphon’s On Truth in order to get an accurate representation of Sophistic Social Contract Theory, and (3) look at Thucydides’ History of the Peloponnesian War to search for evidence of Sophistic Social Contract Theory’s influence on Athenian diplomacy.

32 See Balot 2013, 183 where he says that the term ‘Sophist’ is “nothing other than a derogatory misnomer used by Plato and his followers to distinguish their idealized Socrates from other contemporary philosophers of nature, ethics, and society.”
The Cultural and Historical Context

It is often said that Athens’ aristocratic youth came in large swaths to absorb Sophistic *logoi*; so much so that by the time Thucydides was composing his *History of the Peloponnesian War* at the end of the fifth century Sophistic teachings had taken firm hold of the city (Pownall 2004, 13). Although many of the Sophists were not actually Athenian by birth, Michael Gagarin suggests that “by around 430 the kind of intellectual activity associated with the Sophists dominated the intellectual life of Athens” (Gagarin 2002, 9). Like the Presocratics too, the Sophists were not strictly unified or coordinated; rather, they shared in certain common interests, attitudes, and methodologies (Gagarin 2002, 9). As W.K.C. Guthrie writes, what classifies them as a group is that, “All alike believed in the antithesis between nature [*physis*] and convention [*nomos*]. They might differ in their estimate of the relative value of each, but none of them would hold that human laws, customs and religious beliefs were unshakeable because they were rooted in an unchanging natural order” (Guthrie 1969, 48). If the Sophists were engaging, and ultimately, disagreeing, with the Presocratics’ unified φύσις-νόμος concept, then we can say that the semantic leveling of these two concepts did indeed occur. The Sophists’ greatest unifier, therefore, was this relationship with the Presocratic raw concept of Natural Law. Like the Presocratics they taught that the laws of Nature were eternal and part of the realm of truth. They differentiated themselves from the Presocratics, however, by teaching that νόμος had no role in discovering the truths behind φύσις, that it was entirely malleable and ephemeral (Balot 2013, 183). Therefore, my opinion is that this detachment of νόμος from φύσις allowed the Sophists to teach that laws and conventions could be broken because they are artificial, that we are only truly bound by what is established by φύσις.
Furthermore, also unlike the Presocratic, the Sophists chose to focus their efforts on practical knowledge, rather than knowledge for its own sake. They accomplished this task through the profession of teaching. Johann Arnason, Kurt Raaflaub, and Peter Wagner say that Sophists were often thought of as teachers who took money for their instructions. Whether they did in fact charge their students does not matter so much as the fact that they were in most accounts considered “teachers.” This designation is worth pointing out because it means that the Sophists specifically dealt with young men who chose to associate themselves with them in order to learn how to equip themselves for a political career (Gagarin 2002, 20).

Thus, in order to keep students coming, the Sophists had to offer something tangible. Frances Pownall makes the argument that they found a new market to exploit after “Ephialtes’ transference of many of the powers of the aristocratic Areopagus to the Council, the Assembly, and the law courts” (Pownall 2004, 15-16). For example, Ephialtes’ reforms set up a judicial system of courts manned by male citizens over thirty years old. Jurors made up their own minds after hearing speeches made by the plaintiffs and defendants. Often talented logographers would write speeches for those plaintiffs and defendants in order to sway the opinions of the jurors. Thus, “a political career depended more upon the ability to sway one’s fellow citizens to one’s viewpoint in these public fora than upon one’s family connections” (Pownall 2004, 15-16). I would like to suggest that it is likely the Sophists became popular during the thirty years or so between Ephialtes’ reforms and their own rise to prominence partially because of what they had to offer Athens’ youths in light of the reforms.

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33 See Yunis 2013, 147; Gagarin 2002, 20
34 Also see Rhodes 2017, 25.2
Sophists devoted their time to writing *antilogiae* (opposing arguments), the mastery of which offered the ability to win any political argument\(^{35}\). Protagoras was reportedly the first to say that “on every subject (*pragma*) there are two *logoi* opposed to one another”\(^{36}\). No νόμος was off limits because “every subject” had two possible outcomes. The ability to alter what was once seen as unshakeable, to change the opinions of all, must have been very appealing to Athens’ youth because the ability to tear down the legitimacy of any law meant the opportunity to rise in politics. This stems from the Sophists’ idea that νόμος has no connection to what is eternal but rather is ephemeral and completely artificial. Thus, it is partially for this reason that the Sophists became popular political teachers.

Just like the Presocratics, then, the Sophists were willing to disrupt the status quo for their ideas. They represented a break from the influence of Homer and Hesiod who taught that νόμος could be divine or divinely inspired. Now because of the Sophists, νόμος could be questioned for any political agenda. I argue in this chapter that the Sophists’ system of thought created real political ramifications. Their identification and exaltation of self-interestedness with a theory of the social contract that holds that anything painful for the individual should be ignored creates a system that is unable to hold society together. This is why for the rest of the chapter I refer to Sophistic philosophy as a “movement towards relativism;” because “if there are no absolute standards and all moral concepts are relative, one can always find a justification for any action, no matter how reprehensible” (Pownall 2004, 10-13). The Sophists created a system of thought without fully understanding the ramifications it would have on political decisions.

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\(^{35}\) See Aristophanes 1987

\(^{36}\) See DK 6a; See also Gagrarin 2002, 20 where he suggests that this ability to make *antilogiae* was partly “responsible for their success, as young men with expectations of later careers in public life came to study with them.”
This movement towards relativism is even seen in the earliest Sophistic writings. Protagoras famously wrote that, “of all things man is the measure, of things that are, of things not existing that they do not exist” (πάντων χρημάτων μέτρον ἐστίν ἄνθρωπος, τῶν μὲν ὄντων ὡς ἔστιν, τῶν δὲ οὐκ ὄντων ὡς οὐκ ἔστιν, DK 80b1)\(^{37}\). Here Protagoras suggests that the individual rather than an unchanging moral law, is the ultimate source of value. According to Protagoras one should not rely on laws or customs to find truth, but just on nature, or rather himself. This sounds like a similar proposition to the Presocratics’, except they believed νόμος was another way to understand and find that truth. Similar antinomian sentiment is found in Plato’s *Protagoras* where the Sophist Hippias makes the claim that νόμος is the tyrant of human beings because it is contrary to nature in many ways and is designed to constrain it\(^{38}\). Hippias goes on to say that because of “the rapidity with which they [*nomoi*] may be changed” customs do not need to be taken seriously, whereas it is impossible to change the mandates of Nature (Guthrie 1969, 138). This separation of νόμος from φύσις is really just the identification of an overall trend in human nature; that we tend to ignore νόμος for our own benefit often, but not always, to the detriment of others.\(^{39}\) The Sophists realized this, but they did not seem to realize that a theory of the social contract centered around the complete illegitimacy of νόμος creates the impossibility for the protection of each individual’s rights against the self-interestedness of other people.

In order to get to the point of being able to decipher Thucydides’ descriptions of the movement towards moral relativism, I now turn to two areas of study within Sophistic thought simultaneously: (1) an in-depth analysis of Sophistic views on φύσις and νόμος; and (2) a

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\(^{37}\) See Gagarin 2002, p.32

\(^{38}\) See DK86c1. This is essentially the same contention Antiphon will make in his *On Truth*.

\(^{39}\) See Thuc. 3.83ff for a description of the atrocities caused by the Corcyraeans. This is why I say that the Sophists are striking a chord with human nature, because such atrocities occur when we see a separation of νόμος from φύσις. In this thesis, however, I focus on Athens since it was also the adopted home of the majority of the Sophists.
breakdown of the Sophistic Social Contract Theory, which is the earliest given conceptualization  

40. At the end of this process I conclude that the Sophistic theory of the social contract does nothing to assuage the dark side of human nature described in Thucydides’ *History*, but rather creates the potentiality for legitimizing it. To accomplish my task, I first first look at Antiphon’s *On Truth*, using it as an accurate depiction of mainstream ideas of νόμος and φύσις in Sophistic Social Contract Theory during the latter of the 5th century BCE. For as Guthrie writes, *On Truth* is an “invaluable source for contemporary moral views” (Guthrie 1969, 110). I then turn to Thucydides’ accounts of the Mytilenean Debate and the Melian Dialogue to show that Sophistic Social Contract Theory can produce actions in line with νόμος if in line with self-interest, but that more importantly it helps legitimize unethical political actions. In this regard, I use Thucydides’ descriptions of state actions during the Peloponnesian War as an analogy for what is discussed in *On Truth*. The result of all this is to show that the Sophists created a theory of the social contract that is unable to protect each individual’s rights, given by φύσις, from being taken away by other people. Thus, the Sophists’ help prove that a social contract cannot exist unless it attempts to combine νόμος and φύσις.

*Antiphon’s On Truth*

Although we have large portions of a tract titled *On Truth* by a Sophist named Antiphon, exactly which Antiphon wrote the work is debated. References exist during this time to a poet, orator, and Sophist all of historical significance and all named Antiphon41. Guthrie tells us that Antiphon the Sophist was “a pupil of Gorgias, which though it is nowhere expressly stated, we may take as extremely probable, as also that he was roughly contemporary with his fellow-pupil

40 Hippias gives us the first, see DK 86C1
41 See Pendrick 2002, 1-26 where he denies that it is Antiphon of Rhamnusia (the Orator) who is the Sophist.
Whether this Antiphon is the same as the orator who was largely responsible for the establishment of the Four Hundred, or was the Syracusan poet who wrote tragic poetry, does not necessarily need to be explored. What is useful is that we know a *Sophist* wrote *On Truth* because this work represents an illuminating window into Sophistic conceptions of φύσις and νόμος. Antiphon’s *On Truth* is his only surviving work that explicitly touches upon these two themes. As Martin Ostwald notes, Antiphon’s work is significant not only because he is “the earliest Athenian sophist intelligible to us,” but also because “he is the most explicit exponent of the nomos-physis controversy which emerged in Athens” (Ostwald 2009, 158). Another reason for the work’s importance, as Carroll Moulton tells us, is that the papyrus fragments “are the only extended ipsissima verba to survive from the sophistic movement” (Moulton 1972, 329). For the purposes of this thesis, too, the work is useful because it contains an extant discussion of Sophistic Social Contract Theory. I show here that by arguing for the preeminence of nature and the disadvantage presented by law, Antiphon creates a social contract that does not protect anything other than one’s own ability to pursue self-interest at whatever the cost. *On Truth* allows us to reconstruct from Antiphon’s criticism possible attitudes about the nature of law.

Antiphon begins his tract with a discussion of what we would today call the political phenomenon of “confirmation bias” (Plous 1993, 233). This is the idea that when people are met with new information, they interpret it in such a way as to confirm their pre-existing beliefs. Antiphon critiques the confirmation bias of fifth century Greeks by arguing—if we take Funghi’s suggestion that νόμους is the subject of the opening partial sentence—that while Greeks often respect the laws/customs of communities similar to their own, they also look down upon those of communities that are different from their own (Funghi 1984, 4). Antiphon writes that, “we have
become barbarians in our relations with one another;” while in reality everyone is “equally equipped to be either barbarian or Greek” (ἐν τούτῳ οὖν πρὸς ἄλληλους βεβαρβαρώμεθα, ἐπεὶ φύσει γε πάντα πάντες ὁμοίως πεφύκαμεν καὶ βάρβαροι καὶ Ἑλληνες εἶναι, 44A2)\(^{42}\). Antiphon’s critique of fifth century Greek culture stems from his belief that φύσις is “universally human,” while νόμος is a term used to encompass all social and political norms of a given society (Ostwald 2009, 165)\(^{43}\). In effect, the considerations of νόμος are just constructs, which trick us into believing that we are different. By Nature, however, (φύσει) we are all born equal; Nature mandates that both Greeks and barbarians all must breathe, laugh, weep, hear, see, work, and walk (ἀναπνέομεν τε γὰρ εἰς τὸν ἀ(30)έρ[α] ἀπαντες κατὰ τὸ στόμ[α] καὶ κατ[ά] τὰς ῥίνας κ[αὶ γελῶμεν] εἰς τὸ νῦν ἤδη δακρύω μενος, 44A2-A3). These are unifying, universal, principles we cannot escape. We do not share common customs or standards of decency; the fact that we are human is what ties all of us together. At this point in his argument, however, he has not elaborated upon what this means for νόμος’s place in society. As Michael Gagarin suggests, Antiphon will come to argue that “Physis is the basic—perhaps the original—human condition, to which nomos applies restrictions” (Gagarin 2002, 70). Indeed, the Sophist spends the rest of what is his extant On Truth focusing his efforts on the inimicality of νόμος.

**Antiphon’s Critique of Νόμος**

Unfortunately, a lacuna obscures what is written in the papyrus directly after Antiphon’s plea against the differences νόμοι create. Fernanda Decleva Caizzi does not include the damaged text at the end of fr.A, but if we take J. Barnes’ translation for granted, then presumably in this lacuna Antiphon goes on to give a brief history of organized society because the Sophist ends

\(^{42}\) All Greek for Antiphon comes from Decleva Caizzi 1989, 176-236 and English translations come from Barnes. 1979 via Ostwald 2009, 159-162

\(^{43}\) Also see Moulton 1972, 333
fr.A with an explicit articulation of a social contract. Barnes has Antiphon write that, “each group of men came to an agreement on terms of their liking and enacted the laws.” “Of their liking” implies the relativism of the social contract for Antiphon. His social contract is not built upon anything universal and is different in each society (Guthrie 1969, 22). Thomas Mitchell argues that because of the fact that the social contract has no tie to nature, because νόμοι are terms that each society crafted “to their liking,” then the Sophist is describing a “social contract of expediency” (Mitchell 2015, 154). This aspect of the “expediency” of Antiphon’s social contract is something that I elaborate upon throughout this section. Expediency, or rather self-interest, is the central characteristic of Antiphon’s view of society.

Fr. b begins with a definition of justice which is based upon this social contract of expediency. Antiphon writes that, “Justice consists in not transgressing the regulations of the city of which one is a citizen” (δικαιοσύνη δ᾽ οὖν τὰ τῆς πόλεως νόμιμα, ἐν ᾗ ἂν πολιτεύηται τίς μή παραβαίνειν, 44B1). Antiphon argues here that justice (δικαιοσύνη) is not something that exists outside of society, but rather is distinctively tied to the rules of the city (τὰ τῆς πόλεως νόμιμα). Because of this aspect of justice Antiphon goes on to say 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, but when he is alone and when there are no witnesses (follows) the dictates of nature” (χρῄτ᾽ ἂν οὖν ἄνθρωπος μάλιστα ἑαυτῷ ξυμφερόντως δικαιοσύνη, εἰ μετὰ μὲν μαρτύρων τοὺς νόμους μεγάλολος ἄγοι, μονούμενος δὲ μαρτύρων τὰ τῆς φύσεως, 44B1). Justice (δικαιοσύνη), according to Antiphon, is a tool that can be used to one’s advantage. The adverb ξυμφερόντως tells us that choosing whether to follow the law is a question of self-

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44 See Ostwald 2009, 169 where he makes the argument that in this lacuna Antiphon gave a history of society.
45 Unfortunately, I must rely on Barnes’ addition here. I cannot find the Greek anywhere, only his English addition. See Barnes, 2:207-10
interest. The critique of νόμος in this passage, and throughout On Truth, is a “criticism that is essentially ethical, not anarchistic” (Moulton 1972, 331). Antiphon is not completely anarchistic because sometimes following νόμος does not hinder one’s own self-interest, and justice can occur as a result. There are also times, however, when Antiphon believes one should break the law.46 This creates an empty social contract where the individual really doesn’t give up anything to the state, and thus can not rely on the state for protection.

Antiphon brings to light through his discussion of φύσις and νόμος one of the core aspects of human nature, our willingness to do what is best for ourselves, often to the detriment of others. According to Antiphon, the realization of this part of human nature allows us to see that laws will be broken when possible. It is this ability to disregard νόμος that makes it, as we will see, more of a hinderance to φύσις than a boon. Antiphon writes that “the dictates of the laws are 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, being natural growths, are not based on agreement” (τὰ μὲν γὰρ τῶν νόμων ἐπίθετα, τὰ δὲ τῆς φύσις ἀναγκαῖα. καὶ τὰ μὲν τῶν νόμων ὀμολογηθέντα [τὰ δὲ τῆς φύσις ἀναγκαῖα. οὐκ οὖν ὀμολογηθέντα, 44B1-B2]) 47. Antiphon uses the adjective ἐπίθετα (“added”) to argue that the dictates of nature are completely artificial, whereas through his use of the adjective ἀναγκαῖα (“cumpulsory”) he argues that the dictates of nature are non-negotiable. Thus, νόμος is inimical to φύσις not for anarchical reasons, but rather because Antiphon believes it is human nature to break agreements that are non-compulsory. For Antiphon, oxymoronically,

46 See Moulton 1972, 334 where she argues that Antiphon believes there are some areas “where the imperatives of nomos and physis might overlap.” Also see Gagarin 2002, 69 where he says that “the force of nomos is limited since, because it is sanctioned only by the other members of the community, it can be ignored with impunity when no one else is present.”

47 See Ostwald 2009, 160
the only agreements that are legitimate are those which can not be agreed upon (οὐχ ὀμολογηθὲν), the natural growths of nature (tà δὲ τῆς φύσεως φύντα). Thus, there can be advantages to breaking the law, as well as disadvantages depending on the situation\(^{48}\). But when one attempts to do the impossible and contravene “what is connate with nature,” this results in “violence (βιάζηται),” which leads to “evil” (κακόν)” (Ostwald 2009, 166). It may be human nature to let self-interest be the guide in one’s decision making, but what are the effects of not believing νόμος is a legitimate means to curb human nature?

The effect of such a belief is that society can not rely on the government to protect each individual’s ability to breathe, laugh, weep, hear, see, work, etc (i.e. our Natural Rights). Nussbaum perhaps best articulates the philosophical implications of Antiphon’s argument when she writes,

> If one party acts against the common understanding, the agreement that made the convention firm is itself weakened; no rock-hard underlying nature shores it up. If you and I agree to call certain acts unjust, and you suddenly change your use of the moral term, no eternal law will bring you to book or justify me against you. If I promise to care for your child and I murder him, that promise does not sit unblemished in some holy realm, witnessing against me. It is defiled; nothing replaces it (Nussbaum 1986, 404).

Perhaps a bit extreme on the whole, Nussbaum is correct in principle that when νόμος becomes merely artificial—not representative of any archetypal rules of decency—and each individual has the ability to decide for oneself whether to follow the law, then we are likely to break laws and customs more often than not\(^{49}\). Antiphon claims this is because the societal shame (αἰσχύνης, 44B2) of doing so is weaker than self-interest. The very fabric of the community, νόμος,

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\(^{48}\) See Gagarin 2002, 72 for his discussion of this.

\(^{49}\) The Founding Fathers realized the self-interested nature of humans as well, which is why they insisted upon laws creating checks and balances to channel that self-interest.
becomes meaningless and only a formality. As a result, the social contract becomes a formality too - devoid of any force.

Antiphon further delegitimizes νόμος through the creation of a standard he utilizes to decide whether νόμος should be followed, what I call the ‘Beneficilality Standard.’ I have already briefly touched upon this aspect of Antiphon’s argument with my discussion of ξυμφερόντως. Antiphon, however, elaborates upon this aspect of human-nature throughout the rest of his tract. So going into greater detail on the subject helps one fully understand Antiphon’s opinions of the proper relationship between νόμος and φύσις. Antiphon believes all people use this standard in their decision making. It will also be identifiable as the logic the Athenians employ in both the Mytilenean Debate and the Melian Dialogue.

The Beneficilality Standard

Antiphon spends the rest of what is extant of his On Truth developing a new layer of the φύσις-νόμος debate. His addition resembles something like the Freudian “Pleasure Principle:” man seeks what is good for himself, what is pleasurable, and does his best to avoid what is painful (Gay 1989, 80). Again, this is reminiscent of self-interest. Antiphon begins his new standard with the precept that “things truly advantageous must not bring harm but benefit” (τὰ γὰρ τῷ ἄληθεὶ τὸν ξυμφέροντα οὐ βλάπτειν δὲι, ἀλὰ ὄφελεῖν, 44B4). Here we see the use of ξυμφέροντα again to discuss “benefit.” This is an obscure precept upon which the Sophist builds his argument. Must things purely be beneficial, or can they be harmful at first and beneficial in the end? His answer seems to be that things are always beneficial if they allow the mandates of φύσις to be actualized in the individual, and harmful if they hinder φύσις at all. Antiphon writes (44B3-B4),
For to live belongs to nature and also to die, and living results from things advantageous for them, while dying comes from things that are not advantageous. The advantageous things that have been enacted by the sanction of the laws are fetters on nature, but those sanctioned by nature are free.

This passage is difficult because it seems to imply, again, that Antiphon is completely anarchistic. A closer look, however, reveals that this is not the case. His contention that to live (ζῆν) and to die (ἀποθανεῖν) both belong to Nature is his submission that φύσις has negative mandates, too. This has caused Moulton to argue that On Truth is more about the benefits of Nature than Nature itself (Moulton 1972, 337-8). In order to profit from νόμος we must give up our freedoms, which is why Antiphon says that laws and customs are δεσμοί (“fetters”). To profit from φύσις, however, does not require us to give up anything, it is ἐλεύθερα (“free”).

According to Antiphon’s precept then, giving up our freedoms to receive protections would be considered disadvantageous because it requires discomfort. This is why his social contract is merely a formality.

Evidence of this view of νόμος is found in what Antiphon says next. The Sophist writes that νόμος more often than not brings with it “the suffering of more discomfort, when it is possible to 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” (καὶ τούτων τῶν εἰρημένων πόλλα δὲν τις εὔροι πολέμια τῇ φύσει. ἕν τ’ ἐν αὐτοῖς ἀλγύνεσθαι τε μᾶλλον, ἐξὸν ἤττω, καὶ ἐλάττω ἱδέσθαι, ἐξὸν πλαίω, καὶ κακῶς πάσχειν, ἐξὸν μὴ πάσχειν, 44B5). This passage would seem to suggest that Antiphon is hedonistic. Moulton, however, argues that, “The passage is probably eudaimonistic in the traditional Greek sense, i.e. it recognizes that pleasures are more commonly advantageous than pains for men; but it does not claim that the unlimited pursuit of
pleasures is man kind's natural destiny” (Moulton 1972, 339). If it did, Antiphon could scarcely have gone on to write that theoretically νόμος could bring people benefits without being harmful at 44B5-6. Therefore, it is not that νόμος is always inimical to φύσις, rather that it often is. Due to this common inimicality the beneficiality standard suggests that it would be Antiphon’s view that the advantages of νόμος are parallel to the disadvantageous of φύσις.

The Major Premise Underlying Antiphon’s On Truth

So far we have seen that Antiphon has created an entirely individualistic standard built upon the universal principle of φύσις. This beneficiality standard makes it acceptable for anyone to ignore νόμος when he or she feels as though it brings them harm. In effect, Antiphon’s social contract is an agreement made to be followed, but only in the eyes of everyone else. Νόμος is not in any way universal; it is bound to the state. Through this process we have gained insight into Sophistic criticisms of Natural Law. They are more nuanced than purely anarchistic, and are not entirely hedonistic. We see, however, that when Antiphon applies his standard to positive law, that is law created by man, it becomes impossible to follow. Moving forward, at the end of fr. B and the entirety of fr. C Antiphon puts his beneficiality standard to the test against an Athenian law of testimony. Through the application of his standard, Antiphon will conclude that the criminal, the witness, and the victim of the crime in Athenian law courts are all equally harmed by the law; by extension the law should be ignored. Antiphon will conclude that “it is not possible that these acts [giving testimony] are just and at the same time it is just neither to do wrong nor be wronged oneself. On the contrary, it is necessarily true either that one of them is

50 “Now, if the laws would afford some protection to those who let themselves be subjected to this kind of treatment and would handicap those who do not let themselves be subjected to it but oppose it, obedience that ties us to the laws would not be without benefit” (εἰ μὲν οὖν τις τοὺς τοιαῦτα προσιμένους ἐπικούρησις ἐγίγνετο παρὰ τῶν ὀμόμων, τοῖς δὲ μὴ προσιεμένοις, ἀλλ’ ἐγκατισμένοις ἐλάττωσις, οὐκ ἂν ἄνωφελες ἢν ἦν τὸ ἐν τοῖς νόμοις πεῖσμα, 44B5-6).
just or that they are both unjust” (οὐ γὰρ ὁδὸν τε ταῦτα τε δίκαια εἶναι καὶ τὸ μηδὲν ἁδικεῖν μηδὲ αὐτὸν ἁδικεῖσθαι. ἀλλ’ ἀνάγκη ἔστιν ἢ τὰ ἔτερα αὐτῶν δίκαια εἶναι ἢ ἁμφότερα ἁδικα, 44C2). A law must either benefit the individual, and therefore be just (δίκαια), or harm the individual, and therefore be unjust (/vndikα). I show here that when we apply Antiphon’s standard to a “real” situation, the law becomes impossible to follow.

Antiphon articulates the problem of the law of testimony in the following way: “If we accept the proposition that it is just not to wrong anyone, unless he is wronging you” (εἴπερ τὸ μὴ ἁδικεῖν μηδὲν ἐνα μὴ ἁδικοῦλ]έναν αὐτὸν δίκαιον ἔστιν, 44C1), then we will see the law of testimony fall by the wayside. This is because the law allows the sufferer no special advantage over the aggressor. In fact, according to Antiphon, persuasion (πειθώ, 44B7) makes it so that either side can suffer harm without any bearing on the truth. As Moulton writes, “The sufferer, to have his wrong redressed, must possess the skill of persuasion which will convince the jury (a) of the fact of the crime, and (b) of his stronger case. But the aggressor can always deny that he committed the act” (Moulton 1972, 341). In other words, νόμος is illegitimate because it holds no truth—persuasion takes away from the truth of what happened during a crime—whereas nobody can deny what has been mandated by φύσις. Thus, because of the weakness of νόμος and the power of persuasion, there is nothing in a trial that is ἰδιώτερον (44B6) to either part, “i.e. there is no procedure available to the sufferer that is not also available to the other side” (Moulton 1972, 343).

There is another lacuna at this point, but Antiphon continues his nuanced argument against νόμος in fr. C. Here we are given the specifics of Antiphon’s complaint against νόμος

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51 As we will see, this is the exact position that Plato refutes in the next chapter. Plato believes it is always wrong to do wrong, and from this builds his theory of the social contract.
and his rationale for his position. Antiphon applies his standard of beneficiality to each party involved in a trial. Antiphon first shows the law’s purported illegitimacy on the side of the criminal. He writes, “This [the harm done to the criminal] is inherent in the fact that the testimony given by him [the witness] 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 is not wronging in any way” (ἐν ὁ διὰ τὰ ψέματα ἁλίσκεται ἐκεῖνος καὶ απόλλυσιν ἡ χρήματα ἡ αὐτὸν δῷ τὸ τοῦτον ὅν οὐδὲν ἂδικεῖ, 44C1). According to the standard, the criminal is himself harmed because he did not specifically injure the witness who is testifying against him; one must not harm someone unless one has been harmed. Therefore, the witness is injuring the criminal because the results of his actions will likely take away his life or property. Next, he applies the standard to the person giving testimony, arguing he too is harmed by the law, “because he incurs hatred for having given truthful testimony—and not only is he wronged by hatred, but also for the rest of his life he must be on guard against the man he testified against” (ὅτι μισεῖται ἡ ἀληθῆ μαρτυρεῖν, καὶ οὐ μόνον τῶν μισεί, ἀλλὰ καὶ ὅτι δεῖ αὐτὸν τὸν αἰῶνα πάντα φυλάττεσθαι τοῦτον οὖν καταμαρτυρεῖν, 44C1-C2). As before, the witness is harmed because he becomes hated by the person he testified against, and must now always be on guard against the criminal. Lastly, Antiphon applies the standard to the victim of the crime, concluding the law is illegitimate in this circumstance too “because the law cannot prevent the victim from having suffered in the first place nor the agent from acting” (καὶ οὔτε ἐνταῦθα διεκώλυε τὸν πάσχοντα μὴ παθεῖν, οὔτε τὸν ἔργον ἐργαῖον, 44B6). Thus, by applying a seemingly inappropriate standard based upon whether one feels as though one is being harmed by the law, Antiphon turns an integral democratic institution, the trial-court, into garbage. He ignores the fact that the crime itself is what has caused harm and creates rights that are
superficial in the situation. We will see this same antithesis between convention and self-interest made by Diodotus in the Mytilenean Debate (Thuc. 3.42-48) and the Athenians in the Melian Dialogue (Thuc. 5.84-116). This same definition of justice, not to commit wrong unless one has oneself suffered wrong, will produce both an ethical and an unethical result.

I have argued in this section that Antiphon’s *On Truth* represents a significant advancement in the φύσις-νόμος debate. The sophist identifies a certain aspect of human nature, our self-interestedness, and observes an antinomian world-view around it. His beneficilality standard becomes the arbiter of whether an individual is “free,” and mostly diminishes νόμος to the status of a mechanism for fettering freedom instead of promoting it. There are instances, as we will now see, where φύσις can comport with νόμος, but only when it is beneficial for the individual. As I have already mentioned, Antiphon has struck upon a chord of human nature. Therefore, evidence of his findings could theoretically be seen in any country’s behavior during the Peloponnesian War as well, as before and after it. For convenience’s sake, I now turn to one country’s actions—Athens, the hotbed of Sophistry—to show that Sophistic Social Contract Theory has the potential for both ethical and unethical behavior. Using Thucydides’ description of state actions as an analogy for Antiphon’s philosophy at work, I come to the conclusion that Sophistic Social Contract Theory is detrimental to the protection of our own rights, given to us by φύσις.

*Thucydides’ Discussion of Moral Relativism*

Although the transition from philosophy to history can be a messy process, Thucydides clearly provides us with evidence of what the beneficilality standard looks like in practice. If we imagine that the state acts as an individual in the international realm, as Classical Realists do,
then we can see the beneficiality standard guiding each state’s decision making processes. In other words, we can try and use Thucydides’ description of state actions as analogies for individuals guided by Antiphon’s principles. Michael Doyle writes that, “Thucydides belongs to the Realists. They belong to him” (Doyle 1997, 91). Modern Realists believe that in the international realm there can be no room for justice, that “self-interest is paramount, power is vital for the successful promotion of the interests of the state, talk of justice is at best futile, and at worst dangerous” (Kokaz 2001, 28). I show in this chapter that Thucydides’ use of such a philosophy, which, as we will see, is entirely Sophistic, is meant to partially critique its use by individuals within society. By focusing on a particular state, Athens, and two of its most notorious political decisions, the Mytilenean Debate and the Melian Dialogue, I show that the Sophists certainly struck upon something true. I also show, however, that their theory of the social contract provides no protections for the rights given to us by φύσις, the rights which the Sophists so adamantly said make us free. Through this process we come to see that Thucydides is a silent critic of Sophistic Social Contract Theory.

Thucydides is a reliable critic of the Sophists because, as Perez Zagorin says, “One of the most significant factors in Thucydides’ intellectual formation was his exposure to the unconventional and radical conceptions of the Sophists, which centered on man and his life in society” (Zagorin 2005, 20). Various scholars have pointed out instances of Sophistic ideas, and the types of arguments they taught, in Thucydides’ own writing (Zagorin 2005, 21). It is because of these factors that Zagorin argues, “We may be pretty certain that the teachings of the Sophists left a substantial impression upon his thinking and contributed to the character of his history”

52 See Goodin 2010, 133; I believe Thucydides was well aware of this interplay between the international and domestic realms. As Kokaz suggests, Corcyra can be seen as a critique of Sophistic intra-polis relations happening in an inter-polis example Kokaz 2001, 34.
This familiarity with Sophistic teachings allowed Thucydides to present their arguments accurately in his own recounting of the Peloponnesian War.

Thucydides’ *History of the Peloponnesian War* should be thought of as an interconnected web with each section reflecting and playing off the others. Thucydides doesn’t make isolated arguments, but rather uses juxtaposition to his advantage. Pownall even calls Thucydides the “master of juxtaposition” (Pownall 2004, 9). If one goes about reading Thucydides’ history as a web, whole arguments that did not exist before arise out of the pages. This is certainly the case when reading both the Mytilenean Debate and the Melian Dialogue. Reading the two vignettes in juxtaposition to each other reveals that Thucydides uses Athens, among other states, as an example of what happens when self-interest governs political decisions without any systems in place to unite human behavior with agreed upon ethical standards. I am not using these examples to argue for something like international liberalism, rather only because political decisions in the international realm act as a powerful allegory to the effects of Sophistic philosophy in domestic politics. By analyzing the Mytilenean Debate and the Melian Dialogue in juxtaposition, I show that Sophistic Social Contract Theory only leads to ethical results on the off chance that νόμος aligns with self-interest. This means that Sophistic Social Contract Theory provides no real protection of individual rights that exist outside of society.

*The Mytilenean Debate*

In 428 BCE the Mytileneans revolted against Athens, fearing that they would soon be subjugated to Athenian hegemony. The Mytileneans appealed to Sparta for help but were denied aid. While the Athenians besieged Mytilene, the democratic faction in the city gave up and forced the ruling oligarchs to surrender. In 427 BCE the Athenians decreed that all adult males in the city be executed and the women and children enslaved. On the next day, however, the
Athenians reconsidered their position. The Athenian Assembly subsequently debated what to do with the citizens of the surrendered city. Of particular interest, is Thucydides’ account of Diodotus’ speech during the debate, found in 3.42-48. Diodotus spoke after Cleon, who argued for justice in terms of revenge, that the Athenians must act with strength against all those who act against her. By analyzing this section of the debate I show that Diodotus’ speech has many similarities to the logic presented by Antiphon in his *On Truth*. I conclude that Diodotus’ speech is evidence that Antiphon was correct in his assessment of people’s decision making processes when they see νόμος as a fetter to self-interest. In this case the decision to ignore νόμος results in an ethical policy.

Following Moulton’s lead I split Diodotus’ speech into three specific points that relate to Antiphon’s *On Truth*: (1) “the criticism of a system for the determination of public policy where the truth is subverted by the demagogic abuse of rhetoric (cf. Antiphon on justice and πειθώ)” (3.42-3); (2) “the strict division between a traditional notion of justice (in this case revenge) and τὰ χρήσιμα or τὰ ξυμφέροντα but with the paradoxical (to moralists) result of a goal of humane non-aggression, the byproduct of which is advantage” (3.44); and (3) “the recognition that both the deterrent force of law and the ‘example’ of punishment are incapable of preventing the occurrence of aggression, and that their employment leads to inequity, and ultimately futility” (3.47.3, 45.7) (Moulton 1972, 362-3). All three points lead to the conclusion that Sophistic Social Contract Theory is defective in terms of its ability to protect each individual’s Natural Rights from being infringed upon within the compact.

Turning now to the first point, in 3.42-3 we see Diodotus exposing the Assembly’s inability to come to decisions based upon the most advantageous outcomes. In Antiphon’s *On Truth* the Sophist argues that a witness in the law courts is harmed when he or she exposes the
truth because the witness becomes hated, and has to lookout out for the newly angered criminal.

Diodotus makes a similar argument for the successful assemblyman when he says in 3.42.3,

\[ εἰ \ μὲν γὰρ \ ἀμαθίαν \ κατητιῶντο, \ ό \ μὴ \ πείσας \ ἀξιονετότερος \ ἀν \ δόξας \ εἶναι \ ἢ \ ἀδικώτερος \ ἀπεχώρεῖ: \ ἀδικίας \ δ´ \ ἐπιφερομένης \ πείσας \ τε \ ύποπτος \ γίγνεται \ καὶ \ μὴ \ τυχὼν \ μετὰ \ ἀξιονεσίας \ καὶ \ ἀδικος. \]

If ignorance only were imputed, an unsuccessful speaker might retire with a reputation for honesty, if not for wisdom; while the charge of dishonesty makes him suspected, if successful, and thought, if defeated, not only a fool but a rogue.53

Diodotus observes that when an individual makes a successful argument in the Assembly he creates the impression that the loser is both a fool and a rogue. The result, then, is that the city is deprived of its best advisers out of fear (φόβῳ γὰρ ἀποστερεῖται τῶν ἔμβολων, 3.42.4). This is Diodotus making a case against νόμος with the same type of logic as Antiphon; if νόμος is harmful to individual’s self-interest then it should not be followed.

Furthermore, like in Antiphon’s trial court where πειθώ acts as an equalizer for both the sufferer and the criminal, Diodotus makes the argument that in the Assembly πειθώ makes a good advisor just as likely to be believed as a bad one. Moulton says this is because people are more likely to look at the “rhetorical slander of advisors than to the quality of the advice” (Moulton 1972, 364). Therefore, decisions aren’t based upon any sort of truth, but rather by who can twist the truth more successfully. In 3.42.3 Diodotus says,

\[ καθέστηκε \ δὲ \ τἀγαθὰ \ ἀπὸ \ τοῦ \ εὐθέους \ λεγόμενα \ μηδὲν \ ἀνυποπτότερα \ εἶναι \ τῶν \ κακῶν, \ ὡστε \ δεῖν \ ὁμοίως \ τὸν \ τὰ \ δεινότατα \ βουλόμενον \ πεῖσαι \ ἀπάτῃ \ προσάγεσθαι \ τὸ \ πλῆθος \ καὶ \ τὸν \ τὰ \ ἄμεινα \ λέγοντα \ ψευδάμενον \ πιστὸν \ γενέσθαι. \]

Plain good advice has thus come to be no less suspected than bad; and the advocate of the most monstrous measures is not more obliged to use deceit to gain the people, than the best counselor is to lie in order to be believed. The city and the city only, owing to these

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53 All English translation for the Mytilenean Debate come from Thucydides 1996; All Greek text for the Mytilenean Debate comes from Thucydides 1920.
refinements, can never be served openly and without disguise; he who does serve it openly being always suspected of serving himself in some severe way in return.

Like in the example above, the result of such a state of affairs is not only that the individual is harmed, but also the state. For πειθώ creates a system where νόμος becomes a tool for the obscurer of truth rather than the seeker of truth. This is why Diodotus concludes that “the city and the city only, owing to these refinements, can never be served openly and without disguise” (μόνην τε πόλιν διὰ τὰς περινοίας εὑρίσκει ἐκ τοῦ προφανοῦς μὴ ἐξαπατήσαντα ἀδύνατον).

Πειθώ, for both Antiphon and Diodotus, acts mostly as a deterrent against decisions that comport with self-interest (ξυμφέρον). Thus, what Diodotus is really arguing is that the Assembly would come to better decisions if they based their policy making primarily upon the city’s self-interest rather than traditional notions of justice which stem from νόμος.

After making his case that decisions should be made based upon self-interest, Diodotus continues his critique of the Assembly but focuses on a single question: whether Cleon’s desire for traditional justice—revenge—agrees with self-interest (ξυμφέρον), or if the Assembly should choose a policy of non-agression towards the Mytileneans. Antiphon argues in his On Truth that people make decisions based upon profit, and thus tend to avoid anything harmful. Since the advantages of laws and customs act as δεσμοί (“fetters”) on the advantages of φύσις, “it is only rational for man to consider physis more important” (Moulton 1972, 364). Practically, this causes a potential conflict between self-interest and what the law defines as justice. Diodotus’ speech should be seen as an attempt to paint the Mytilenean Debate as such an Antiphonian conflict.

Diodotus asserts that he has not come forward either to oppose or to accuse in the matter of the debate, but rather to argue that the question before the Athenians “is not their guilt, but our interests” (οὐ γὰρ περὶ τῆς ἐκείνων ἀδικίας ἡμῖν ὁ ἄγων, εἰ σωφρονοῦμεν, ἄλλα περὶ τῆς ἡμετέρας εὐβουλίας, 3.44.1). Therefore, Diodotus asserts, this time more plainly, that the
Athenians should not think of the situation in terms of νόμος but in terms of φύσις, whose byproduct is good counsel (εὐβουλίας), or “our interests.” In effect Diodotus makes the question of what to do with the Mytileneans entirely amoral. This is seen even more so when Diodotus says in 3.44.2,

> ἢν τε γὰρ ἀποφήνω πάνυ ἀδικοῦντας αὐτούς, οὐ διὰ τοῦτο καὶ ἀποκτεῖναι κελεύσω, εἰ μὴ ἣμαρ ἀξίωμα, ἢν τε ἄγαθον φαίνοιτο. νομίζω δὲ περὶ τοῦ μέλλοντος καὶ ἔχοντάς τι ἐξαιτήματι, εὰν, εἰ τῇ πόλει μὴ ἦμας μᾶλλον βουλεύεσθαι ἢ τοῦ παρόντος.

Though I prove them ever so guilty, I shall not, therefore, advise their death, unless it be expedient; nor though they should have claims to indulgence, shall I recommend it, unless it be clearly for the good of the country.

Like in Antiphon’s writing, Diodotus claims that expediency (ξυμφέρον) should be the basis of decision making. With expediency as his guiding principle, Diodotus says he is not concerned with whether the Mytileneans are executed on the basis of justice, but whether their execution is “good for the country.” Again, Diodotus says that “the question is not justice, but how to make the Mytilenians useful to Athens” (ἡμεῖς δὲ οὐ δικαζόμεθα πρὸς αὐτούς, ὥστε τῶν δικαίων δεῖν, ἀλλὰ βουλευόμεθα περὶ αὐτῶν, ὅπως χρησίμως ἔξουσιν, 3.44.4). Diodotus is appealing to Antiphonian self-interest, but now applying it to international politics as though the state were an individual. By doing so he hinders Cleon’s argument for traditional justice, and places the lives of the Mytileneans in the hands of Athenian self-interest. Thus, if the state were an individual within a society, we can now begin to see that that individual has no real protections; hypothetically that individual’s Natural Rights can be taken away if within the self-interest of some aggressor.

Turning now to the last point, Diodotus shifts his argument to recognize that both the deterrent force of law and traditional justice are incapable of preventing the occurrence of aggression. Diodotus uses this point to argue that enacting traditional justice on the Mytileneans will only cause Athenian losses in the long run. In terms of the deterrent force of law, after a
lengthy discussion of human nature in 3.45, Diodotus concludes that, “In short, it is impossible to prevent, and only great simplicity can hope to prevent, human nature doing what it has once set its mind upon, by force of law or by any other deterrent force whatsoever” (ἅπλῶς τε ἀδύνατον καὶ πολλῆς εὐηθείας, ὃστις οἴεται, τῆς ἀνθρωπείας φύσεως ὁρμωμένης προθύμως τι πράξαι, ἀποτροπήν τινα ἐχειν ἢ νόμων ἰσχύι ἢ ἄλλῳ τῷ δεινῷ, 3.45.7). Diodotus is arguing that the deterrent force of law is defective because human nature (ἀνθρωπείας φύσεως) is more powerful than the force of any law/custom (νόμων ἰσχύι). Similar to Antiphon’s argument, Diodotus is claiming that the laws of Nature are not based on agreement and therefore can not be broken, whereas νόμος is completely malleable and therefore holds a secondary status. The secondary status of νόμος is the same conclusion that Sophistic Social Contract Theory comes to realize.

Diodotus takes this Sophistic conclusion and applies it to the present case. He argues, much as Antiphon does, that the force of the law is incapable of preventing the occurrence of aggression. Diodotus says on 3.47.3,

εἰ δὲ διαφθερεῖτε τὸν δήμον τῶν Μυτιληναίων, δς οὐτε μετέσχε τῆς ἀποστάσεως, ἐπειδὴ τε ὅπλων ἐκράτησεν, ἐκὼν παρέδωκε τὴν πόλιν, πρῶτον μὲν ἀδικήσετε τοὺς εὐεργέτας κτείνοντες, ἔπειτα καταστήσετε τοῖς δυνατοῖς τῶν ἀνθρώπων ὃ ἄφισταν γὰρ τὰς πόλεις τὸν δήμον εὐθὺς ξύμμαχον ἕξουσι προδειξάντων ὑμῶν τὴν αὐτὴν ζημίαν τοῖς τε ἀδικοῦσιν ὁμοίως κεῖσθαι καὶ τοῖς μή.

But if you butcher the People of Mytilene, who had nothing to do with the revolt, and who, as soon as they got arms, of their own motion surrendered the city, first you will commit the crime of killing your benefactors; and next you will play directly into the hands of the higher classes, who when they induce their cities to rise, will immediately have the People on their side, through your having announced in advance the same punishment for those who are guilty and for those who are not.

Therefore, even if the Assembly chose Cleon’s method of justice the end result would still contain further aggressions. Diodotus, frames his appeal not in any moralistic sense, however, but rather again from the perspective of self-interest. The adjudication of penalties, useless as
deterrents, “happens to be placed in the anomalous context of the guilty and the innocent being placed in the same position,” just as in Antiphon’s example (Moulton 1972, 366).

Thucydides tells us in 3.49 that Diodotus’ argument won. In other words, from an amoral argument came a moral political decision; the Athenians sent a trireme with a message to spare the Mytileneans to intercept the one sent before. Thus, νόμος and φύσις were in alignment. Moulton makes the argument that “the large amount of space in Diodotus’ speech concerning all debates on public policy (3.42) and the ineffectiveness, given human nature (cf. 45.7), of deterrent laws and punishments (45) is an indication of a more general concern, perhaps related to the examination of such subjects by the sophists” (Moulton 1972, 361). Diodotus’ speech certainly shows the use of Sophistic thinking in the public sphere. Perhaps, it was Diodotus’ goal to show that Sophistic political philosophy wasn’t anarchistic but rather could lead to moral results that were in line with advantage (ξυμφέρον). By looking at another example of a decision based upon ξυμφέρον, however, we will see that it can lead to completely unethical results as well.

The Melian Dialogue

In 5.85-5.111, Thucydides tells us that the Melian Dialogue is a political discussion between ambassadors from Melos, “a colony of Sparta that would not submit to the Athenians like the other islanders, and at first remained neutral and took no part in the struggle” (οἱ δὲ Μήλιοι Λακεδαιμονίων μὲν εἰσιν ἄποικοι, τῶν δ᾽ Ἀθηναίων οὐκ ἤθελον ὑπακοῦειν ὥσπερ οἱ ἄλλοι νησιῶται, ἀλλὰ τὸ μὲν πρῶτον οὐδετέρων ὄντες ἡσύχαζον, 5.84.2), and the Athenian ambassadors. The discussion takes place after the Athenians have used violence against the

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54 All English translations for the Melian Dialogue come from Thucydides 1996; all Greek text for the Melian Dialogue comes from Thucydides 1921.
Melians and plundered their territory. Thus, just like in the Mytilenean episode, we are dealing with a *polis* that is on the brink of being completely subjugated by the Athenians. Thucydides starts off this vignette, however, by drawing attention to Athens’ past aggressions. They come to the negotiating table already having acted in violence. I assert in this section that Thucydides’ emphasis on “Athens-the-aggressor” is purposeful. Thucydides wants to point out to his readers that making decisions purely based upon φύσις, self-interest, can lead to horrendous atrocities. Here, like in the Mytilenean Debate, we will see that the Athenians aren’t really concerned about making a decision based upon the traditional notion of justice, but rather are motivated by self-interest. By reading the two in juxtaposition, however, this time we see an unethical result. Again, I am going through Thucydides as a way of showing that Antiphon’s argument ultimately leads to a defective social contract where one’s Natural Rights cannot be adequately protected.

An example of something like the beneficiality standard governing Athenian actions is that the dialogue starts off with the Athenian navy already parked in the Melians’ harbor. They are imposing their will upon the other party. The Melians say to the Athenians, “we see you are come to be judges in your own cause, and that all we can reasonably expect from this negotiation is war, if we prove to have right on our side and refuse to submit, or in the contrary case, slavery” (ὁρῶμεν γὰρ αὐτούς τε κριτὰς ἥκοντας ὑμᾶς τῶν λεχθησομένων, καὶ τὴν τελευτὴν ἐξ αὐτοῦ κατὰ τὸ εἰκὸς περιγενομένους μὲν τῷ δικαίῳ καὶ δ’ αὐτὸ μὴ ἐνδοῦσι πόλεμον Ἦμιν φέρουσαν, πεισθεῖσι δὲ δουλείαν, 5.86). The Melians saying that the Athenians have “come to be judges in your own case” (κριτὰς) is revealing because it shows that the Athenians are thinking in terms of self-interest only; they aren’t concerned about traditional notions of justice. In fact, the Athenians have come to negotiate by using big-stick diplomacy, having brought their military to the Melians’ shores as a scare tactic. They are explicitly exerting their dominance over a
small, insignificant, island, because they think it is beneficial for their empire—not because they think it is just.

The Athenians respond to the Melians’ accusation by articulating a political standard extremely similar to Antiphon’s. The Athenians argue that, “you know as well as we do that right, as the world goes, is only in question between equals in power, while the strong do what they can and the weak suffer what they must” (ἐπισταμένους πρὸς εἰδότας ὅτι δίκαια μὲν ἐν τῷ ἄνθρωπῳ λόγῳ ἀπὸ τῆς ἴσης ἀνάγκης κρίνεται, δυνατὰ δὲ οἱ προύχοντες πράσσουσι καὶ οἱ ἀσθενεῖς ξυγχωροῦσιν, 5.89). We see here a denial that right (δίκαια) judges (κρίνεται) between states of unequal power. German political theorists would come to call such a policy Realpolitik, the idea that might is right. The essence of this policy is that a country must do what is right for itself in the political sphere; decisions are made based upon self-interest (φύσις) rather than common standards (νόμοι). The phrase “the weak suffer what they must” (οἱ ἀσθενεῖς ξυγχωροῦσιν) shows that the Athenians are thinking amorally; they are only calculating through the prism of whether attacking Melos benefits their empire. Justice is in the hands of the strong. Like Antiphon’s own philosophy, this does not mean that anarchy is the result. Rather, those in power have the choice of how they define justice. It is my contention that this necessarily leads to more abuses of power than not due to the very human nature that the Sophists describe.

The Athenians, in fact, continue to think in terms of a cold cost-benefit analysis throughout the dialogue. The most illuminating example of this is found in the false choice they give to the Melian delegates. The Melians ask, “And how, pray, could it turn out as good for us to serve as for you to rule?” (Καὶ πῶς χρήσιμον ἂν ξυμβαίη ἡμῖν δουλεύσαι, ὥσπερ καὶ ἡμῖν

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55 See Kokaz 2002, 42 for her discussion on this
ἀρξαί; 5.92), to which the Athenians respond, “Because you would have the advantage of submitting before suffering the worst, and we should gain by not destroying you” (Ὅτι υμῖν μὲν πρὸ τοῦ τὰ δεινότατα παθεῖν ὑπακοῦσαι ἂν γένουτο, ἡμεῖς δὲ μὴ διαφθείραντες ύμᾶς κερδάινομεν ἄν, 5.93). The Melians have the choice to become either slaves or be completely destroyed. We can see from this example that even the Melians are thinking in terms of benefit and are not presenting their situation in terms of justice. The Athenians, however, who have come as the aggressors answer the Melians question by responding in terms of the Athenians’ own benefit, “we should gain by not destroying you” (ἡμεῖς δὲ μὴ διαφθείραντες ύμᾶς κερδάινομεν ἄν).

It is poignant that Thucydides floods the continuing response with Sophistic language, making the Athenians praise expediency and become discreditors of nomian “shame.” For a man as brilliant as Thucydides, the ties to Sophistic language cannot be a coincidence. Kokaz says that “sophistic vocabulary of power and necessity dominates practically all discussions of Thucydides and fixes human nature as that which is opposed to convention” (Kokaz 2001, 36). For example, the Athenians say, “Of the gods we believe, and of men we know, that by a necessary law of their nature they rule wherever they can” (ἡγούμεθα γὰρ τό τε θεῖον δόξῃ, τὸ ἀνθρώπειόν τε σαφῶς διὰ παντὸς ὑπὸ φύσεως ἀναγκαίας, ὥδε ἄν κρατῇ, ἀρχεῖν, 5.105.2). Here we see the language of the “necessity of nature” (φύσεως ἀναγκαίας). The Athenians are arguing, as Antiphon does, that we must understand an individual’s decision making process not by the malleable laws and customs that surround him or her, but by human nature. With this in mind they paint their decision making process as amoral—it is not a question of should they enact justice on the Melians, but what the Athenians want to do with their power. They go on to say, “you [the Melians] and everybody else, having the same power as we have, would do the
same as we do” (εἰδότες καὶ ὑμᾶς ἃν καὶ ἄλλους ἐν τῇ αὐτῇ δυνάμει ἡμῖν γενομένους δρῶντας ἂν ταῦτό, 5.105.2-3). Here the Athenians idealize φύσις while simultaneously relativizing νόμος. Their argument is that it is a law of nature (ὑπὸ φύσεως ἀναγκαίας) that those who hold power can wield it however they would like, that this is advantageous. According to the Athenians, the Melians are in their current position because they do not understand “the view that expediency goes with security,” and that “justice and honor cannot be followed without danger” (Οὔκουν οἴεσθε τὸ ξυμφέρον μὲν μετὰ ἁσφαλείας εἶναι, τὸ δὲ δίκαιον καὶ καλὸν μετὰ κινδύνου δρᾶσθαι, 5.107). Again, we see the word (ξυμφέρον), telling us that the Athenians are thinking in terms of “expediency” rather than ethical pursuits such as “justice and honor.” As Nancy Kokaz argues, “Throughout the Melian Dialogue, there is never a doubt that the Athenian action violates rules of fair play and just dealing” (Kokaz 2001, 34). We certainly see that here with their admission that “justice and honor” are futile pursuits. Like Antiphon, too, the Athenians argue that expediency is advantageous. Here they argue such advantage in terms of security (ἁσφαλείας). Using all of these argument the Athenians dismantle their opponent’s nomian argument. Whether Thucydides thought this Sophistic political tilt was a negative shift is answered in his brief conclusion.

Thucydides, as is his style, leaves a rather shocking statement at the end of the Melian Dialogue. He does not explicitly judge the situation, but allows the gravitas of his description to speak for itself. He simply ends by writing, “the Melians surrendered at discretion to the Athenians, who put to death all the grown men whom they took, and sold the women and children for slaves, and subsequently sent out five hundred colonists and settled the place themselves” (ξυνεχώρησαν τοῖς Ἀθηναίοις ὥστε ἐκείνους βουλεῦσαι. οἱ δὲ ἀπέκτειναν Μηλίων ὅσους ἠβῶντας ἔλαβον, παιδὰς δὲ καὶ γυναῖκας ἠνδραπόδισαν. τὸ δὲ χωρίον
αὐτοὶ ὁκισαν.3 ἀποίκους δισεκατόρου πεντακοσίους πέμψαντες, 5.116.3-4). I think Mitchell summarizes the situation in Greece best when he writes, “Thucydides held to the view that human beings have a higher nature that values good-hearted fellowship, trust and a society of laws that fosters discipline and moderation and is based on common human standards of the right and the just. He saw a destructive decline in these values in Greece, including Athens... intensifying with the civil conflicts of the 420s” (Mitchell 2015, 156). The similarity of the events in Melos to Mytilene cannot be overlooked. Both involved the question of what to do with the men, women, and children. As we have seen, in both situations the purported “winner” of the argument used Sophistic language to idealize φύσις and relegate νόμος. And lastly, both arguments centered around self-interest (ξυμφέρον), or what I have called the beneficaility standard. In the Melian situation, however, Sophistic political philosophy led to a massacre.

Looking Forward

Through the aid of Thucydides I have shown that political decisions purely based upon φύσις are necessarily amoral. I have also shown, however, that this doesn’t mean that they can not lead to ethical policy decisions. Using the state as a metaphor for the individual shows that there are major problems with Sophistic Social Contract Theory. Although we saw, through the use of Antiphon, that the Sophists believed in something like Natural Rights—these are gifts given by φύσις that make all equal as humans and all free—their belief that νόμος was secondary to advantage/self-interest ξυμφέρον makes it impossible for a social contract to have any force. The Sophists idealized the source of freedom so much, that they ignored the disadvantages of human-nature. Because of this they failed to see that νόμος has a place in securing what φύσις gives each one of us.
It is worth noting that in the wake of the Peloponnesian War the philosophical trends showed an abandonment of traditional Sophistic Social Contract Theory. An example of this is the little known sophist Lycophron, whose only remaining alleged fragment states that “and its law becomes a compact and ‘guarantor of reciprocal rights’” (Mulgan 1979, 125). Scholars, such as Mulgan, have often thought of this statement as one of the first instances of an “unequivocal statement of the contractual theory of law” that is based in the necessity of law rather than the expediency of law (Mulgan 1979, 125) 56. But if we want to really understand a theory of the social contract that is based upon Presocratic Natural Law, and that is designed to protect our Natural Rights, then we must turn to Plato. I show in the next chapter that Plato’s Social Contract Theory is an answer to the moral relativism of the Sophists and should be thought of as part of the intellectual framework for Enlightenment Social Contract Theory.

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56 Also see Mulgan 1979, 139 where he says that Lycophron is sometimes “even claimed as the founder of the social contract theory in its earliest form.”
Chapter 4: The Ethical Social Contract

I now turn to Plato’s Social Contract Theory as depicted in both the *Crito* (c. 360 BCE) and the *Republic* (c. 380 BCE). I argue that Plato’s *Crito* represents his major articulation of the social contract. In this first dialogue Plato presents a theory of the social contract built around the major premise that to do wrong is always to do wrong. This theory is meant to be operative, as Plato applies it to the real-world situation of Socrates’ decision whether to escape from jail. I then argue that the *Republic* is where Plato seems to countermand his prior argument by refuting the legitimacy of Social Contract Theory. I show, however, that Plato is really entering into a historically oriented philosophically diachronic dialogue with the *Crito* in which he presents us with a new frame of reference to look upon his social contract – as a means towards the pursuit of the Platonic “Good.” Lastly, I show that Plato’s social contract harmonizes φύσις and νόμος, and that this harmony becomes the basis for Enlightenment Social Contract Theory.

In order to understand Plato’s reception of and reaction to Social Contract Theory, it is necessary to turn to whole dialogues instead of selected quotations. For when one speaks of ‘Plato’s views’ one really means the dialogues. As Guthrie so aptly puts it, “It is the dialogues which down the centuries have inspired and stimulated, irritated and exasperated, but never bored... Whatever the motives of their author, for all of us, in Europe and beyond, the dialogues are Plato and Plato is his dialogues” (Guthrie 1975, 4). I have chosen the *Crito* and the *Republic* for two particular reasons: the first is that a wealth of scholarship exists surrounding Social Contract Theory in both dialogues; the second is that scholars usually deem the *Republic* as
completely antithetical to the *Crito* 57. This perception of the two dialogues has prompted me to attempt to argue that such a wise philosopher as Plato would not contradict himself without reason; that this is proof that he has a coherent theory of the social contract lurking beneath the surface of his dialogues, waiting to be revealed.

The apparent contradictions arise because what Plato argues in the *Crito* about Social Contract Theory barely surfaces in the *Republic*. I suggest that this is because the *Crito* presents us with a social contract formulated on the basis of action, whether or not Socrates should escape from jail—this is a particular instance and thus requires a particular solution—whereas the *Republic* presents us with a theory of the social contract formulated on the basis of words – it is purely a philosophical exercise and is thus meant to be generalized. Taken together, however, both strands reveal that Plato symbiotically unites φύσις and νόμος in an endeavor to create an *ethical* social contract between the citizen and the state, an endeavor which is at complete odds with the Sophistic conception presented in the prior chapter. Plato’s contract is an agreement-in-words which is tied to the well-being of the soul through a mechanism of an agreement-in-deeds. If this is kept in mind throughout my analysis, then both dialogues soon become complementary.

In fact, I believe that the essence of Plato’s theory of the social contract should be viewed as developing in reaction to the Sophists’ own theory; just as the Sophists’ theory of the social contract has already been shown to be in such a relationship with the developments of the Presocratics’. Even a cursory survey of the dialogues reveals that they are filled with Sophists from the era before Plato and then his formative years. One should consider the fact that Plato opted out of serving in the Government of the Thirty. Guthrie tells us that although Plato’s many

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57 If I were to continue on in this project I would look much more deeply at the Republic. For the parameters of this M.A. thesis such a task is just not feasible.
family members, who were Sophists themselves, were part of the Thirty, and although Plato was of political age and had the opportunity to enter into politics (as was customary for aristocrats his age), the budding philosopher instead “...watched and waited; and what he saw of their excess so shocked him that he simply withdrew himself of the excesses of the time” (Guthrie 1975, 16)\textsuperscript{58}. Thus we should follow Guthrie’s conclusion that one should read Plato’s starting point as being “historically conditioned” (Guthrie 1975, 6). In light of this, some have argued that Plato writes with the underlying intention of engaging with, building upon, and critiquing the Sophists. This should lead us to the conclusion that if the Sophists’ theory of the social contract took ethics out of the equation, Plato’s will be ethically centered\textsuperscript{59}.

I now turn to Plato’s \textit{Crito} to discuss his ethical theory of the social contract. Again, the goal of analyzing this particular rendition of Plato’s social contract, as opposed to his second in the \textit{Republic}, is to reveal its practical nature. This theory of the social contract was created for a real-world situation—Socrates’ decision whether to escape from jail. I show through my analysis of the \textit{Crito} that Plato’s entire social contract is built upon the major premise that to do wrong is always to do wrong, a watered down version of what Plato will call in the \textit{Republic} the pursuit of the “Good.”

\textit{The Crito}

Unlike the \textit{Republic} which features many characters, the \textit{Crito} is a discussion between only Socrates, who has been found guilty of corrupting the youth and introducing new gods and

\textsuperscript{58} Also see Cornford [1932] 1962, 57 where he writes, “As soon as he was of age, his influential relatives and friends were urging him to join their faction. His own ambitious inclinations tempted him to accept these flattering approaches. But he mentions two decisive events that caused him to draw back in horror and disgust.”

\textsuperscript{59} Plato is widely considered to be a moral philosopher and was accepted as such in antiquity. His reception and use of Social Contract Theory is deeply connected both to his historical context and to the philosophical traditions that preceded him among the Presocratics and the Sophists. See: Sandys 1908, 306-343; Whittaker 2001, 153; Dickey 2007, 10.
is waiting his execution in jail, and Crito, a wealthy man and Socrates’ benefactor for whom the
dialogue is named (24b). Thus, unlike Plato’s other dialogues which feature Socrates waxing
philosophically in order to come to agreements-in-speech, the Crito’s discussion has
consequences that will influence the outcome of Socrates’ own life. The central question of the
dialogue is whether Socrates should escape from jail, or not (48b). Such a question requires
Socrates, and the man for whom the work is named, to come to an agreement-in-action. As
Melissa Lane writes, “Socrates nowhere else confronts a particular problem of practical reason:
ought he, or ought he not, to take a certain action—i.e. to escape, as urged by Crito, from
imprisonment and impending execution” (Lane 1988, 313). Following Lane, I analyze the Crito
from the viewpoint of practical reasoning. This leads me to argue that that the theory of the
social contract presented in the Crito is both intended to be practical, in that Socrates actually has
to use it, and also ‘portable’, in that Plato wanted it to be an applicable theory of political
science.

Establishing Portability

The dialogue’s portability is centered around two premises that run throughout the
dialogue (Lane 1988, 313-330). The Crito’s major premise is that one should never do wrong
with all its corollaries (Lane 1988, 315)60. In other words, one must always strive for justice
because of the Socratic assumption that what is just is what is good, and man seeks what is good.
This is a premise that the Sophists did not agree with at all, and one that Glaucon, who represents
the Sophistic outlook, specifically refutes in the Republic. The major premise is meant to be
operative – one should never do wrong is a test to be applied to every situation. The minor

60 Also see “Then we mustn’t act unjustly in any way” (Οὐδεμιὸς ἄρα ἀδικεῖν, 49b).
premise, then, is the application of the major premise. Put simply, the minor premise is ‘to do x (break out of jail) is to do injustice’. The entire beginning of the dialogue is a failure on Socrates’ part to get Crito to agree to this minor premise. Ultimately, it is Socrates’ failure to teach Crito that leads to the dialogue’s account of Platonic Social Contract Theory.

Plato begins the dialogue with Crito entering Socrates’ cell in jail. He has come to announce that the ship’s arrival signaling the permissibility of the philosopher’s execution will be the next day (43d)\(^61\). Crito, instead of finding Socrates pacing and sleepless, is surprised to find him sleeping soundly in his prison bed. After waking Socrates up, Crito exclaims, “I’ve been surprised at you for some time, seeing how sweetly you are sleeping” (σοῦ πάλαι θαυμάζω αἰσθανόμενος ὡς ἡδέως καθεύδεις, 43b)\(^62\). The use of the adverb ἡδέως (“sweetly”) is meant to mark odd action for someone who has been condemned to death. The reader, then, is immediately faced with one of the central questions of the dialogue: “Why does Socrates now so willingly choose to follow the law?” For Socrates must have reason for sleeping “sweetly,” when one would expect to find otherwise. Thus, from the beginning of the dialogue the burden of proof, so to speak, is on Socrates to prove that he is doing the right thing by not escaping from jail. In order to do this, he will first have to convince Crito that doing injustice is harmful for the agent, the major premise of the dialogue (Lane 1998, 319). In other words, Socrates has to come up with a viable alternative to the Sophistic notion that to do wrong is sometimes beneficial.

I consider Crito’s main line of attack popular, in that it is entirely constructed around the opinions of others, rather than grounded in deliberation\(^63\). Each of Crito’s objections are based

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\(^{61}\) See Lane 1998, 314

\(^{62}\) All Greek and English from the Crito comes from Plato 2017.

\(^{63}\) See Lane 1998, 317 where she writes, “According to Crito the advantages of escape include: benefiting Crito by maintaining his friend; benefiting Crito by maintaining his reputation as one who values friends above money, and in general saving Crito and other friends from the shame of being thought cowardly or unmanly; not benefiting
upon popular will rather than deliberated-upon-reasoning. For example, if we follow Socrates’ argument critiquing Crito’s second point—if Socrates is executed the people (οἱ πολλοὶ) will persecute Crito for looking like a rich man who was unwilling to use all of his resources to save his own friend, (ἐτὶ δὲ καὶ πολλοὶς δόξῳ, οἱ ἐμὲ καὶ σὲ μὴ σαφῶς ἴσασιν, ὡς οἶκός τ’ ἄν σε σφίξειν εἰ ἢθελον ἀναλίσκειν χρήματα, ἀμελήσαι, 49b-c)—then it is clear that Crito has not considered the philosophical implications of his view. We know from other dialogues that Socrates does not believe anything can be thought of as good or bad unless it has been deliberated, a point which will specifically be addressed in the Republic.

Socrates begins his refutation by saying bluntly, “But my dear Crito, why is our reputation among the majority of people of any concern to us?” (Ἀλλὰ τί ἡμῖν, ὦ μακάριε Κρίτων, οὔτω τῆς τῶν πολλῶν δόξης μέλει; 44d). This question gets to one of Socrates’ core beliefs, that there is a natural order to things. In light of this, Socrates regards the opinions of the many to be low on that ordering. His thoughts on the matter are summarized in the following statement: “of the beliefs that people hold some should be highly regarded, others not” (ὅτι τῶν δοξῶν ἃς οἱ ἄνθρωποι δοξάζουσιν δέοι τὰς μὲν περὶ πολλοῦ ποιεῖσθαι, τὰς δὲ μὴ, 46e). This idea posits an order of value which is independent of social and human construction, an argument that is at the forefront of the Republic. Socrates uses it here to convince Crito that taking advice on a matter from people who aren’t experts in a field is actually harmful for that individual.

Socrates wants Crito to understand that there is a natural order to things so that he realizes that the opinions of the many are not a place to start when talking about justice. This is a necessary logical step because justice as defined by Socrates, never doing wrong, is the ethical

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Socrates’ enemies by gratifying their wish to destroy him; benefiting Socrates’ sons by remaining alive to educate them.”
basis of his social contract. In order to get Crito to understand that there is an order of value that exists independently of social construct, Socrates asks, “Would a man in training and fully engaged in it pay attention to the encouragement, criticism and opinion of every person, or only that of one person who is actually his doctor or trainer?” (γυμναζόμενος ἀνήρ καὶ τοῦτο πράττων πότερον παντὸς ἀνδρὸς ἐπαίνῳ καὶ ψόγῳ καὶ δόξῃ τὸν νοῦν προσέχει, ἢ ἕνος μόνου ἐκείνου ὃς ἄν τυγχάνῃ ἱατρὸς ἤ παιδοτρίβης ὄν; 47b). Socrates makes the scope of the question whether something is good for the γυμναζόμενος ἀνήρ. His use of the participle γυμναζόμενος shows us that Socrates is focusing on someone in action. Thus, he is not just talking about the independent value of things in words, but rather the effect of these words on action. As Socrates says, the training man is one who is τοῦτο πράττων (engaged in it). Socrates is trying to show Crito that, like the γυμναζόμενος ἀνήρ, both of them are “engaged in it,” here the “it” being the pursuit of justice.

In fact, Socrates uses this very analogy of the γυμναζόμενος ἀνήρ and applies it to the question of whether an individual who is pursuing justice should care about the will of the many. Socrates says to Crito (47c-d),

οὐκόν καὶ τάλλα, ὦ Κρίτων, οὕτως, ἵνα μὴ πάντα δῷμεν, καὶ δὴ καὶ περὶ τῶν δικαίων καὶ ἀδίκων καὶ αἰσχρῶν καὶ καλῶν καὶ ἁγιῶν καὶ κακῶν, περί ὧν νῦν ἡ βουλὴ ἡμῖν ἔστιν, πότερον τῇ τῶν πολλῶν δόξῃ δεῖ ἡμᾶς ἐπαίνῳ καὶ φοβεῖσθαι αὐτὴν ἢ τῇ τοῦ ἕνος, εἰ τίς ἐστιν ἐπαίνῳ, ὂν δὲ καὶ αἰσχύνεσθαι καὶ φοβεῖσθαι μᾶλλον ἢ σύμπαντας τοὺς ἄλλους;

Then in other matters, not to enumerate them all, in questions of right and wrong and disgraceful and noble and good and bad, which we are now considering, ought we to follow and fear the opinion of the many, or that of the one, if there is anyone who knows about them, whom we ought to revere and fear more than all the others?

Here, as with the γυμναζόμενος ἀνήρ, Socrates again uses a phrase to show Crito that he is talking about someone “engaged in it”; this time περὶ ὧν νῦν ἡ βουλὴ ἡμῖν ἔστιν. Furthermore, as with the γυμναζόμενος ἀνήρ who would do best by listening to the expert trainer rather than
the will of the many, those seeking justice would do best if they listened to an expert in justice. As Socrates himself puts it, “And if we do not follow him, we shall injure and cripple that which we used to say is benefited by the right and is ruined by the wrong. Or is there nothing in this?”

\[ \text{ὅ εἰ μὴ ἀκολουθήσομεν, διαφθεροῦμεν ἕκεινο καὶ λοβησόμεθα, ὅ τὸ μὲν δικαίῳ βέλτιον ἐγίγνετο τὸ δὲ ἁδίκω ἀπώλλυτο. ἢ οὐδὲν ἐστι τοῦτο; 47d}. \]

This, Socrates thinks, supports his major premise, something that Crito has agreed to beforehand, that to do wrong is always to do wrong.

This elaboration of natural order allows Socrates to propose a test which he hopes Crito and he can both agree on, which is whether they should act rightly or wrongly in effecting his escape (48d). If they agree in words that escape is advantageous or beneficial for Socrates, then the convicted philosopher will agree to escape from jail. But if they find the opposite to be true, then Socrates must face his execution. Unlike the Sophists, then, Socrates is trying to tie together self-interest and justice. From the beginning, as is evidenced by his sleeping sweetly, Socrates will take up the position that escape is unjust. Again, one can see that words, however, are not the only consideration here. The agreement that Socrates hopes to make with Crito will have a direct effect on what they decide to do. This is in essence a test of Sophistic Social Contract Theory; the idea that laws only have to be followed in public and should be broken when it is beneficial to do so is under examination. Thus, Socrates’ success is really the success of a viable alternative to Sophistic Social Contract Theory.

I show here that Socrates’ refutation of Crito is built upon one argument, which is that they have already agreed on the major premise in the past and therefore Crito must agree that leaving the city actually harms innocent Athenians. Socrates ultimately fails this line of logic.
Because of this he finds it necessary to invoke the Laws in order to get Crito to understand that his agreement with the major premise means he must also agree with the minor premise.

Socrates begins to refute Crito in 49e. He mentions to Crito that the origin of their inquiry lies in principles which “we” had agreed on in the past. Socrates means to say that Crito and he previously had agreed, outside of the world of the Platonic dialogue, on the major premise that one should never do wrong willingly. Therefore, this deliberation rests on ethical claims. Socrates tests Crito’s acceptance μετὰ τοῦτο (“beyond this”) already agreed upon principle throughout 49e-50a in an alternate form of the minor premise. Socrates asks Crito, “if we leave this place without first persuading the state, are we harming certain people and those whom we should do least harm to, or not? And do we stand by what we agreed to be just, or not?” (ἀπιόντες ἐνθένδε ἡμεῖς μὴ πείσαντες τὴν πόλιν πότερον κακῶς τινας ποιοῦμεν, καὶ ταῦτα οὕς ἠκιστα δέι, ή οὗ; καὶ ἐμμένομεν οῖς ὁμολογήσαμεν δικαίοις οὖσιν ή οὗ; 50a). With this statement Socrates invites Crito to see that “leaving here without the city’s permission” is the same as “harming certain people and those whom we should do least harm to,” which is meant to suggest to Crito that the proposed action would be unjust. This syllogism aims to require Crito to agree that Socrates and he must yield a conclusion against escape (Lane 1998, 321).

The syllogism presented above is essentially the logic of Plato’s social contract, just without any elaborations. Socrates’ argument that it is always unjust to break the laws necessarily means he believes νόμος is a pathway towards true justice. The problem is, however, that Socrates cannot get Crito to come to an agreement-in-words after presenting him with the aforementioned question. Crito merely responds to Socrates’ proposition by saying, “I cannot answer your question, Socrates, for I do not understand” (οὐκ ἔχω, ὦ Σώκρατες, ἀποκρίνασθαι πρὸς ὦ ἐρωτᾶς: οὐ γὰρ ἐννοῶ, 50a). Crito therefore is unable to apply the major premise,
something which he has already agreed upon, to the minor premise. This becomes the point in
the dialogue at which Socrates must elaborate the minor premise with the help of the
personification of the Laws.

Socrates’ Use of the Laws

The Laws present the reader with two arguments that help Socrates in his quest to try and
convince Crito of the minor premise, both of which I touch upon in greater detail in this section:
the first is that because Socrates was born, educated, and brought up in Athens that he is both the
offspring and the slave of the state (50d-51c); the second is that Socrates has always had the
opportunity to leave Athens if he disagreed with the laws, but because he actively chose to spend
almost the entirety of his seventy years there he is bound to follow them (52-54d). A third
argument is found hidden between the lines of the dialogue. I show in this chapter that the Law’s
central, and third, argument is that the social contract is an agreement-in-deed which is ethically
centered (51c-52d).

Due to the fact that Socrates and Crito have already agreed on the major premise, that to
do wrong is always to do wrong, the Laws begin with the same minor premise that Crito could
not agree to beforehand. The Laws say to Socrates (50b),

άλλο τι ἦ τούτο τῷ ἔργῳ ὃ ἐπιχειρεῖς διανοῆ τοὺς τε νόμους ἡμᾶς ἀπολέσαι καὶ
σύμπασαν τὴν πόλιν τὸ σὸν μέρος; ἢ δοκεῖ σοι οἶδον τε ἐπὶ ἐκείνην τὴν πόλιν εἶναι καὶ μὴ
ἀνατετράφθαι, ἐν ἦ ἄν αἱ γενόμεναι δίκαι καὶ μὴ δὲν ἰσχύωσιν ἢλλὰ ὑπὸ ἰδιωτῶν ἄκυροί τε
γίγνονται καὶ διαφθείρονται;”

By this action you’re undertaking are you planning to do anything other than actually
destroy us, the Laws, and the whole state in as far as it’s in your power to do so? Or do
you think that the state can continue to exist and not be overturned in which legal
judgements have no force but are rendered invalid and destroyed by private individuals?
The Laws claim that “to destroy” (ἀπολέσαι) is an unjust act and that because of this unjust nature any man should shy away from causing destruction. In this case the harm is the destruction of the city. Some might argue why there this causes harm is obscure. As Lane says, “it can be much debated whether the underlying thought is of a domino effect, or expressive-symbolic, or of setting a bad example which might be followed by others” (Lane 1998, 323). The Laws, however, actually provide us with a reason why ignoring them is akin to destroying the state. Because the city is of greater importance than the individual, to do harm to the city does harm to everyone. The Laws say to Socrates, “that your native city is a thing of greater worth than your mother and father and all the rest of your ancestors, and more worthy of respect, holier and held in greater esteem both among the gods and men of good sense” (ὥστε λέληθέν σε ὅτι μητρός τε καὶ πατρός καὶ τῶν ἄλλων προγόνων ἀπάντων τιμιώτερόν ἐστιν πατρίς καὶ σεμινότερον καὶ ἀγιότερον καὶ ἐν μείζονι μοίρα καὶ παρὰ θεοῖς καὶ παρ’ ἀνθρώποις τοῖς νοῦν ἔχουσι, 51a-b). This argument often provides fodder for those who claim that Plato values the state more than the individual. While this is also often the drawn conclusion of the Republic, it is something that I argue against here.

The State is the thing of greatest worth (τιμιώτερόν) because it is itself the Laws; it is a shadow of what can be pure justice. Νόμοι, if they are legislated in accordance with what is natural (φύσις), may provide the opportunity for each individual to succeed. Nobody is required to give anything to the community except his or her allegiance to the rule of law. This is why the Laws make the claim that the state is capable of being destroyed by each private individual (ὑπὸ ἰδιωτῶν), because one is not forced to uphold one’s own liberty, it is something that one has to choose to do every day. Such a claim is at complete odds with the Sophistic view of the social contract which holds that every individual can break the laws when it is of benefit to themselves,
and that this has no bearing on the health of the state. Here, however, the Laws are suggesting that the social contract is tied to the very well-being of the community.

The Laws then move on to expand upon the minor premise, that to ignore them is to destroy the city, by presenting their first argument (which was mentioned above). This first argument is that the Laws have provided everything that has been good in Socrates’ life, and that he has never argued against them. Therefore, he has tacitly agreed with them. For example, the Laws say to Socrates, “Wasn’t it we who gave you birth in the first place, and your father married your mother through us and gave you life?” (οὐ πρῶτον μὲν σε ἐγεννήσαμεν ἡμεῖς, καὶ δὴ ἡμῶν ἐλαβε τὴν μητέρα σου ὁ πατήρ καὶ ἐφύτευσέν σε; 50d). The Laws go through the “laws” concerning education too, for example, and each time Socrates agrees that he has never complained about them. The Laws even provide Socrates with a method in which to enact change if he did in fact come to despise them. They say to Socrates that he has been afforded throughout his life, as well as every Athenian, the tool of persuasion. The Laws say to Socrates, “you must persuade it as to where justice lies” (πείθειν αὐτὴν ᾗ τὸ δίκαιον πέφυκε, 51c). The Laws, in fact, tell Socrates that he “must” use persuasion if he disagrees with them because if they are to continue being unjust this itself would be an injustice. This point is also in contention with Sophistic philosophy. We saw in both Antiphon and Diodotus a hate of πείθειν because of its ability to obscure truth. Here, however, Plato argues that πείθειν is a way to discover the truth. If a law is wrong, argument and persuasion help perfect it. Therefore, whereas the Sophists take a determinative view of persuasion, Plato takes a teleological view of it. Furthermore, Plato gives us the first hint that his social contract requires action on the part of the individual, since one agrees with it each day by choosing whether to benefit from it. Again, this is not to say one can not dissent, but rather that there are certain avenues for dissent within the rule of law.
The second argument, like the one just presented, also is based in action. It is the idea that if one chooses to stay in a state, then that individual has tacitly agreed to uphold and abide by the laws of that state. This is why the Laws say to Socrates (51d-e),

> ἡμεῖς γάρ σε γεννήσαντες, ἕκθροντες, παιδεύσαντες, μεταδόντες ἅπαντον ὅν οἷοι τ’ ἦμεν καλὸν σοι καὶ τοῖς ἄλλοις πάσιν πολίταις, ὅμως προαιρετόμους τῷ ἐξουσίαν πεποιηκέναι Ἀθηναίοι τῷ βουλομένῳ, ἐπειδὰν δοκιμασθῇ καὶ ἱδη τὰ ἐν τῇ πόλει πράγματα καὶ ἡμᾶς τοὺς νόμους, ὃ ἂν μὴ ἀρέσκομεν ἡμεῖς ἔξειναι λαβόντα τὰ αὐτοῦ ἀπέναι ὅποι ἂν ἄνθρωπος. Καὶ οὐδεὶς ἡμᾶς τὸν νόμον ἔμπορον ἐστίν οὕτω ἐκατορθοῦσα, ἐάντε τις βούληται ἡμᾶς ἐκείνος ὀποιοῦ ἡμᾶς ἔτεινε ἐπὶ τῇ πόλει καὶ ἡ ἀρέσκομεν ἡμεῖς ἐκείνος τῇ πόλει, ἐάντε μετοικεῖν ἀλλού ποιεῖν ἐλθὼν, ἐάντε ἐλθὼν, ἐστιν οὐδὲν ἀπαγορεύει, ἐάντε τις βούληται ἡμᾶς ἐκείνος ἡμᾶς ἐκείνος τῇ πόλει καὶ ἡ ἀρέσκομεν ἡμεῖς ἐκείνος τῇ πόλει, ἐάντε μετοικεῖν ἀλλού ποιεῖν ἐλθὼν, ἐστιν οὐδὲν ἀπαγορεύει, ἐάντε τις βούληται ἡμᾶς ἐκείνος τῇ πόλει καὶ ἡ ἀρέσκομεν ἡμεῖς ἐκείνος τῇ πόλει, ἐάντε μετοικεῖν ἀλλού ποιεῖν ἐλθὼν, ἐστιν οὐδὲν ἀπαγορεύει, ἐάντε τις βούληται ἡμᾶς ἐκείνος τῇ πόλει καὶ ἡ ἀρέσκομεν ἡμεῖς ἐκείνος τῇ πόλει, ἐάντε μετοικεῖν ἀλλού ποιεῖν ἐλθὼν, ἐστιν οὐδὲν ἀπαγορεύει.

For, having given you birth, having brought you up and educated you, having shared all good things we’re capable of with you and the rest of your fellow citizens, we nevertheless proclaim that we’ve given permission to any Athenian who wishes it, if, when he has been scrutinized and sees the city in operation and us the Laws, he finds us unsatisfactory, to take his belongings and go anywhere he wishes. Moreover, none of our laws stand in your way or forbids you, whether any of you wishes to go to a colony, if both we and the city are displeasing, or go and emigrate somewhere else wherever he wishes with his property.

The Laws claim that not only Socrates, but every Athenian who chooses to stay in Athens, binds him or herself to the social contract. As they say, any citizen can take their belongings and go anywhere one wishes if one disagrees with them (λαβόντα τὰ αὑτοῦ ἀπειναὶ ὅποι ἂν βούληται). Thus, just like the Law’s first argument, the second argument calls for action. The social contract is something that every day the citizen has to reexamine. As Lane writes, “Every Athenian is given the opportunity, on reaching maturity, of leaving the city with his possessions and going to live elsewhere. No law forbids this” (Lane 1998, 323). If someone truly could not come to an agreement with the Laws and had exhausted all the democratic tools to alter the Laws, then it is realistic to assume that one could leave the state.

With both of the Laws’ explicit arguments presented to the reader, what Plato says in 52de can more easily be understood as the express articulation of the social contract agreed upon.
in action. The Laws say to Socrates, “Then are you breaking anything other than the covenants and agreements that you have made with us, not ones you have agreed on out of necessity, nor even because you have been misled, not even ones you were forced to decide on in a short space of time” (“Ἄλλο τι οὖν ἢ συνθήκας τὰς πρὸς ἡμᾶς αὐτοὺς καὶ ὀμολογίας παραβαίνεις, οὐχ ύπὸ ἀνάγκης ὀμολογήσας οὐδὲ ἀπατηθεὶς οὐδὲ ἐν ὀλίγῳ χρόνῳ ἀναγκασθεὶς βουλεύσασθαι, 52d-e).

Here Plato finally lets us know that we are specifically dealing with a theory of the social contract in the *Crito*. Plato uses terms like “covenants” (συνθήκας) and “agreements” (ὁμολογίας) to argue that the judicial/ethical standards to which the Laws are calling should be thought of as binding. This is contrary to what the Sophists argued, which was that agreements based on νόμος have no authority. For the Sophists only the requirements of φύσις have any real force. Plato argues, however, that every day one has to ask oneself whether the laws of the city are in accordance with justice (the premise that to do wrong is always to do wrong), and is required to change them if they are not. It is this ability to alter the laws and drive them towards justice that makes the contract binding.

Not much else is needed to say about what the contract entails since it has been covered in the Laws’ arguments. What is worth mentioning here is a question that many readers of the *Crito* come to have, that is: What if the Laws told someone to do something obviously unjust, like to kill another individual cold bloodedly? (Lane 1998, 324). The answer is found in the fact that Socrates and Crito have already established a standard of agreement that is independent of the law – to do wrong is always to do wrong. One might automatically be reminded of Thoreau’s argument made in *Civil Disobedience*, that if an individual’s conscience cannot cope with the perceived immorality of a law then it is his or her duty to ignore that law64. The argument here,

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64 See Thoreau [1854] 2012
however, is more nuanced. One must never break the law, and one must never break the major premise. But one never has to worry about doing so if a law is unjust because Plato’s social contract as presented in the *Crito* has mechanisms for change: one can leave, one can persuade. This is Plato saying that Socrates himself never *acted* to break the laws. Even though Plato’s teacher never admitted outright to breaking Athens’ laws, Plato creates a theory of the social contract that is in accord with Socrates’ actions. Thus, Plato creates a social contract centered around ethics.

In fact, there is one last piece of evidence that Plato’s social contract as presented in the *Crito* is meant to be ethical. When the Laws claim that Socrates’ decision whether to follow them is something that will be judged in Hades itself, they say to him that he should always follow them, “in order that when you get to Hades you may offer all this in your defense before those who rule there” (ἵνα εἰς Ἅιδου ἐλθὼν ἔχης πάντα ταῦτα ἀπολογήσασθαι τοῖς ἐκεῖ ἀρχομένοις, 54b). Such a claim is not supposed to indicate that the social contract is protected by supernatural powers. Rather, it shows that the pursuit of justice is tied to the well-being of the soul. Again, Plato has made a hierarchy of what is both good and bad. The pursuit of justice is beneficial because it produces a just person, just like the pursuit of health is good because it produces a healthy person. Therefore, it is good for one’s soul to guide one’s actions always by what is just, what is moral. Adherence to justice, therefore, is an ideal that is good outside of the realm of society. Justice, therefore, is not, as the Sophists argue, something that is artificial, but rather something that exists as part of φύσις.

So far in the chapter I have argued that the social contract presented by Plato in the *Crito* is built upon an ethical foundation, that to do wrong is always to do wrong. Plato extended this major premise to the minor premise, making it a practical theory. As a result, he tied the pursuit
of justice to the well-being of the soul. Thus, Plato’s social contract as presented in the *Crito* requires not only an agreement-in-words like the Sophistic version but also just action: each day the individual must agree with the state that one will abide by the laws by speaking in their defense and following their lead. There is no excuse for breaking the laws on purpose because there are avenues to change them, or to leave. I now turn to the *Republic*, to Plato’s other famous articulation of Social Contract Theory, in order to show that what at first seems to be a refutation of Social Contract Theory itself is rather an argument that bolsters the *Crito’s*. I show that the *Republic* acts as an ethical stimulus to what has been presented here in the *Crito* - that the social contract is a means towards justice and justice is a means towards the “Good.” In the process I get to argue what I have not yet done in this chapter, that Plato’s theory of the social contract is a unification of φύσις and νόμος.

The *Republic*

Just like the *Crito*, the *Republic* is in essence a rebuttal of Sophistic Social Contract Theory. Glaucon, who has volunteered to start off where Thrasymachus left off, represents Sophistic views and in particular has agreed to take the position that it is beneficial to do injustice (just like Antiphon’s position in *On Truth*). Although I do not examine the entirety of the *Republic*, since such a task in itself requires time and resources beyond the scope of this thesis, I do touch upon the major themes of Socrates’ refutation of Glaucon to help reconstruct Plato’s Social Contract Theory. While it is tempting to say that the *Republic* and the *Crito* come to two very contradictory conclusions about Social Contract Theory, I show that they should be viewed as complementing each other. Although on the surface Socrates dismantles Social Contract Theory in the *Republic*, he comes to the conclusion that the pursuit of justice, which is an attempt to unify φύσις and νόμος, is beneficial because justice is a means towards the Good.
Furthermore, both dialogues necessarily agree on the precept and major premise of the *Crito*, that to do wrong is always to do wrong.

The precept of the *Republic* is that there is natural order, which, if followed, leads to the “Good”\(^{65}\). This natural order is both necessarily sought after and pre-existent to any social contract. My suggestion is that the *Republic* implies that this natural order can actually be achieved, and particularly through the pursuit of justice in legislation. Therefore, in the *Republic*, φύσις and νόμος are not separate, but a means to the same end; human beings, with enough experience, can unite φύσις and νόμος. G.A. Cohen writes that the, “philosophically most fundamental motivation of Plato’s *Republic* is to reply to a staple proposition of fifth-century Greek thought, a proposition propounded by many of Plato’s Sophistic predecessors, and that is the proposition that there is a distinction between nature and convention, *phusis* and *nomos*, and that *nomos*, convention, human law, cannot be derived from nature, and, according to some, though not all, of those who believe all that, even contradicts nature” (Cohen 2014, 3).

In order to unite νόμος and φύσις ‘justice’ must have a universal meaning, independent of man’s thinking; Plato believes all governments should strive to base their laws upon this fundamental principle (Cornford [1932] 1962, 61). This is against the Sophistic contention made by Antiphon that justice is attached to the laws of a city.

The question of the proper relationship between φύσις and νόμος is apparent from the beginning of the dialogue. Glaucon’s central section in the dialogue contains a short statement of the Sophistic ideals of the two concepts (358c-359b)\(^{66}\). As Cohen argues, “the subversive distinction between nature and convention is alive in the challenge that Glaucon lays down to Socrates” (Cohen 2014, 3). Due to Plato’s desire to establish justice as an ideal that exists outside

\(^{65}\) I use precept here instead of premise because Socrates is no longer dealing in the realm of action. He is not being faced with death and therefore is not employing practical reasoning.

\(^{66}\) All Greek text comes from Plato 2013. All English translations come from Bloom 1968
of society, Plato aims to refute a contractarian account of justice “which debases it by tracing it to individual self-interest” (Cohen 2014, p.3). We can see from the outset that Glaucon makes justice into the progeny of self-interest and necessity rather than a perpetual ideal. Glaucon argues the following (358e-359b):

καὶ ὁ πρῶτον ἔφη ἐρεῖν, περὶ τούτου ἀκουε, ὡς ὁ ἄλλος γέγονε παρακολούθησι. περιπετεία γὰρ ὃς ἔφης τὸ μὲν ἀδικεῖν ἀγαθόν, τὸ δὲ ἀδικεῖσθαι κακὸν, πλέον δὲ κακῷ ὑπερβάλλειν τὸ ἀδικεῖσθαι ἢ ἀγαθῷ τὸ ἀδικεῖν, ὥστε οὖν ἐπειδὴ ἀδικοῦσιν τὰς ἀδικίας ἀκολουθεῖται, τοῖς μὴ δυναμένοις τὸ μὲν ἐκφεύγειν τὸ δὲ αἰρέιν ὡς ὁ κακὸν ὑπερβάλλειν συνθέσθαι ἀδικοῦσιν μήτ’ ἀδικεῖν μήτ’ ἀδικεῖσθαι· καὶ ἐντεύθεν δὴ ἄρξασθαι νόμους τίθεσθαι καὶ συνθήκας αὑτῶν, καὶ ὁμομάσαι τὸ ὑπὸ τοῦ νόμου ἐπίταγμα νόμιμόν τε καὶ δικαίον τὸ δὲ ἀδικοῦσιν τὸ μὲν ἀδικεῖν μήτ’ ἀδικεῖσθαι· καὶ ἐντεύθεν δὴ ἄρξασθαι νόμους τίθεσθαι καὶ συνθήκας αὑτῶν, καὶ ὁμομάσαι τὸ ὑπὸ τοῦ νόμου ἐπίταγμα νόμιμόν τε καὶ δικαίον, ὥστε ἐπειδὴ ἀλλήλους ἀδικῶσι τε καὶ ἀδικῶνται καὶ ἀμφοτέρων γεύωνται, τοῖς μὴ δυναμένοις τὸ μὲν ἐκφεύγειν τὸ δὲ αἰρέιν ὡς ὁ κακὸν ὑπερβάλλειν συνθέσθαι ἀδικοῦσιν μήτ’ ἀδικεῖν μήτ’ ἀδικεῖσθαι· καὶ ἐντεύθεν δὴ ἄρξασθαι νόμους τίθεσθαι καὶ συνθήκας αὑτῶν, καὶ ὁμομάσαι τὸ ὑπὸ τοῦ νόμου ἐπίταγμα νόμιμόν τε καὶ δικαίον τὸ δὲ ἀδικοῦσιν τὸ μὲν ἀδικεῖν μήτ’ ἀδικεῖσθαι· καὶ ἐντεύθεν δὴ ἄρξασθαι νόμους τίθεσθαι καὶ συνθήκας αὑτῶν, καὶ ὁμομάσαι τὸ ὑπὸ τοῦ νόμου ἐπίταγμα νόμιμόν τε καὶ δικαίον, ὥστε ἐπειδὴ ἀλλήλους ἀδικῶσι τε καὶ ἀδικῶνται καὶ ἀμφοτέρων γεύωνται, τοῖς μὴ δυναμένοις τὸ μὲν ἐκφεύγειν τὸ δὲ αἰρέιν

Well, I promised I’d talk first about the nature and origin of morality, so here goes. The idea is that although it’s a fact of nature that doing wrong is good and having wrong done to one is bad, nevertheless the disadvantages of having it done to one outweigh the benefits of doing it. Consequently, once people have experienced both committing wrong and being at the receiving end of it, they see that the disadvantages are unavoidable and the benefits are unattainable; so they decide that the most profitable course is for them to enter into a contract with one another, guaranteeing that no wrong will be committed or received. They then set about making laws and decrees, and from then on they use the terms “legal” and “right” to describe anything which is enjoined by their code. So that’s the origin and nature of morality, on this [that is, the Sophist] view: it is a compromise between the ideal of doing wrong without having to pay for it, and the worst situation, which is having wrong done to one while lacking the means of exacting compensation. Since morality is a compromise, it is endorsed because, while it may not be good, it does gain value by preventing people from doing wrong. The point is that any real man with the ability to do wrong [and get away with it] would never enter into a contract to avoid both wrongdoing and being wronged: he wouldn’t be so crazy. Anyway, Socrates, that is what this view has to say about the nature and origin of morality and so on.

Glaucon’s Sophistic argument is essentially made up of five claims. The first is that the essence of justice is to be understood by its origin. The second is that committing injustice is naturally good and desired, but that suffering injustice is naturally bad and avoided. Hence, the third is that justice is not grounded in φύσις; rather, φύσις is contrary to human nature. Accordingly, the fourth is that justice is based on convention, namely a
social contract. Lastly, the fifth is that real men would not submit to this convention.

Taken together, Glaucon’s argument is centered around amorality while putting an “individual spin on it” (Cohen 2014, 4). Socrates strikes down each one of Glaucon’s claims.

Socrates starts off by saying, “So if we were to look at a state coming into being in theory, we would also be able to see its justice and injustice coming into being, wouldn’t we?” (Ἄρ’ οὖν, ἦν δ’ ἐγώ, εἰ γιγνομένην πόλιν θεασαίμεθα λόγῳ, καὶ τὴν δικαιοσύνην αὐτῆς ἰδομεν ἂν γιγνομένην καὶ τὴν ἀδικίαν; 369a). Socrates’ first claim would appear to agree with Glaucon’s, that the beginning of a thing tells us about its nature. The nature of the dialogue, however, would suggest otherwise. For it is not until Socrates and his companions have deliberated on the matter and metaphorically created two cities that they are able to determine whether injustice is inherently good or bad for the individual (Bloom 1968, 416). Thus, it is my opinion that through the process of deliberation, the process of the Republic, Socrates actually comes to refute Glaucon; he shows us that it is the end of a thing that determines its nature and not the beginning by the creation of his two cities. In other words, νόμος is something that is not automatically just, but rather whose end can be just. There is a teleological nature to νόμος.

Shortly after this premise, Socrates goes on to make the claim that government is not created out of self-interest, the Hobbesian model, but rather that government is formed out of a natural communal interest. As Socrates says, “Well then as I see it, a state comes into being since each of us is not independent, but actually needs the support of many people” (Γίγνεται τοίνυν, ἦν δ’ ἐγώ, πόλις, ώς ἐγώμαι, ἐπειδὴ τυγχάνει ἡμῶν ἕκαστος οὐκ αὐτάρκης, ἀλλὰ πολλῶν ἐνδεής; 369b). Socrates claims that people have
essential needs such as food, shelter, clothing, and health (369d), and that it is because of these needs that they come together to form government, not because injustice becomes rampant in the state of nature. This paints man not as self-interested in the Hobbesian sense, but rather collaborative in nature. Socrates, like the Sophists, looks to human nature for the basis of society. Socrates, however, comes creates a fundamentally different picture of mankind. This difference creates an entirely different theory of the social contract.

Furthermore, Socrates contends that mankind tends towards economic specialization (370b). Thus, individuals become doctors, farmers, clothes salesmen, etc., rather than a jack of all trades who is mediocre at everything because people do not have time to do it all. Bloom tells us that this first city is an impossibility because it is miraculously governed by a “hidden hand” which blends private and public interests together for the good of the community without any trouble at all (Bloom 1968, 346, 416). Furthermore, all of the citizens are still entirely self-interested. This first articulation of the social contract is, however, still fundamentally different from Glaucon’s in that it is built around the premise that government is built on community needs.

As Lewis writes, Socrates’ first city tells each of us that, “It is our duty—or if not a duty at least an enlightened and elevated form of self-interest—to supply one another’s needs, independently of the artificial sanctions imposed by the State... The claims of morality are seen to lie deeper than mutual agreements, and society is entitled to our service independently of our private convenience” (Lewis 1998, 80). Thus, as we will see with the second city, Plato is slowly establishing that there are certain ethical rules that
govern mankind’s actions which exist outside of society. This is the take away from the *Republic*, that it actually bolsters the argument made in the *Crito*.

Plato is able to establish this point through the creation of Socrates’ second city. Glaucon calls this first city “one fit for pigs,” (372d) because each individual only ekes out a living (he specifically complains about the lack of relishes for food). Glaucon claims that the citizens up to this point have been living unrealistically, that people truly can not live happily without a little luxury. In response to this Socrates begins to construct a “city with a fever,” (372e). This complaint, which Glaucon thought would derail Socrates’ argument, will help him argue that there is a natural order to things which exists outside of society and is to be strived for. This natural order is what gives purpose to the social contract articulated in the *Crito* and is achieved through the practice of attempting to harmonize φύσις and νόμος.

Plato’s second city should be read as an extended analogy of the higher order of things. One might think of the allegory of the cave as a wonderful example of this. But I would like to turn to Socrates’ argument of the tripartite soul. For it is here that we are given evidence of a premise that strengthens the theory of the social contract presented in the *Crito*. Socrates notes that when options enter a city so too comes the possibility of feeling both attracted and driven away by something at the same time. For example, I may see a piece of cake and want it. But upon closer examination I may realize that the cake has a bite out of it already. My “soul,” as Socrates would say, is torn between two decisions – eat the delicious cake, or possibly get sick. According to Socrates I would have this psychological battle inside my “soul” because I in fact have a “tripartite soul.” The tripartite soul is the moral compass that is found in each of us, and if trained is what
can allow society to reach the Good. It is an argument against the Sophistic idea that we only base our decisions upon self-interest.

In Socrates’ tripartite soul there is a rational part, spirited part, and appetitive part. The rational part of the soul naturally rules on the basis of its knowledge of what is beneficial for each of the three parts (442 c). The spirited part of the soul is subordinate to reason and carries out what the latter commands it to do (442 b). The weakest part of the soul is the appetitive part, which the first two parts of the soul govern together (442 a-b). If this third part were not governed by the other two, then it would be out of control. If this hierarchy is instated, then the soul is in harmony and becomes healthy (442 c). The tripartite soul is what allows individuals to see that the harmony of φύσις and νόμος is a means towards the Good. It provides the teleological drive to unite the two.

A soul that is healthy does not partake in anything that has to do with injustice such as crimes against the state or friends (443 a). If the soul were to seek injustice, then it would go against reason. This is because to do bad is in itself bad, according to Socrates. Instead the healthy soul should primarily seek justice (442 d- 444 a). In order to prove all of this, and ultimately in order to refute Glaucon’s claim that justice is artificial and illusory, Socrates now argues that the hierarchy of things is grounded in Nature. Socrates asks Glaucon if a healthy activity promotes health, and an unhealthy activity leads to illness, to which Glaucon of course answers yes. From this Socrates goes on to conclude that the pursuit of justice, like the pursuit of health, leads to more justice for the soul which is something that is good. Socrates says, “Then it seems that virtue would be a

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67 See (_SLAVE_ καὶ τὸ μὲν δίκαια πράττειν δικαιοσύνην ἐμποιεῖ, τὸ δ’ ἄδικα ἄδικιάν; Ἀνάγκη, 444d).
kind of health, beauty and good condition of the soul, while sickness is evil, a disgrace, a weakness” (Ἅρ’ οὖν οὐ καὶ τὰ μὲν καλὰ ἐπιτηδεύματα εἰς ἀρετῆς κτῆσιν φέρει, τὰ δ’ αἰσχρὰ εἰς κακίας; 444e). With this, Socrates is able to refute Glaucon’s fifth point by concluding that real men wouldn’t want to be unjust because it hurts the well-being of their soul (445a). This should sound very familiar to the major premise argued in the Crito. In fact, everything that Socrates has argued so far bolsters Socrates’ claim that one must not break the Laws on purpose because doing wrong is always wrong. The Republic ultimately argues that the pursuit of justice benefits the soul of an individual. This argument is what strengthens the Crito’s social contract because it establishes what Socrates really didn’t explicitly articulate, that justice is a teleological pursuit towards the Good.

This abstract “Good” is what is threshed out in the rest of the Republic. Shane Drefcinski makes the point that “if a proper understanding of human nature reveals that justice is its health and perfection, it does not follow that the ultimate source of moral value lies in human nature, or even in nature itself” (Drefcinski). Because of this, the case against Glaucon’s social contract continues on in the Republic. In “The central books of the Republic, Socrates argues that the ultimate source of value lies, not in nature and certainly not in the human construction of a social contract, but in an idea grasped by the enlightened intellect—the Form of the Good” (Drefcinski). According to Socrates, the natural order of things has the Good at the top, and that it is virtuous to pursue justice because justice is in and of itself a part of the Good (505c). As humans we should constantly be striving with difficulty for the Good in all aspects of our lives; this is in fact
the cause of justice. The purpose of the state, then, in Plato’s view, is to train citizens morally, to teach them to use the rational part of their soul so that they can not only help legislate laws that are in accordance with nature, but also aid the community. This is derived from the belief that government is established on the basis of communal need. Furthermore, because society’s primary purpose is to educate and instill virtue, a “person nurtured within a community receives from it not only material benefits but her very character” (Cohen 2014, 27). Therefore, I have established that the Republic should be viewed as an elaboration of the ethical reasons for following the social contract established in the Crito. The Republic is an elaboration of why attempting to harmonize φύσις and νόμος leads to justice—because justice is a means to an end that exists outside of society, the “Good.”

In summary, within the Republic, Socrates makes the following claims: (1) “The primary function of the State is positive and not negative. Its purpose is not merely to prevent us from injuring one another, but also, and in the first instance, to enable us to help one another;” (2) “It is in that service of society [helping one another] which his ‘station’ prescribes that a man attains to the highest condition of his soul. This will be the

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68 It should be noted that not everybody is equally capable of pursuing the Good. This is why there are Philosopher Kings ruling the city. See Cornford 1962, 58 where he writes, “the race of man could never find rest from evils until the lovers of wisdom should become kings, or kings, by some divine appointment, become lovers of wisdom.”

69 See Cohen 2014, 27 where he writes, “Society has a prior purpose, one that is necessarily prior to that of satisfying human demands, for it has the purpose of forming human beings in the first place, of shaping and educating human beings.”

70 See Cohen 2014, 27 where he writes, “Society has a prior purpose, one that is necessarily prior to that of satisfying human demands, for it has the purpose of forming human beings in the first place, of shaping and educating human beings.”

71 See Cohen 2014, 27-28 where he brings to our attention that Plato’s social contract requires the individual to give up a lot for the sake of the community. This can create some potential problems. A critique that should be made here, what Cohen calls the conservative critique, is that Plato’s state completely assumes that each individual is predetermined with character and a set of demands that are possessed independently of the institutions that shape them.
life according to reason. It alone brings true satisfaction;” and (3) “This service presents itself, on occasion, as a pure moral obligation” (Lewis, 1998, 79). All of these point to the main argument of this chapter which is that Plato’s view of government “is essentially a moral one” (Lewis 1998, 79).

In the process of refuting Glaucon Socrates doesn’t actually come to refute Social Contract Theory itself, but rather Glaucon’s theory of the social contract. If we are to take Socrates’ claims at face value, a social contract can be in theory completely just, if it is completely in accord with Nature. This, however, isn’t enough. The two concepts, φύσις and νόμος, are not ends in and of themselves, but rather means to a greater end, which is the Good. This teleological argument means that there is potential for φύσις and νόμος to be one and the same within society. In one way Plato actually agrees with the Sophists “that political arrangements as they exist do not follow natural principles” (Cohen 2014, 30). In another, more significant way, however, Plato believes “that there exist natural principles to which the polity ought to be made to conform” (Cohen 2014, 30). With this argument in mind, I have shown that within Plato’s theory of the social contract every individual has an obligation to the state to follow the laws, but that this results in the betterment of the individual’s own soul. I have also shown that when νόμος is not thought of as inimical to φύσις, but rather a means towards it, it creates an ethical social contract. This contract admits that there is evil in the world, but puts forth a solution. Plato did this by tying justice to the “Good,” by making it part of a universal, Natural, goal. Justice, then, is more than simply the physical, tangible, task of following the law; according to Plato it is also the pursuit of a well-regulated soul.
Chapter 5: Conclusions

Through this process I have shown that Social Contract Theory hasn’t developed linearly. Rather, it is evident that there is a diachronic conversation taking place between all the political philosophers who have contributed to it. It has been my contention that this conversation provided the inspiration for the Enlightenment thinkers to develop their own theories of the social contract. I began with the idea that if I was to prove this conversation were taking place then I would need to find evidence of the ancients grappling with similar political concepts. I showed this to be the case in the oldest piece of literature in the Western Canon—the *Iliad*. In Homer, the narrator provides us, through the opening assembly scene, with a prototype of a social contract in action. With this, I then made the contention that an idea can exist latently within a society before it is “crystalized” semantically into a precise theory. I argued that Enlightenment Social Contract Theory can not exist without Natural Law, so if my hypothesis were to be provable, then I would need to find evidence of a theory of Natural Law forming alongside a theory of the social contract. To do this I tracked the semantic development of φύσις and νόμος from the time of the Presocratics to Plato.

I argued that the Presocratics, through their scientific methodology, developed a raw form of Natural Law that provided the intellectual framework for both the Sophists and Plato to develop their own theories of the social contract. I then argued that the Sophists, through their relegation of νόμος, created an unethical social contract. That is, it tied justice to self-interest. The result of this is that the Sophists created a social contract that could not provide the
framework to protect each individual from the disadvantages of φύσις, particularly self-interest. Lastly, I argued that Plato, seeing the effects of this philosophy first hand, attempted to create a theory of the social contract that was ethically centered. That is, he attempted to show that the process of uniting φύσις and νόμος, which is the teleological development of justice, is necessarily part of the social contract.

I can say now with confidence that the classical philosophers provided the intellectual framework for the Enlightenment thinkers to develop their own theory of the social contract. I believe that I have shown that the Enlightenment thinkers were given a raw form of Natural Law from the Presocratics; that from the Sophists they were warned of what it looks like to have a social contract constructed upon the idea that laws are fetters on φύσις; and lastly that they were given an attempt to merge Natural Law with an ethical social contract developed by Plato, from which they could develop their own conceptions. We do not have to look so far into the future as the Enlightenment philosophers, however, to see this same conversation taking place. If we briefly turn to Cicero, to what Walter Nicgorski calls the “classicus locus for discussions of popular consent.” we can see that he uses classical Social Contract Theory to build his own Roman theory of it (Nicgorski 2005, 7). Furthermore, this provides an example of new avenues my research can lead to.

Cicero’s De Republica contains a thorough discussion of Social Contract Theory. Cicero wrote his De Republica between the years of 54 to 51 BCE. It consists of six books, depicting a fictional conversation at the rural estate of the great Roman statesman and general, Scipio Aemilianus. The conversation starts off, as this investigation did, with discussions of natural phenomena. Laelius, however, is eager to discuss the political turmoil that is raging at Rome while he is in the presence of Scipio. He says at 1.31 that they shouldn’t be discussing why there
are two suns in the sky but rather “why in one state there are now virtually two senates and two
peoples” (quo modo duo soles visi sint, non quaerit, cur in una re publica duo senatus et duo
paene iam populi sint? 1.31). With this Laelius ushers in a rich conversation, which, like the
Greek model of a dialogue, begins with a question, establishes a definition, and then elaborates
and molds that definition. The development of all three stages concludes with an ethical theory
of the social contract, which argues that justice is brought about through the union of φύσις and
νόμος.

Laelius begins the political conversation with the question of what the best constitution
might be. He says, “Let us ask Scipio to explain what he thinks is the best constitution”
(Scipionem rogemus, ut explicit, quem existimet esse optimum statum civitatis, 1.33). After
Laelius asks this central question of the dialogue, Scipio answers with his definition of a state.
He says at 1.39, “Res Publica, then, is the concern of a people. A people, further, is not just any
gathering of humans that has come together in any way at all; but it is a gathering of a multitude
formed into a partnership by a common agreement on law and a sharing of benefits” (Est igitur ...
res publica res populi, populus autem non omnis hominum coetus quoque modo congregatus, sed
coetus multitudinis iuris consensus et utilitatis communione sociatus). Here, we know that Cicero
is talking about a social contract because of the noun consensus (“agreement”). This agreement
is established in law (iuris) and provides benefits (utilitatis). According to Elizabeth Asmis,
“Utilitas covers any type of benefit, including material wealth, security, freedom, power, fame,
virtue, happiness” (Asmis 2004, 578). Furthermore, iuris consensus “suggests both an agreement

72 All English translations of Cicero come from Asmis 2004; All Latin text comes from Cicero 1928.
73 Interestingly enough Laelius says at 1.34 that “Scipio used to have frequent discussions with two Greeks, Polybius
and Panaetius, both very experienced in politics” (sed etiam quod memineram persaepe te cum Panaetio disserere
solitum coram Polybio, duobus Graecis vel perissimis rerum civilium). This is Cicero telling us that in this
dialogue he will be conversing with the Greeks.
on the kinds of rules and an agreement to abide by them” (Asmis 2004, 579). Thus, we are given a social contract that provides benefits and protects one’s Natural Rights, but also is firmly established in law. At this point, however, we are still unsure if Cicero means Natural Law, and whether this concept of law contains an ethical definition of justice.

We quickly come to see that Cicero means Natural Law, however, and that he ties the purpose of the state to the teleological development of justice much as Plato does. In 1.39, just as Socrates in the *Republic*, Scipio argues that society is formed not out of self-interest, but a desire to be with other people. He says, “The first reason for this gathering, moreover, is not so much weakness as a certain natural association of humans” (Eius autem prima causa coeundi est non tam imbecillitas quam naturalis quaedam homnin quasi congregatio, 1.39). If we take this natural associability with an assertion Cicero made in 1.1, that “Nature has implanted in the human race so great a need of virtue and so great a desire to defend the common safety that the strength thereof has conquered all the allurements of pleasure and ease” (tantam esse necessitatem virtutis generi hominum a natura tantumque amorem ad communem salutem defendendam datum, ut ea vis omnia blandimenta voluptatis otique vicerit), then we can argue that Cicero is saying “our natural communal impulse is a seed that grows into a virtue” (Asmis 2004, 584). This “natural seed” is the teleological impulse for justice.

In fact, Scipio even comes to describe justice as a natural impulse. He says at 3.24 that “justice...instructs us to spare all men, to consider the interests of the whole human race, to give

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74 According to Asmis this is proved at 1.49: quid enim vicitas nisi iurus societas (“For what is a state other than a partnership in law”?). See Asmis 2004, 579

75 In his discussion of the man who is aware that often bad men profit, Scipio says, “For only such a man can really claim all things as his own, by virtue of the decision, not of the Roman People, but of the wise, not by any obligation of the civil law, but by the common law of Nature” cui soli vere liceat omnia non Quiritium, sed sapientium iure pro suis vindicare, nec civili nexo, sed communi lege naturae, 1.27). Therefore, we know that Cicero is aware of natural law, but we have not yet seen him explicitly tie it to the social contract.
everyone his due, and not to touch sacred or public property” (iustitia autem praecipit parcere omnibus, consulere generi hominum, suum cuique reddere, sacra, publica, aliena non tangere). Justice, then, according to Cicero, isn’t relative, but rather is an extension of φύσις. As Scipio says, “True law is right reason in agreement with nature; it is of universal application, unchanging and everlasting... we need not look outside ourselves for an expounder or interpreter of it” (Est quidem vera lex recta ratio naturae congruens, diffusa in omnes, constans, sempiterna... neque est quaerendus explanator aut interpres eius alius, 3.33). Cicero is not talking about law strictly derived from φύσις, but rather an amalgamation of φύσις and νόμος. We can find it in ourselves; he does not say that we absolutely will. Thus, again, he is tying the development of justice to the social contract.

After this concept of Natural Law has been established as the foundation upon which the social contract is built, like Plato, Cicero makes the contention that a fully developed city is a paradigm of justice (Asmis 2004, 594). At 3.43 Cicero goes into a lengthy discussion of how cities fall into discord when there is not “a single bond of justice” (unculum vinculum iuris) among the people. Asmis says “The reference to a ‘single bond’ points to natural law” (Asmis 2004, 589). Therefore, in Cicero, like the Enlightenment philosophers, we see a rich conversation going on with classical Social Contract Theory. Cicero is able to not only utilize pieces of their theories, but also innovate when he sees fit. The identification of this conversation taking place is an important one because it provides further evidence for the same happening with the Enlightenment theorists. It also shows that the ethical theory of the social contract seems to have found positive reception among later thinkers.

The pattern I discovered through this investigation has opened up a whole world of possibilities in the field of Classical Political Philosophy. I have successfully tied modern
theories to an intellectual framework developed long before what is traditionally accepted. The work that I have shown all of the philosophers in this investigation to have done on the social contract seems to make them some of the first major modern political thinkers. Furthermore, through this investigation I have developed a framework that allows conversations to take place between Greek and Roman authors. The same sort of investigation done here could hypothetically done on the classical roots of federalism, the classical roots of republicanism, or even the theory of the presidency. This is because of the simple discovery that an idea can exist in a raw form long before the necessary language is developed to make it a neat and tidy theory. My exploration into this idea has opened up a whole field of research for me. It has created an entire world of conversations between the great political thinkers of today and the past. For that reason, it is only just beginning.

76 See Niegosk 2005, 2
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