Causation and the Law in Antiphon’s Second Tetralogy
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As Gregory Vlastos demonstrated in an influential essay on reasons and causes in Plato’s *Phaedo*, philosophy owes a debt to Plato and Aristotle for, among other things, their investigations into *ta aitia*, or as we would say (with some reservations), causes. Whatever their differences in this regard, they agree on one point: causes cannot be simply those things “without which not” (*Phaedo* 99a-b; *Physics* II 9, 200a25-30).

Against this we may set the second *Tetralogy* of Antiphon. There, the prosecutor claims that the defendant is responsible (*aitios*) for his son’s death. No one disputes the facts: while the defendant was practicing his javelin throws on the athletic field, the victim ran in the path of an oncoming missile and was fatally wounded. Both sides concede that the death was accidental. Nonetheless, someone must be *aitios*. But who? As might be expected, the prosecution argues that the boy who threw the javelin is *aitios*. The defendant, however, argues that the victim himself is responsible because “had he stood still and not run across, he would not have been struck…” (3.2.5).

This is a tort case, and the defendant has just introduced what in modern legal jargon is called a “but for” condition in order to establish cause. It has been generally accepted that the prosecution recognizes that this method for determining cause cuts both ways. He points out that the javelin throw, too, was a condition without which the victim’s death would not have occurred (3.3.10). This is not, however, a genuine concession to the defense, but a dialectical argument intended to show that even on the “but for” analysis of causation, the defendant is a cause of the victim’s death. One of Antiphon’s objectives, I argue, is to juxtapose in this *Tetralogy* two deeply incompatible conceptions of 1) what it means to be a cause and 2) the role of causation in establishing moral-legal responsibility. The defense holds that causes are necessary conditions. But an event will have on this view not a cause but many causes. Thus, moral-legal responsibility, insofar as it seeks to identify a single responsible party, must proceed beyond questions of strict causality.

The prosecution relies on a non-conditional analysis of causation. The prosecutor’s single-minded focus on the thrown javelin indicates his implicit belief that there is a way to discern the cause of the victim’s death. That the defendant was the cause of the accident just follows from the fact that he struck the victim *with the javelin*. Moreover, establishing cause in this way is sufficient for determining the defendant’s moral-legal responsibility.

After analyzing the philosophical and rhetorical elements of the arguments Antiphon puts into the mouths of the parties, I conclude that he intends readers to accept the conditional analysis of causation (and the accompanying rejection of strict liability as a criterion of for evaluating moral-legal responsibility) as more refined and intellectually defensible. Thus, Antiphon offers a compelling alternative to Plato and Aristotle and anticipates contemporary metaphysical positions about causation and its role in moral and legal reasoning.