POLIS

&

POLITICS

Studies in Ancient Greek History
Living Freely as a Slave of the Law.
Notes on Why Sokrates Lives in Athens

JOSIAH OBER

"Since you were born, nurtured, and educated [through the laws], can you assert that you do not belong to us [viz. the laws], both as our son and slave, you yourself as well as your ancestors?" (Plato, Crito 50E).

Among Mogens Hansen's many Athenian interests, one individual and one political value stand out: the individual is Sokrates and the value is freedom, especially in its "negative" sense of "freedom to pursue one's personal goals". Here I will seek to illuminate, with a philosophical torch assembled largely from Hansen's historical investigations of Athenian legal procedure, a few small corners of a big question about Sokrates and freedom: Does the acceptance by Sokrates (i.e. the literary figure depicted in Plato's Apologia and Crito: hereafter simply "Sokrates"), of communal obligations he owed as a citizen, unduly compromise his freedom as an individual? Linked to this normative question is a historical question about Sokrates' identity: How Athenian, in terms of embracing values implicit in Athenian legal and political practices, was Sokrates? I will suggest that both Sokrates' "Athenian-ness" and his idiosyncrasy bear on the problem of his ethical obligations to the state. I make three main points: 1. Although Sokrates regarded other polities as substantively "better", Athens was the right polis for Sokrates because (inter alia) the procedural emphasis of Athenian law rendered a commitment to obeying the laws fully compatible with the freedom of Sokrates as an individual to choose and pursue his distinctive life goals. And so Athens never confronted Sokrates with a hard choice between his freedom of conscience and his duty as a citizen. 2. A hypothetical law against philosophizing would not confront Sokrates with a hard choice, because he would regard such a law as formally invalid. 3. When he disobeyed the order of the Thirty to arrest Leon of Salamin, Sokrates was not breaking the law because the order lacked authority under the lawcode that Sokrates regarded as being in force at the time.

Sokrates is often, and not unreasonably, lumped in with other fifth-century intellectuals who chose to reside in Athens. Aristophanes in the Nubes caricatured Sokrates as a model mad scientist/sophist and, a half-century after the trial, Aischines (1.173) referred in a dicanic oration to "Sokrates the sophist". But Sokrates was quite different from most fifth-century sophists and scientists;
not only was he an Athenian citizen, he was deeply concerned with the obligations of citizenship. Sophists tended to move about; their choice of residence in Athens was certainly not a matter of ethical responsibility. Sokrates, by contrast, was unwilling to live (Apologia 37C-E) or even to travel outside of the city of Athens. In the Crito, his steadfast preference for a specific locality is offered (in the speech of the Laws [Nomoi]: 52B; cf. Phaedrus 230C) as proof that Sokrates fully “accepted the contract” of the Athenian laws, i.e. he willingly offered his obedience to the law in exchange for his birth, upbringing, and education. The Nomoi point out that since Athenians enjoyed freedom of movement, if Sokrates had ever become disenchanted with the laws, he could have left Attika at will. His continued presence thus marked his continued acceptance of the social contract (51D-E). In sum: Sokrates had incurred contractual obligations to the state because he was born and raised as a citizen of Athens, and he signaled his acceptance of those obligations, day by day, through his willing continued residence in the polis of his birth.

Much of the modern scholarship on the Crito, notably Richard Kraut’s important Socrates and the State, is concerned with the problem of whether or not Sokrates’ position on obedience is authoritarian. Kraut attempts to absolve Sokrates of authoritarianism by arguing that the “obey or persuade” doctrine enunciated by the Nomoi implies that Sokrates can seek to persuade his community that the law is wrong either before or after knowingly breaking the law. Moreover, the Nomoi may regard him as acting justly, even if he breaks the established laws of Athens, so long as his actions are consistently moral and he defends them in valid moral terms. But this argument is hard to square with the actual text of the dialogue: The Nomoi tell Sokrates, “you must do whatever the polis and patris commands, or else persuade it of what is just” (51B cf. 49E-50A, 51E-52A). The options are obey or persuade. This would seem, on the face of it, to mean “obey [existing law] or [successfully] persuade [the law to change (via legislation) or those who enforce it to change their interpretation of it]” not “obey or [seek to] persuade [on the basis of sound moral arguments, although you may break the law if your arguments fail to persuade]”. The “persuade” options countenanced by the Nomoi certainly must include legislative changes in statutory law (through ordinary processes of nomothesia) and convincing jurors to accept a particular interpretation of the law. But the “either/or” wording does not allow for defending law-breaking (in past or future) on the basis of a sound moral argument that nonetheless fails to persuade the legal authorities. Among the maddening aspects of Sokrates in the Crito is his refusal to acknowledge that he faced a hard choice between obedience to (potentially) unjust law and freedom to follow a conscience that identified injustice with wrongdoing.
Some recent commentators on the Crito have suggested that making legal authority the primary interpretive problem is an error, arguing that Sokrates' refusal to escape from prison is adequately governed, in philosophical terms, by his preliminary acceptance of two premises: first that one must not do harm under any circumstance (49A-C: this is said to have been established in a prior discussion) and next that legal disobedience constitutes one sort of "doing harm". The long speech of the Nomoi, on this reading, is irrelevant to Sokrates' choice; it is best understood as a rhetorical sop to Kriton, who is unable to accept the consequences of the "do no harm" doctrine without such palliatives. But this interpretation makes for a very lopsided dialogue (much more rhetoric than philosophy) and it requires Sokrates' concluding comment, to the effect that the argument of the Nomoi is so persuasive that he is unable to hear any other, to be an example of simple irony, of saying the opposite of what is in fact the case. Without some strong warrant for such an assumption, this seems a desperate measure.

The Nomoi of the Crito, those that Sokrates feels obligated to obey and those he imagines as dissuading him from leaving prison, are not universal principles of jurisprudence, not the just laws of a state in the abstract, but rather "the laws (hoi nomoi) and the community (to koinon) of the polis" (50A): i.e., the laws and the accepted norms of social life in democratic Athens. The home state that Sokrates never voluntarily leaves is Athens, the laws he agrees to obey by his day-to-day residence are the laws of Athens. And so, before we reject the prima facie exclusionary force of the either/or condition, or resort to assumptions about where and how Sokrates is being ironic, it seems worthwhile to investigate how much personal freedom that obedience to established Athenian law allowed Sokrates. I will argue that, given the highly procedural focus of Athenian law, Athenian practices of law-making, and prevailing Athenian assumptions about the relationship of law to the governing body, Sokrates was not constrained by the laws of Athens in ways that would have unacceptably limited his personal freedom to choose and pursue those activities (specifically philosophizing) essential to his personal happiness (Ap. 38A) and moral well-being. In Athens, Sokrates was both free and obedient, and he lived what he regarded as a consistently dutiful life without suffering a crisis of conscience.

Under a system of state law in which substantive law took precedence over procedure, and in which judicial magistrates could make substantive law by establishing new legal precedents, Sokrates might well have been confronted with a hard choice between doing philosophy and obeying the law. And so he would either have to accept a severe constraint upon his freedom, or leave the city, or break the social contract sketched by the Nomoi of Crito by willingly
breaking the law. In Athens Sokrates was not confronted with this hard choice. This does not mean that Sokrates thought of Athens as an “ideal state”, or that he regarded democracy as intrinsically good, or that he thought his fellow Athenians were unlikely to do wrong and cause harm. He certainly regarded his own conviction by an Athenian jury on a charge of impiety as substantively unjust and perhaps he guessed that he could have avoided that fate in a “better” city. But Sokrates regarded harm to himself as less important than the opportunity to live a consistently ethical life. That opportunity was provided him by the procedural focus of Athenian law.

Procedural law is concerned with establishing fair rules for legal practices, rather than with carefully defining legal terms in an attempt to achieve consistently good outcomes. Under a legal regime in which impiety was strictly defined, Sokrates would confront a problem if and when his dialectical investigations demonstrated that a prevailing legal definition was flawed. If, for example, established substantive law defined a specific and detailed set of beliefs as constituting piety and mandated that citizens hold such beliefs, and if Sokrates determined philosophically that those beliefs were foolish, Sokrates would have to choose between his conscience and the law. But Athenian law avoided such difficulties because it avoided detailed definitions of abstract terms like “piety”.\(^7\) In accepting the authority of Athenian law, Sokrates accepted the established procedures by which he would be judged if he were accused of a delict, but he was not constrained to accept a detailed, substantive definition of that delict. Athenian law forbade (inter alia) impiety, hybris, slander, and assault. By living in Attika and thereby accepting the law, Sokrates acknowledged that these things were morally reprehensible and worthy of punishment. So, for example, because Athenian law forbade impiety (asebeia) Sokrates accepted that asebeia (properly so understood) was a crime, and that a citizen formally accused of asebeia would be tried according to a specific set of procedures. But when indicted on a charge of asebeia, Sokrates was not constrained to accept the detailed definition of asebeia offered by the prosecution. Nor was he constrained to accept that his behavior (even if accurately described by the prosecutor) would have constituted asebeia. Rather, Athenian law invited each juror to weigh the competing assessments of prosecutor and defendant regarding what sorts of behavior carried out under what conditions constituted impiety.

Sokrates, of course, claimed not to know anything certain about moral truths, including (as shown by the Euthyphro) piety. And so he may not have known what impiety was in an absolute sense. But he was sure that truth must be logically consistent to itself. And so he could be sure that asebeia could not be what Meletos supposed, because Meletos contradicted himself under cross
examination (*Ap. 27A*). Thus, whether or not Sokrates was a pious man in an absolute sense, he was not (by his own lights) guilty of *asebeia* as defined by his legal opponents. Sokrates evidently expected that the jurors could in fact be persuaded by this sort of logical demonstration, in that he claims that he was not seriously endangered by his “new accusers”, despite their rhetorical skill (*Ap. 17B, 18B*). The “old accusers” – the slanders that had long circulated in the city against him – were something else again and almost impossible to refute in the span of a legal defense. But the point is that the legal process by which Sokrates was tried was procedurally fair. Sokrates willingly accepts the authority of a legal system that gave the defendant a chance to establish, by logical demonstration if he chose, that the prosecutor’s definition of what constitutes a delict was faulty. In this sense, at least, Athenian legal procedure potentially maps quite closely to the “procedure” of Socratic dialectic. Neither process assumes that it is possible to arrive at a final truth, but both processes assume that better definitions of contested evaluative terms can be arrived at and agreed upon, and worse definitions rejected.

The procedural emphasis of Athenian law thus goes a long way to explaining Sokrates’ willing obedience to it. A more substantive lawcode (perhaps that of Sparta, Crete, Thebes, or Megara: *Cri. 52E, 53B*) might indeed foster a “better” political regime. But such a lawcode was not subject (as were Sokrates’ working definitions of moral terms) to constant elenchtic examination, and so it would also be more likely to employ (at some point) a seriously flawed definition. Thus the “better” regime was more likely to confront Sokrates with a hard choice between loyalty to philosophy and to the duties of citizenship, a choice he did not face in Athens. Athens may have been less “good” by Sokrates’ lights than Crete or Sparta, but Athens offered Sokrates the unique capacity to be an obedient citizen and a free individual. This is at least one reason why, given a daily choice of his place of residence, Sokrates consistently chose Athens.

Let us consider two potential complications to this general account of why Sokrates was content with Athenian law.

First there is the possibility that a jury might seek to punish Sokrates by forbidding him to philosophize or that the Athenians might pass a law forbidding philosophizing.\(^8\) The problem arises obliquely from Sokrates’ statement (*Ap. 29C-30B*, cf. *37E-38A*) that he would not obey the jurors if they freed him on the condition that he abandon pursuit of his philosophical conversations. Brickhouse & Smith attempt to square Sokrates’ statement in the *Critio* that he must always obey the law with his refusal in the *Apologia* to obey a hypothetical gag order, by pointing out that an *asebeia* trial was an *agon timetos*, meaning that if the defendant were found guilty, the jury decided
between competing penalties offered by the litigants. Athenian trial procedure made no provision for jury-initiated penalties. Since Sokrates knew the prosecutors planned to call for his execution, he was in no danger of being slapped with a gag order.⁹

But Kraut points out that a law forbidding philosophizing could be passed by the Athenians at any time. If they did so, Sokrates would seem to face a quandary. According to Kraut, “Socrates ... has no alternative: faced with a law against philosophy, he could not give it up, and he would not leave the city; he is unavoidably committed to disobeying a valid law”.¹⁰ But I think that Sokrates could refuse to accept the validity of such a law on the following argument:

1) Sokrates believed that Apollo’s response to Chairephon’s query as to whether any man was wiser than Sokrates amounted to a divine order to Sokrates to philosophize. Now, this is admittedly a peculiar interpretation of what Mogens Hansen has shown is a highly ambiguous referential oracular statement.¹¹ Delphic statements are notoriously problematic as performative speech acts (e.g. as warnings or orders); it was unlikely that many of the jurors felt that by saying “no one” is wiser than Sokrates the god had in fact unambiguously ordered Sokrates to ceaselessly expose the ignorance and folly of his fellows. It is not surprising that Sokrates must interrupt his description of the oracle with a request that the jurors not shout him down (Ap. 21A). But the jurors’ doubts would gravely concern Sokrates only if he cared more about avoiding harm to himself than maintaining his own ethical consistency. Sokrates seems very sure of his ground here, and his interpretation of the oracle as a divine order clearly constituted an important part of why he regarded his own philosophizing as self-evidently pious.

2) The established Athenian law code, the law that Sokrates felt constrained to obey, explicitly forbade impiety. Although the law did not define impiety, it was reasonable for Sokrates to suppose, as he clearly did (Ap. 33C, 37E), that under any coherent definition, willfully disobeying a god’s order would be impiest. Therefore, if Sokrates were to avoid impiety, as he must if he were to fulfill his agreement with the Nomoi, he must also philosophize.

3) The (hypothetical) law forbidding philosophizing therefore mandated impiety (at least in the case of Sokrates). By mandating a course of action explicitly forbidden by an existing law, the hypothetical law contradicted an established Athenian law. It is, of course, Sokrates’ peculiar definition of what constituted a god’s order that introduces the contradiction, but since Athenian law was silent on the substantive content of impiety, Sokrates was free to hold this opinion.

4) The Athenian law code, and Athenian law-making procedure, as revised
and re-established in the legal reforms of 410-399, did not tolerate contradictory laws. According to Athenian legal principles, the passage of a new law required the repeal of any established law contradicted by the new law; if a conflict between laws were detected, the older law prevailed unless and until it was repealed.\(^\text{12}\) Sokrates, then, could regard the law against philosophizing as invalid as long as the law against impiety remained on the books.\(^\text{13}\) Most Athenians might not recognize that the anti-philosophizing law was invalid on procedural grounds, but, as shown by his actions as 

\textit{prytanis} in 406 (see below), Sokrates distinguished between obedience to majority will and obedience to the established law.

5) Since only valid laws must be obeyed, Sokrates need not obey the anti-philosophizing law, on the grounds of its procedural irregularity, until and unless the law against impiety were repealed (by majority vote of a board of nomothetoi).

As the trial of Sokrates itself demonstrates, the Athenians cared deeply about piety; repeal of the law against impiety is so far-fetched as to be uninteresting as a hypothetical case. But what about the possibility that the Athenians might pass some other law that would require Sokrates to do wrong according to his own lights? The force of the argument of the 

\textit{Nomoi} in the \textit{Crito}, to the effect that Sokrates must "obey the law or persuade it" is clarified by considering fourth-century Athenian law-making (nomothetia) procedure. Mogens Hansen has illuminated how that procedure worked in practice, and conveniently lists the main steps in his indispensable \textit{Athenian Democracy}. Hansen's step no. 4 (Hansen [1991] 168-169) is especially relevant: "A proposal to change the existing laws must be published \textit{before} the Monument to the Eponymous Heroes in the Agora, to enable any citizen who wishes to have a say in the matter". Thus, before a problematic new law became authoritative, Sokrates had ample opportunity to "persuade": to argue, in public and privately, against the passage of any proposed law that would make the polis an unacceptable home for him by requiring him to choose between doing wrong and disobeying the law. If such a law were ultimately passed, Sokrates might, under Athenian law, continue to seek to "persuade" the law to change by indicting its proposer under the procedure for prosecution on the charge of establishing unsuitable laws (see Hansen [1991] 175). Failing that, he was free to leave the polis: as the \textit{Nomoi} point out, his continued presence in Attika was voluntary.

Sokrates would not have a similar opportunity to "persuade" in respect to the law under a legal system in which substantive law could be created when a judicial magistrate's ruling established a new precedent. Nor would the option of persuasion be available to (for example) those who lived in Sparta under the Laws of Lykourgos. Although Sokrates himself, with his aversion to
making public speeches (Ap. 31C), might not choose to avail himself of the chance to persuade in respect to the law, the possibility of amelioration via deliberation was surely attractive in principle to the practitioner of dialectic—once again, while Sparta might, at any given point “be better” as a society, it had little possibility of becoming better, through deliberative processes, than it currently was. Sokrates (in the *Apologia* and the *Crito*) remains at least guardedly optimistic about the possibility of moral improvement of each and every Athenian via the persuasion of rational discourse. And thus the claim of the *Nomoi* that persuasion was a complementary alternative to obedience was both realistic and in tune with Sokratic aspirations.

The *Nomoi* that address Sokrates were currently in force at the time of his imprisonment in 399 BC. These same *Nomoi* claim to have promoted his birth and upbringing and so they are also the laws that pertained at the time of Sokrates' birth in 469 BC and during his youth in the mid-fifth century. The *Nomoi* are, therefore, the ancestral laws of the democratic Athenian state. Aristotle, in the *Política* (1281a, 1282b) points out that a fundamental change in the laws implies a change in regime, and vice versa. Assuming that, in Sokrates' view, the laws of 469 were fundamentally the same as those of 399, there remains the question of whether Sokrates was or would be bound by Athenian legal regimes other than the ancestral regime promulgated by the democracy. Specifically, did orders issued under the regime of the Thirty justly command Sokrates' obedience? Sokrates notoriously remained in Athens during the reign of the Thirty, rather than joining the democrats either at Phyle or Peiraeus. Does the argument of the *Crito* imply that Sokrates-in-Athens should obey any existing Athenian government? Or (like Theramenes as described by the Aristotelian *Ath. Pol.* 28.5) any government with a claim to constitutionality? The issue comes to the fore in Sokrates' description of his refusal to obey an order he received from the Thirty to arrest Leon of Salamis and bring him to the city for execution (Ap. 32C-3D). Although the text does not allow a definitive answer to the question of the extent of Sokrates' duty to a constitutional non-democratic legal regime, his behavior in 404 suggests that he did not accept that the ancestral (fifth-century, democratic) Athenian lawcode had been nullified by the government of the Thirty. If we suppose that Sokrates regarded the Athenian laws in force before the coup remained in force during it, then Sokrates' refusal to arrest Leon of Salamis is fully consistent with a stance of steadfast obedience to the (ancestral) laws.

The government of the Thirty was not a full-fledged new constitutional regime in that, as Krentz has shown, there cannot have been a full new lawcode passed by the Thirty. Nor would an Athenian necessarily conclude that the existing Athenian lawcode had been formally repealed when the Thirty
erased laws inscribed on Royal Stoa and took down other written laws; erasing a copy of a law does not constitute its nullification. A possible model for thinking about the status of Athenian law under the Thirty is provided by the nomos passed on the resolution of Eukrates in 337/6 BC. This Athenian law threatens with disenfranchisement (atimia) and property confiscation any member of the Council of the Areopagos who fulfills his official function while "the demos or the demokratia is overthrown". The implicit premise of Eukrates' law is that democratic Athenian law is the law of Athens, irrespective of who is actually in charge at any given point in time. The democratic law is imagined as pertaining during a period in which the "demokratia and the demos" had been replaced by a tyranny. The tyranny is seen as a lapse in the effective power of the demos to govern, but not in the legal authority of the established law over all Athenians, and especially over Athenian magistrates. Sokrates might well have reasoned likewise. He certainly refused to equate the power of the demos to effect its will with the authority of Athenian law, as demonstrated by his resistance to the popular will of the Assembly when he served as prytanis during the indictment of the Arginousai generals in 406. That resistance was predicated explicitly on the grounds of procedural irregularity (paranomos: 32B4). Moreover, his resistance to the demos when serving as prytanis is equated by Sokrates with his resistance to the order to arrest Leon (Ap. 32C). In both cases, it seems, those in power demanded one thing, but Sokrates rejected that demand as inconsistent with the established law. Finally, the Nomoi that address Sokrates in the Crito speak as if their authority (and Sokrates' obedience to it) had been uninterrupted during the course of Sokrates' life.

So I would suggest that in 404 and 399 Sokrates, like his fellow Athenians some 60 years later, assumed that the "ancestral lawcode" (the one under which he had been born and had grown up) remained in place throughout a tyrannical interregnum. And, unlike Sokrates' peculiar interpretation of the force of Apollo's oracle, this assumption may have been quite consistent with the thinking of the ordinary Athenians on the jury - and as such it required no special explanation.

As Sokrates reports the Leon incident, he was ordered by Athenian magistrates (the Thirty) to seize another Athenian. Mogens Hansen has shown that under normal circumstances, Athenian law held that magistrates, giving orders within their sphere of competence, must legally be obeyed. In this case it may initially have appeared to Sokrates that the magistrates in question could legitimately command his obedience, since when ordered (meta aeppsamenoi me ... 32C5) to come to the Tholos, Sokrates did so. But the order given him upon his arrival was a peculiar one: to seize and transport another citizen from
Salamis (αγαγεῖν εκ Σαλμαίνους ... 32C6) to the city, with the clear understanding that Sokrates would be bringing him to Athens for execution. Instead of going to Salamis, Sokrates went home, thus refusing to obey the order.

Did the magistrates mandating the arrest of Leon issue a legally binding order to Sokrates? I would suggest that Sokrates reasoned that the transport order had no validity under the pertaining (ancestral) system of law — i.e. either giving such an order lay outside the magistrates’ sphere of authority or the "magistrates" were not genuine magistrates, having been appointed extra-constitutionally. Either way, someone who considered the ancestral law to be still in place need not suppose that the Thirty had the legal authority to order him to agagein an Athenian. Now, it is indeed the case that under certain circumstances, an Athenian magistrate or an ordinary citizen might seize a citizen. Mogens Hansen notes the frequency of use of apagoge procedure by the Thirty. According to this procedure an Athenian might be legally executed if he had been identified as a malefactor (κακουργός) and was apprehended by a magistrate (or a citizen volunteer) in a criminal act (ἐπαυφόρησις). But there seems to be no existing provision in ancestral Athenian law that would authorize a magistrate to issue a binding order to an Athenian citizen to travel elsewhere in Attika in order to seize another Athenian and transport him to the city for execution. And so, when Sokrates ignored the magistrate's invalid order, he put himself at risk (as he points out: Ap. 32D), but he did not compromise his stance in regard to the duty owed by a citizen to the established law.

I have tried to show that in democratic Athens Sokrates was, by his own lights, free to pursue his life goals and still able to live the dutiful life of a law-abiding citizen. In his conviction that Athens, uniquely, offered its citizens a conjunction of freedom and the fulfillment of the citizen’s life, Sokrates is very Athenian: in tune with parts of the idealistic vision offered in the Funeral Oration of Thucydides’ Perikles and sharing core assumptions with his ordinary fellow-citizens about why it is was better to live in Athens than elsewhere.

But of course Sokrates was neither a politician nor an ordinary Athenian. Some of the assumptions that allowed Sokrates to square his own cherished freedom to pursue philosophy with the strictest obedience to the law — notably the pious duty he supposed had been assigned to him by Apollo’s oracle — were peculiar to himself. Sokrates of Apologia and Crito does not, therefore, offer a full-featured general description of how anyone else, living under any other legal regime, might square personal freedom with obedience to the law. But neither does he claim to do so. Sokrates leaves each would-be Sokratic to figure out the details of own ethical life, which is presumably why Crito was not
Plato's last word on political obligation and the law. The deep personal idiosyncrasy that lurks within a distinctively Athenian persona, all the while coinciding with a commitment to universal values and reason, helps to explain why Sokrates remains such an engaging, elusive, and occasionally maddening figure. And I conclude by noting that those characteristics are not completely alien to the man to whom this essay is offered.

**BIBLIOGRAPHY**


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NOTES

1. I do not suppose that Plato's Sokrates in any given dialogue is identical to the historical Sokrates, but I do suppose that Sokrates as he is depicted in the *Apologia* and the *Gricus* represents Plato's initial understanding of the ethical quandaries confronting the historical Sokrates and Plato's understanding of why the historical Sokrates acted as he did when faced by Meletos' indictment, at the trial, and in the few days prior to his execution. See further, Ober (1998) 159-160. Kateb (1998) argues for distinctly different depictions of Sokrates in *Apologia* and *Gricus*.


4. On Socratic irony, see now Vassiliou (1999).

5. Kraut (1984) 81-82, claims that the *Nomoi* of *en·co* blend together real Athenian laws and an idealized jurisprudence; this seems to me not to be the case: the *Nomoi* explain the logic behind the laws of Athens in what may be fairly described as jurisprudential language, but the logic is a specifically Athenian legal logic, one that arises from the law code. I think therefore it is misleading to say (Kraut (1984) 82) that "someone who violates the city's orders [i.e. an actual Athenian law] is not necessarily departing from the philosophy of the Laws [the *Nomoi* of *Crito*]", although as I will suggest below, Sokrates can disobey an order that he regards as invalid due to its failure to conform to established Athenian judicial procedures.

6. On substantive law and precedent-making as law-making, see Scalia (1997).


12. Hansen (1991) 169, 175, notes that the lawmaking procedure takes the form of a trial against existing laws.

13. A prosecutor who indicted Sokrates under the hypothetical anti-philosophizing law, anticipating this defense, might assert that the anti-philosophizing law was *valid* until and unless it was condemned under the procedure for indicting unsuitable laws (see below). But Sokrates' could respond that, since it is impossible to be both pious and impious simultaneously, both laws could not simultaneously command his obedience. The invalidity of the newer law was thus demonstrated by the fact that it mandated illegal behavior.


17. *SEG* 1287.

18. The *Nomoi* do not, therefore, consider the revisions and recodifications of 410-399 as an interruption in their continuous authority, even though new laws were added and some laws in effect before 403/2 were not included in the revised lawcode (Hansen [1991] 162-164). In this sense, then, the *Nomoi* must be regarded as representing the underlying jurisprudential logic of Athenian law, as well as the laws themselves.


20. I would like to think that the magistrates' lack of authority was established after they had been engaged by Sokrates in an elenctic conversation on the subject of legal authority, but imagining that interchange in detail would require Mogens Hansen's skill in inventing Socratic dialogue; see, for an example, Hansen (1995) 22-24.

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