

PHILOCHORUS, POLLUX AND THE *NOMOPHULAKES* OF DEMETRIUS OF PHALERUM

Abstract: A board of ‘law-guardians’, or *nomophulakes*, has long been associated with the Athenian regime of Demetrius of Phalerum (317–307 BC). The duties of Demetrius’ officials have been surmised from an entry on *nomophulakes* in the *Atthis* of Philochorus (*FGrHist* 328 F64), which lists their central functions as the supervision of magistrates and the prevention of illegal resolutions by the assembly and council. This understanding of the fourth-century *nomophulakes* stands in contradiction to the explicit testimony of Pollux (8.102), who asserts that Demetrius changed the name of the *hendeka*, the eleven Athenian gaolers, to *nomophulakes*. A case is made here for the acceptance of Pollux, a case based on textual grounds and on comparison with other reforms associated with Demetrius. It is further argued that Philochorus’ description applies – as the sole excerpter of the *Atthis* to give a temporal context, the *Lexicon Cantabrigiense*, indeed states – to *nomophulakes* created in the aftermath of Areopagite reform in the mid-fifth century, and that Demetrius’ officials were linked to these early *nomophulakes* through their inheritance of different aspects of *nomophulakia* associated with the early Areopagus.

AMONG the fragments of the masterly *Atthis* written in the early third century BC by Philochorus, there survives an entry on a little-discussed Athenian board of ‘law-guardians’, or *nomophulakes* (*FGrHist* 328 F64). A board of this name is widely believed to have featured in the government of Demetrius of Phalerum (317–307 BC), and its existence at this date would explain why Philochorus chose to discuss the *nomophulakes* in Book 7 of the *Atthis*, a book generally agreed to have dealt with Demetrius’ regime.¹ Demetrius’ *nomophulakes* have long been controversial, but the controversy has tended to be one of date,² and it has overshadowed a far more fundamental problem: what did these officials actually do?

There has been a standard answer: Demetrius’ *nomophulakes* compelled other magistrates to use the laws, and sat in the assembly and council in order to prevent the enactment of anything deemed disadvantageous or unlawful.³ This is indeed how the *nomophulakes* are described by Philochorus, the flavour of whose account is given by the following key excerpts:⁴

Lexicon Cantabrigiense (henceforth *Lex. Cantab.*) p.351, 10N = *Lexica Graeca Minora* ed. K. Latte and H. Erbse (Hildesheim 1965), p.82: *Nomophulakes*: they are different from the *thesmothetai*, as Philochorus says in his seventh book. For the archons went garlanded to the Areopagus, but the *nomo-*

¹ See Boeckh (1871) 421–2 on the subject matter of Book 7, also Jacoby in his introduction to *FGrHist* 328 FF63–5.

² The appearance of *nomophulakes* in Book 7 is not alone sufficient to establish that they were created by Demetrius of Phalerum, and the fact that two Dinarchan speeches – the *Against Himeraeus* and the *Against Pytheas* – made reference to *nomophulakes* (so Harpocration s.v. νομοφύλακες, below) has been taken as proof that such officials existed before 317 BC (thus, among others, Ferguson (1911a) and more recently Hansen (1974) 55, cf. Hansen (1991) 211). Nevertheless, the attribution to Demetrius does seem more credible. We do not know that Dinarchus was referring to a contemporary board, and even if he were, it is not clear that the speeches containing the allusions date to before the regime of Demetrius. The Pytheas (*PA* 12342) usually deemed the target of the *Against Pytheas* fled Athens around the outbreak of the Lamian war (Plut. *Demos*. 27.2), but his absence is implied by the *Suda* s.v. Πυθέας to have been temporary. Himeraeus (*PA* 7578), brother of Demetrius of Phalerum and presumed subject of the *Against Himeraeus*, was indeed dead by 317 but, as

Gehrke (1978) 190 has already observed, Dinarchus’ speech against him may have been written after the subject’s death, perhaps as a political pamphlet (does Dionysius of Halicarnassus’ reference to it (*De Din.* 10) as an *eisangeltikos* rather than an *eisangelia* imply as much?) responding to hostility generated by Himeraeus’ death (a death clearly used by Demetrius’ enemies to tarnish his reputation – Athen. 542e). Given that the Dinarchan material offers no sound basis for dating the *nomophulakes*, and that there is at least explicit testimony linking Demetrius to them (Poll. 8.102), the attribution of the creation of these officials to Demetrius seems preferable to a 320s date.

³ Such are the *nomophulakes* in the major treatments of Demetrius’ regime, of which the most notable are those of Gehrke (1978) (esp. 151–62 on *nomophulakes*) and Williams (1983), also the chapter on Demetrius in Habicht (1997). Bayer (1942) remains useful, as does Ferguson (1911a).

⁴ The other excerpts – *Anecd. Bekk.* p.283, 16 and Phot./*Suda* s.v. οἱ νομοφύλακες – add nothing to the *Lex. Cantab.*’s description of the *nomophulakes*’ duties.

phulakes, with white headbands, sat in the theatre opposite the nine archons, and conducted the procession to Pallas. They compelled the magistrates to follow the laws (τὰς δὲ ἀρχὰς ἠνάγκαζον τοῖς νόμοις χρῆσθαι), and sat in the assembly and *boule* with the *proedroi*, preventing things disadvantageous to the city (κωλύοντες τὰ ἀσύμφορα τῇ πόλει πράττειν). There were seven and they were instituted, as Philochorus says, when Ephialtes left to the Areopagus only its competence for homicide (ἑπτὰ δὲ ἦσαν καὶ κατέστησαν, ὡς Φιλόχορος, ὅτε Ἐφιάλτης μόνον κατέλιπε τῇ ἐξ Ἀρείου πάγου βουλῇ τὰ ὑπὲρ τοῦ σώματος).

Pollux 8.94 *Nomophulakes*: they were crowned with a white headband, and conducted the procession to the goddess, and they sat in the assemblies with the *proedroi*, preventing the voting of anything disadvantageous.

Harpocration s.v. *Nomophulakes*: this was the name of a certain magistracy among the Athenians, different from the *thesmothetai*. Dinarchus [mentions them] in his speeches *Against Himeræus* and *Against Pytheas*. Philochorus describes certain things about them in his seventh book, and that they compelled the magistrates to follow the laws.

To make this a description of Demetrius' *nomophulakes* has entailed the 'correction' of the source tradition. In none of the excerpts of Philochorus are the *nomophulakes* explicitly associated with Demetrius; indeed, according to the *Lex. Cantab.* (the only excerpt to give any temporal context at all), Philochorus was detailing officials active in the mid-fifth century after the reforms of Ephialtes (c. 462 BC). By contrast, the one source which does state a link between Demetrius and *nomophulakes* describes them as simply another designation of the *hendeka*, the eleven gaolers and executioners of Athens. Thus Pollux 8.102:

The eleven: Their name was changed to *nomophulakes* in the time of [or: according to] Demetrius of Phalerum (νομοφύλακές τε κατὰ τὸν Φαληρέα Δημήτριον μετωνομάσθησαν). They supervised those in the gaol (ἐπεμελοῦντο δὲ τῶν ἐν τῷ δεσμωτηρίῳ) and they used to arrest thieves, kidnappers and highwaymen, and, if they confessed, put them to death; if they did not confess, they brought them to trial and, if convicted, put them to death. One door of the *nomophulakion* was called the Charonion (τοῦ δὲ νομοφυλακίου θύρα μία Χαρώνιον ἐκαλεῖτο), through which they were led to death.

None has been willing to countenance this association of *nomophulakes* with the *hendeka*. The common approach has been to dismiss the entry at Pollux 8.102 as a garbled reference applying properly to *desmophulakes*, or gaol-guardians, and to apply Philochorus' description to the fourth, rather than fifth, century. This tendency to transpose Philochorus' *nomophulakes* from the fifth century has been fuelled by doubts that such a board existed in the aftermath of Areopagite reform in 462 BC.⁵

This recasting of the tradition on *nomophulakes* has become enshrined in studies of the late fourth century, but it is an orthodoxy which, I hope to show, rests upon rather shaky premises. It is my purpose here to re-examine the handling of the sources for Demetrius' *nomophulakes*, and to make a case for the plausibility of those sources as they stand. While the focus is on Demetrius' officials and the dissociation of *nomophulakes* from the *hendeka*, a revision of the evidence entails also some discussion of their fifth-century counterparts, whose historicity has impacted upon the question of the fourth-century board. In arguing for the credibility of fifth-century *nomophulakes*, I am essentially expanding arguments proffered already by Jacoby; the arguments advanced in defence of Pollux' understanding of *nomophulakes* at 8.102, however, mark a departure from the previous literature.

⁵ Among the earliest to reject a fifth-century board was von Wilamowitz-Moellendorf (1893) 2.192.

FIFTH-CENTURY *NOMOPHULAKES*

The case of the fifth-century board rests on the testimony of the concluding line of the entry in the *Lex. Cantab.* There have been attempts to reject the Philochoran provenance of this line, due largely to its infelicities of spelling and grammar, but these have proved unconvincing; as Jacoby has demonstrated, all the material of the *Lex. Cantab.* must derive ultimately from Philochorus' *Atthis*.⁶

Acceptance or rejection of Philochorus' testimony is thus largely a matter of historical probabilities. To the objection that no other source makes any mention of *nomophulakes* in the period of Ephialtes' Areopagite reforms, Jacoby has already provided ample rejoinder: 'our knowledge of offices existing in the fifth century is scanty anyhow; it would shrink considerably if we were to demand two witnesses in each case'.⁷ Moreover, within the scanty tradition concerning fifth-century constitutional change – a tradition composed largely of the *Athenaion Politeia* attributed to Aristotle – it is possible to accommodate Philochorus' board of officials. This observation, too, was made in brief by Jacoby, but an amplification of his arguments may serve to remind us of their cogency.

The functions of the *nomophulakes* are reconcilable with those ascribed by Aristotle to the pre-Ephialtic Areopagus, and they are the functions which appear to have been lost by that council through the reforms of Ephialtes. The very name of these officials corresponds closely to the early Areopagus' duty of *nomophulakia*: Solon set the Areopagus ἐπὶ τὸ νομοφυλακεῖν.⁸ Moreover, the two aspects of the *nomophulakia* of Philochorus' officials – the supervision of magistrates, and prevention of illegal measures in the assembly – may have belonged to the pre-Ephialtes Areopagus, according to the *Athenaion Politeia*. The claims for the supervision of magistrates are explicit enough: Draco's Areopagus ensured that the magistrates governed in accordance with the laws, while that of Solon corrected offenders, having power both to fine and to punish (τοὺς ἀμαρτάνοντας ἠϋθύνεν κυρία οὐσα καὶ ζημιοῦν καὶ κολάζειν – a phrase which may allude to the formal scrutiny called *euthunai* to which outgoing magistrates were subjected).⁹ The belief that the early Areopagus exercised control over magistrates can be traced back further, to the 403/2 BC law of Teisamenus which provided for the Areopagus to compel officials to use the laws.¹⁰ Supervision of the laws was also a feature of the pre-Ephialtic Areopagus in the *Athenaion Politeia*, although the form of this supervision is not detailed, and hence its identification with a power to prevent illegal assembly resolutions (rather than, say, the detection of inconsistencies in the laws) can be advanced only with caution.¹¹ Prior to Draco the Areopagus is said to have had responsibility to guard the laws (διατηρεῖν τοὺς νόμους); Draco's Areopagus was guardian of the laws (φύλαξ ... τῶν νόμων); Solon's Areopagus was the overseer of everything and guardian of the laws (ἐπίσκοπος πάντων καὶ φύλαξ τῶν νόμων).¹²

⁶ The line in manuscript runs ἐπὶ δὲ ἦσαν καὶ κατέστησαν, ὡς Φιλόχωρος, ὅτε Ἐφιάλτης ἰμόνη κατέλιπε τῆι ἐξ Ἀρείου πάγου βουλῆι τὰ ὑπὲρ τοῦ σώματος. Boeckh (1871) 424-5 dismissed the line as an invention of the lexicographers, but its origins in Philochorus are well defended by Jacoby, commentary on *FGrHist* 328 F64 n.8, and by Starker (1875) 26-7. The (possibly but not certainly) mistaken substitution of the *Atthis* book number (seven) for the number of *nomophulakes*, and the unusual description of the post-Ephialtic competence of the Areopagus as jurisdiction over τὰ ὑπὲρ τοῦ σώματος (dismissed as an unacceptable rendering of homicide (*phonos*) by Boeckh), are similarly insufficient grounds on which to reject the line *in toto*. τὰ

ὑπὲρ τοῦ σώματος might not be intended as an equivalent for homicide alone, and might apply rather to the range of offences resulting in death (not only homicide, but premeditated wounding, arson and poisoning) which were under Areopagite jurisdiction.

⁷ Jacoby, commentary on *FGrHist* 328 F64 n.11. There is one other possible allusion to them: *nomophulakes* appear in Xen. *Oec.* 9.14, which Pomeroy (1994) 302 takes as a reference to Athenian officials.

⁸ *Ath. Pol.* 8.4.

⁹ *Ath. Pol.* 4.4; for Solon's Areopagus, 8.4.

¹⁰ *Andoc.* 1.83-4.

¹¹ For bibliography on the meaning of supervision of laws, see Rhodes (1993) 315-16.

¹² *Ath. Pol.* 3.6, 4.4; cf. *Plut. Sol.* 19.2.

Admittedly, in the *Athenaion Politeia*, the powers stripped from the Areopagus by Ephialtes are claimed to have been assigned to the *boule*, to the *demos* and to the *dikasteria*, with no mention of any *nomophulakes*.¹³ But the appearance of a short-lived board to inherit powers lost by the Areopagus, as part of an extended and complex process of reforms,¹⁴ is not definitively ruled out by the known facts, since, on the current state of evidence, the inheritance of Areopagite powers by the courts, assembly and council cannot be dated with precision. There is, for example, no evidence about the apparatus for the supervision of magistrates in the period immediately after Ephialtes' revision. While the review of outgoing magistrates (*euthunai*) and the scrutiny of incoming magistrates (*dokimasia*) were eventually performed by the popular courts and (in some cases of *dokimasia*) by the council,¹⁵ it cannot be demonstrated that these duties were transferred to those bodies by Ephialtes' reforms of 462 BC. These scrutinies are not documented until the very end of the fifth century; nor are the *logistai* (the officials who conducted the financial audit component of *euthunai*) attested before the fourth century.¹⁶ As for the other key duty of Philochorus' *nomophulakes*, prevention of the passage of illegal motions through the assembly, the mechanism used in the fourth century – prosecution of the proponent by a procedure called *graphe paranomon* – is first attested in 415; the related *graphe nomon me epitedeion theinai* does not appear until the fourth century.¹⁷ There is, therefore, a considerable gap in the tradition on the transfer of Areopagite powers after Ephialtes' reforms, and a short-lived board of *nomophulakes* can be accommodated within the surviving information on fifth-century institutions.¹⁸

I would argue, then, that Philochorus' claim for fifth-century *nomophulakes* ought be accorded serious consideration. The duties ascribed to the *nomophulakes* may be consistent with the powers of the pre-Ephialtic Areopagus as outlined in the Aristotelian *Athenaion Politeia*; neither the vague tradition surrounding Ephialtes, nor the evidence for the subsequent exercise of these powers by assembly, council and law-courts yields conclusive proof against their existence. We may yet lack actual confirmation of such *nomophulakes* from a source independent of Philochorus, yet Philochorus' explicit claim for such officials ought not be dismissed out of hand, and the transfer of Areopagite powers to the *boule*, *ekklesia* and *dikasteria* may have been more convoluted than a superficial reading of the *Athenaion Politeia* would suggest.

Before turning to the *nomophulakes* of Demetrius of Phalerum, mention must be made of another conclusion tenable on the above evidence: that Philochorus did indeed write of fifth-century *nomophulakes*, but that these officials were the product of fourth-century ideology about early Areopagite powers, and not based on historical fact. It is widely believed that, in the late fifth century and again from the mid-fourth century, sections of Athenian society opposed to the democracy sought a return to a less democratic, 'ancestral' constitution (the *patrios politeia*), and that part of their programme was the extension of the powers of the Areopagus.¹⁹ For advocates

¹³ *Ath. Pol.* 25.2; cf. *Plut. Cim.* 15.2-3, *Per.* 9.5.

¹⁴ The appearance of Pericles (*Ath. Pol.* 27.1) and Arcestratus (35.2) in connection with Areopagite reform hints that the reform process was more complex than *Ath. Pol.* 25.2 would have us believe – so Jacoby, commentary on *FGrHist* 328 F64 n.22.

¹⁵ For *euthunai*, *Ath. Pol.* 48.4-5, 54.2; on *dokimasia*, *Ath. Pol.* 55.2-5.

¹⁶ The council played a part in such scrutinies in the fourth century: *Ath. Pol.* 45.2, also *Hesperia* 43 (1974) 157-88, ll.32-6 of 375/74 BC. See further Rhodes (1972) 111. *Logistai* serving other purposes, such as checking Delian League tribute payments, do feature in the fifth century, but not in the context of magisterial *euthunai*. Wallace (1974) 267-9 maintains that Ephialtes himself established the courts in their competence over previously Areopagite areas of control, but acknowledges that

'there are no testimonia' for this.

¹⁷ Rhodes (1993) 316.

¹⁸ We need not be troubled by the claim that Philochorus' mention of *proedroi* (who replaced the *prytaneis* only between 403/2 and 379/8: see Rhodes (1993) 534) is anachronistic and therefore shows that there were no fifth-century *nomophulakes*. The change from *prytaneis* to *proedroi* has been detected by modern scholars from decree prescripts, and is not remarked on by any ancient source. Whether or not Philochorus himself was aware of the change, comparable anachronisms concerning *proedroi* can be found in other sources (*Schol. Dem.* 24.157 (cf. 22.5); *Harp.* (=Photius/Suda) s.v. πρόεδροι).

¹⁹ For bibliography and discussion of Areopagite and *patrios politeia* ideology, see Wallace (1989), esp. Part II ('The Areopagus in ideology and politics, 411 to 307 BC').

of the *patrios politeia*, their elevation of the Areopagus was justified as the restoration of its early duties, and this ideological platform may have encouraged the attribution of unhistorical competences to the pre-462 Areopagus. The historicity of the sparse and often ambiguous account of early Areopagite powers in the *Athenaion Politeia*, against which the plausibility of Philochorus' account has been assessed above, is indeed contentious,²⁰ and elements of it may have been influenced by such champions of *patrios politeia* ideology.²¹ Not only the form, but even the very existence, of the Areopagus' supervision of magistrates prior to Ephialtes' reforms is debated,²² as is the application of the Areopagus' *nomophulakia* to anything as concrete as the prevention of illegal resolutions in the assembly.²³ If a very sceptical view is taken of the claims in fourth-century sources for the Areopagus' ancient competences, the plausibility of Philochorus' fifth-century *nomophulakes* cannot be pressed; all we may say is that they were credible against the backdrop of some fourth-century views of the pre-462 BC Areopagus. The possibility that Philochorus' *nomophulakes* were the product of *fourth-century* beliefs about the fifth-century Areopagus raises some interesting questions about the fabrication of early institutions. We may wonder about the interests which encouraged the idea of a board acting as a transitional point between the Areopagus' exercise of power and the eventual inheritance of that power by the *demos*, *boule* and *dikasteria*. This is a problem beyond the scope of this article, but one which may prove a fruitful line of investigation.

FOURTH-CENTURY *NOMOPHULAKES*

If the description of *nomophulakes* found in our many paraphrases of Philochorus belongs to officials of the fifth century, and was included in Book 7 of the *Atthis* as a retrospective passage leading up to a discussion of homonymous late fourth-century officials, we may then ask how Philochorus went on to describe that fourth-century board. For Jacoby and others, the answer has been straightforward: the two sets of *nomophulakes* were essentially the same. But the title *nomophulakes* could apply to a wide variety of officials, as a thorough survey of its usage soon demonstrates;²⁴ and to assume that the fourth-century *nomophulakes* replicated their fifth-century forebears involves the rejection of the explicit testimony of Pollux who, while giving a description of *nomophulakes* reminiscent of other Philochoran excerpts at 8.94, clearly states at 8.102 that Demetrius changed the name of the *hendeka* to *nomophulakes*.

As noted in passing above, the rejection of Pollux 8.102 – and of the Platonic scholion on *Phaido* 59e which (apart from a single word, discussed below) is identical – has been rationalized on the basis that *nomophulakes* is simply an error for *desmophulakes*. It is a rationalization which scrutiny renders problematic. For one, the existence of *desmophulakes* is tenuous. Despite Sundwall's ingenious attempt at discovery of such officials in an Athenian decree of

²⁰ So incomplete and contradictory is the material on the early Areopagus that the amount of information available to fourth-century scholars has been seriously questioned. On the poverty of the tradition and problems with the Aristotelian account, see Day and Chambers (1962) 120-33; Ruschenbusch (1966) esp. 370-2; Sealey (1964) 11.

²¹ For example, Wallace (1989) 44 identifies the view of the pre-Solonian Areopagus at *Ath. Pol.* 8.2 (where the Areopagus is credited with the appointment of magistrates) as having its origins in partisan ideology.

²² Rhodes (1972) 203-7 believes that the Areopagus did conduct *euthunai* of magistrates (as do Sealey (1964) 19; Wallace (1974) 259-69; Hignett (1958) 203-6); Rihill (1995) 88-90 does not accept that it conducted *euthunai*, but believes it did perform a scrutiny akin to *dokimasia*. By contrast, De Bruyn (1995) 63-73 remains doubtful

that supervision of magistrates was ever a function of the early Areopagus at all.

²³ Cf. above, n.11. Hignett (1958) 208-13 deems it anachronistic to look for a form of safeguard against illegal proposals in the assembly at the time of Ephialtes and before, but the early existence of the concept is argued for by Wallace (1989) 61.

²⁴ Christophilopoulos (1968) compiles a convenient summary of epigraphical attestations. Scribes called *nomophulakes* are found at deme level in Attica immediately after Demetrius of Phalerum's regime (*IG* ii² 1311 ll.6-7). *Nomophulakes* exercising punishment of offenders (closer to the model of Pollux 8.102) occur in Magnesia (*IG* ix 2 1109 = Ziehen (1896) nos.80 (esp. ll.26, 30) and 81 (esp. l.16)) and possibly in Ptolemaic Alexandria (*P.Lille* 1.29).

304/3,²⁵ the term *desmophulakes* is not attested in the period of Demetrius' government (nor indeed in its immediate aftermath). Some scholiasts certainly used it, but as an explanation of the term *hendeka* rather than as an official title in its own right.²⁶

This historical consideration is compounded by problems of method. After all, the correction of Pollux supposes a curious mistake. As is clear from the rest of 8.102, Pollux was well acquainted with the duties of the eleven gaolers and their official domain, the gaol or *desmoterion*. *Desmophulakes* is the term which fits more naturally in this context, but, on the conventional interpretation, Pollux has opted for a less congruent term. Considered thus, his use of *nomophulakes* begins to look deliberate. And while we might make initial allowance for Pollux' supposed confusion with Demetrius of Phalerum's 'real' *nomophulakes*, which he has allegedly described at 8.94, his association of *nomophulakia* with the Athenian prison is not confined to the renaming of the eleven: he refers to the *nomophulakion*, intending the prison building, when he writes of its door. In this second application of a *nomophulak*-based word to the gaol Pollux *could* merely be guilty of repeating his earlier mistake. But this explanation surely tests the limits of plausibility. A considerable section on the functions of the eleven intervenes between Pollux' first mention of the *nomophulakes* and this second allegedly erroneous allusion; as he refers to the gaol by its more usual name in the intervening passage (ἐν τῷ δεσμωτηρίῳ), there is no good reason why *desmo-* should have been replaced with *nomo-* a second time. Rather, his labelling of the prison as a *nomophulakion* is perfectly credible if he really did believe that the eleven became *nomophulakes*.²⁷

Editors of Pollux frequently alter not only *nomophulakes* to *desmophulakes*, but also τοῦ νομοφυλακίου θύρα to τοῦ δεσμοφυλακίου θύρα. The latter phrase is indeed the reading of the otherwise identical scholion on Plato, *Phaido* 59e. But the tradition labelling the Athenian prison the *nomophulakion* is, in fact, stronger than the one for *desmophulakion*, which occurs only in the Plato scholiast (the other properly attested name for the prison being *desmoterion*²⁸). Pollux' explanation of the name of the gaol gate, *Charonion*, is repeated by numerous sources, all naming the gaol not as the *desmophulakion* but the *nomophulakion*. The Suda s.v. νομοφυλακίου θύρα and s.v. Χαρώνειος θύρα both refer to the *nomophulakion*; similarly Hesychius s.v. Χαρώνειον and Zenobius 6.41 Χαρώνιος θύρα. These accounts all clearly derive from a common source and as such cannot, of course, count as independent testimony; it is curious nonetheless that only in the Plato scholiast is the supposedly correct term, *desmophulakion*, given. Once again, according to the principle of accepting the *lectio difficilior*, we should be more inclined to believe that the Plato scholiast emended the correct term, *nomophulakion*, to a name which seemed more plausible, *desmophulakion*.

Enlisted as support for the revision of Pollux' *nomophulakes* to *desmophulakes* is the Schol. V Aristoph. *Vesp.* 1108, in which it is claimed that the eleven were also called *thesmophulakes* (ἐκαλοῦντο δὲ οὗτοι οἱ ἔνδεκα καὶ θεσμοφύλακες), on the understanding that here, too, *thesmo-*

²⁵ *IG* ii² 488 (304/3) honours eleven magistrates, one from each tribe. It has been suggested by Sundwall (1906) 14 n.6 that these officials are the eleven gaolers, and that the stone proves that they became *desmophulakes*. But all that remains of their title is -κων and it cannot even be established that the eleven gaolers are represented by the eleven names.

²⁶ See the Schol. Dem. 22.26: Demosthenes had spoken vaguely of taking the thief to 'the archons', and the scholiast, seeking to clarify which magistrates are meant, explains that the reference is to the magistracy of the gaol-guardians (τὴν ἀρχὴν τῶν δεσμοφυλάκων), a magistracy comprising eleven men. One might compare Aristotle's description (*Ath. Pol.* 35.1) of the eleven as 'the eleven guardians of the gaol' (τοῦ δεσμωτηρίου

φύλακας ἔνδεκα). The gloss of the term *hendeka* at Schol. Dem. 24. 80 could be operating in a similar way.

²⁷ Ferguson (1911b) 273 n.1 sought to justify the supposed error of the lexicographers by suggesting that a *nomophulakion* did exist in Athens and served as a repository for the texts of laws. There was just such a building in Cyrene (see Laronde (1987) 431-2); there is, by contrast, no evidence for an Athenian *nomophulakion*. In philological terms, a *nomophulakion* could simply be the building occupied by *nomophulakes*; thus a *nuktophulakion* was the domain of a *nuktophulax* (Eusebius, *Commentarius in Isaiam* 1.12).

²⁸ The scholion has τοῦ δὲ δεσμοφυλακίου θύρα μία Χαρώνιον ἐκαλεῖτο. For *desmoterion*, see *Ath. Pol.* 35.1, 52.1.

phulakes is just a corruption of *desmophulakes*. Certainly, the miscopying of a *delta* as *theta* is possible, but another interpretation is tenable. *Nomophulakes* and *thesmophulakes* are commonly viewed as comparable terms,²⁹ and the latter might as easily be understood as a variation of *nomophulakes*. The scholion might just be presenting essentially the same report as Pollux 8.102.

Deserving of passing consideration here is an ill-preserved papyrus, the *Anonymus Argentinensis*, a text identified as being in some way connected with Demosthenes, either as the epitome of a commentary on Demosthenes' speech against Androtion,³⁰ or as part of Didymus' treatise on Demosthenes.³¹ At line 24 of this text νομοφυλάκων is legible. Col. v, ll.19-25 reads:

ΟΙΤΙΟΙ ΘΕΣ[ΜΟΘΕΤ]ΑΙ
 ... ΔΙΑΤΟΔΙΚΑΣΕ[.] ΔΕΤΑΓΜΕΝ[.]...[.]
 ... ΓΕΙΝΑΥΤΟ[.]Μ[Ε]ΤΕΒΑΙΝΟΝΟ[.] [.]Ν
 ... ΑΡΙΟΝΠΑΓΟ[.] [.] ΣΔΕ Ξ ΘΕΜΕ[....]
 ... ΠΡΟΣΟΝΑΙΧΡ[Ο]ΝΟΓΡΑΦΙΑΙ....
 ... ΑΡΧΟΣ... ΝΟΜΟΦΥΛΑΚΩΝΑΡΧ
 ... [ΑΝ]ΔΡΩΝ ΙΑ

The *nomophulakes* appear in a column (v) introduced by a discussion of *thesmothetai*, the six lesser-ranking of the nine Athenian archons who acted as a judicial college; the column concludes with a mention of eleven men (ἄνδρων ἰΑ³²) which has been taken as a reference to the eleven, the *hendeka*. The passage is too poorly preserved to determine the precise relationship of these three magistracies,³³ but it is striking that there occurs here a grouping of *nomophulakes*, *thesmothetai* and the eleven. These are the very elements which occur in our sources for the *nomophulakes*: Philochorus' lemma on *nomophulakes* begins with a distinction between them and the *thesmothetai*, while Pollux 8.102 links the *nomophulakes* and the eleven. This congruence may be more than sheer coincidence. It is possible that the *Anon. Argent.* col. v 19-25 contains a report very similar to that of a full Philochoran original entry on the *nomophulakes*, in which the relationships between all three offices may have been explored. The divergences in phraseology and emphasis from the excerpts of Philochorus are sufficient to demonstrate that the papyrus is not a direct paraphrase of Philochorus himself, but it is worth noting that at line 23 there is a clear allusion to chronographers; it seems, then, that the information in the *Anon. Argent.* is derived from sources such as the Attidographers, who compiled just the kinds of works in which such developments of various offices might have been recorded.³⁴ On this understanding, the sources used by the author of the *Anon. Argent.* may have first outlined the duties of the *thesmothetai* (in fact this much may be discerned from the remaining text, lines 19-23); a comparison of *thesmothetai* and *nomophulakes*, for example, might have followed in the subsequent line. The item of key interest is contained in the final line, in which a transition may have been made from the *nomophulakes* to the eleven. If the interpretation advanced is tenable, then the *Anon. Argent.* may furnish independent evidence for some association between officials called *nomophulakes* and the eleven, corroborating Pollux' much dismissed assertion of 8.102.

²⁹ These labels, at least when applied to boards with significant constitutional powers, are regarded as virtually interchangeable by Gehrke (1978) 159 n.53; Busolt (1920) 490.

³⁰ So Wilcken (1907).

³¹ So Laqueur (1908), while admitting some particular affinity with the *Against Androtion*.

³² Thus Wilcken's edition, disputing an earlier reading ἄνδρων ἰΣ. Wilcken maintained that his version was 'eine ganz sichere Correctur'.

³³ Wilcken deemed it impossible to decide whether

each represented a new lemma, or whether some or all belonged together.

³⁴ There is an apparent overlapping of some material: compare the *Lex. Cantab.* οἱ ἄρχοντες ἀνέβαινον εἰς Ἄρειον πάγον with the *Anon. Argentin.* μ[ε]τέβαινον... Ἄριον πάγο[v]. Hence, it is possible that the author of the *Anon. Argentin.* used Philochorus among others. If Laqueur was right in attributing the work to Didymus, the possibility of some Philochoran input is strengthened, since Didymus knew his *Atthis* (see Jacoby, introduction to Philochorus *FGrHist* 328 p.239).

To this point, consideration of Pollux 8.102 has focused on the problems besetting the usual correction of that text; it may be profitable now to examine the plausibility of such *nomophulakes* in the context of Athenian constitutional change. A case may be made for Pollux' *nomophulakes*, if we posit that the competence to apprehend and punish offenders (*kakourgoi*) traditionally exercised by the *hendeka* was enlarged into a more general concern for the enforcement of order, or a *cura morum*. It has been argued above that the fifth-century *nomophulakes* inherited their supervision of magistrates and scrutiny of assembly and council resolutions from the *nomophulakia* exercised formerly by the Areopagus. These duties were not the only aspects of the ancient Areopagite *nomophulakia*. In fourth-century opinion, another important facet was a general scrutiny of the morality and behaviour of *all* citizens, not just magistrates;³⁵ this broader significance may indeed be inherent in *nomophulakia*, since in fifth-century usage *nomos* covered 'customary behaviour' rather than simply 'codified law'.³⁶ This emerges at two points in the *Athenaion Politeia*: at 3.6 the pre-Draconian Areopagus is stated to have been competent to punish and fine all offenders against order (κολάζουσα καὶ ζημιούσα πάντα τοὺς ἀκοσμοῦντας κυρίως) and at 8.4 under Solon it is again said to have this power.³⁷ These claims correspond closely to the views of Isocrates, who attributes to the pre-Ephialtic body the maintenance of *eukosmia* and *eutaxia*,³⁸ that this supervision is envisaged as applying to all Athenians, and not just magistrates, is clear from the assertion that the Areopagus supervised each man's way of life, and those misbehaving (*akosmountas*) were called to account.³⁹ A general scrutiny of behaviour is attributed to the early Areopagus also by the Atthidographers: according to Philochorus, Phanodemus and others, the Areopagites in early times would summon and punish spendthrifts and those living beyond their means.⁴⁰

This attribution to the ancient Areopagus of a wide-ranging concern for behaviour, and of a power to punish τοὺς ἀκοσμοῦντας, 'disorderly behaviour', and τοὺς ἀμαρτάνοντες, 'criminal offences', to use the phrasing of the *Athenaion Politeia* (3.6, 8.4), may provide a context in which Demetrius of Phalerum's renaming of the eleven gaolers makes sense. Demetrius' *nomophulakes* could have claimed to have been exercising this *cura morum*, in which case they shared with the fifth-century *nomophulakes* an inheritance of aspects of early Areopagite *nomophulakia*; against such a background, Philochorus' detailed description of the fifth-century board as a prelude to a treatment of the fourth-century officials may be seen as a pertinent historical digression. At the same time, Demetrius' *nomophulakes* were exercising a function which was an extension of the fourth-century *hendeka*. The *hendeka* were concerned with punishment of *kakourgoi*, a concern that extended beyond their supervision of the gaol; they presided over the courts in various criminal cases, and Wilamowitz suggested that they may originally have exercised jurisdiction over some offences in their own right.⁴¹ Obviously, Demetrius' *nomophulakes* were more than simply the *hendeka* under a new name, but the function of the former could be viewed as related to the duties of the latter.⁴²

³⁵ The historicity of such general scrutiny by the pre-462 BC Areopagus is debated, and it may have been a product of fourth-century Areopagite ideology. On this wide-ranging concern for behaviour, see Cawkwell (1988); also Wallace (1989) 61-4.

³⁶ On the meaning of *nomos*, Ostwald (1969), esp. 21.

³⁷ On the latter, Rhodes (1993) 155 argues that the reference is to an Areopagite authority for the punishment 'of offenders in general'.

³⁸ Isoc. 7.37, 39.

³⁹ Isoc. 7.46.

⁴⁰ Athen. 168a = *FGrHist* 328 F196 and *FGrHist* 325 F10. Some, including Wallace (1989) 198, have taken the Atthidographers as alluding to an early Areopagite juris-

isdiction over the *nomos argias*, or idleness law (*cf.* Plut. *Sol.* 22.3), a jurisdiction which may not have been historical (so Harrison (1968) 80 n.1). Jacoby, commentary on *FGrHist* 325 F10, thought, however, that the Atthidographers intended merely 'a general *cura morum*'.

⁴¹ Arist. *Ath. Pol.* 52.2. The functions of the eleven are analysed by Hansen (1976), who gives a legal definition of *kakourgoi* at 36-42. On the courts of the eleven, Ar. *Vesp.* 1108, Harp. s.v. παράβυστον. Von Wilamowitz-Moellendorff (1893) 222 n.70 notes that the odd number may have been chosen to prevent tied votes.

⁴² As Bayer (1942) 30 observes, there may be a mention of Demetrius' board by Cicero, who knew of, and approved of, Demetrius' regime (so *Leg.* 2.64, 2.66, 3.14;

A COMPARATIVE CASE: THE CREATION OF THE *GUNAIKONOMOI*

This extension of the competence of what was (under the democracy) a relatively minor board of officials, the *hendeka*, into a board of *nomophulakes* with a more wide-ranging *cura morum*, may appear curious; it may, however, be lent plausibility by comparison with the possible formation of the *gunaikomoi*, another set of officials introduced under Demetrius of Phalerum.⁴³ The *gunaikonomoi*, according to Pollux 8.112, were officials who enforced the observance of appropriate behaviour by women. Comparison with *gunaikonomoi* in other Greek states suggests that this concern for female propriety extended to the curtailment of luxury, the regulation of behaviour at feasts, burials and festivals, and in general the enforcement of orderly conduct by women in public.⁴⁴

A similar pattern – the creation of a supervisory board out of an insignificant panel of sortitive magistrates – may be traced in the development of these *gunaikonomoi*. Half a century ago, Bayer proposed (without volunteering much evidence) that the *gunaikonomoi* bear some relationship to officials, the *astunomoi*, existing under the democracy; upon their creation, the *gunaikonomoi* may have assumed some of the duties earlier performed by the city magistrates.⁴⁵ Although the duties of the ten *astunomoi* involved supervision of roads and buildings,⁴⁶ it is clear that, in the late 320s, they were also responsible for luxury provisions which, in a later context, quite plausibly might have been assigned to the *gunaikonomoi*.⁴⁷ For example, the *astunomoi* enforced those laws fixing the charges exacted by flute-girls, harp and lyre players;⁴⁸ the best documented law regulated by *gunaikonomoi* under Demetrius' regime (see below, n.57) similarly concerned the conduct of banquets. Moreover we learn from Diogenes Laertius that the cynic, Crates, was allegedly accosted by the *astunomoi* for wearing muslin. This undated anecdote can hardly pass for fact.⁴⁹ But even if the incident with Crates is fictitious, the association of the *astunomoi* with sumptuary laws may reflect Athenian practice. There is no explicit statement of an analogous law under Demetrius' rule banning the wearing of certain garments, but in other states which had *gunaikonomoi*, regulations governing dress fell to them, and it is plausible that such laws were transferred to the Athenian *gunaikonomoi* upon the establishment of those magistrates.⁵⁰ A final area of overlap between the two sets of officials may be found in the regulation of religious processions. The pre- and post- Demetrian *astunomoi* were involved in maintaining the paths along which processions moved, while the *gunaikonomoi* may have been charged to oversee the processions themselves (as such officials are well attested as doing in other Greek states).⁵¹ It may be noted that in Thasos, a funeral law has both *gunaikonomoi* and *agoranomoi* (magistrates which, according to Pouilloux, combined the functions of Athenian *astunomoi* and *agoranomoi*) working in concert to oversee aspects of the burial procession.⁵² In generalized terms, too, there is continuity: sources repeatedly define the *astunomoi* and *agoranomoi* in terms of a concern for *eukosmia*, the very quality associated with the *gunaikonomoi*.⁵³

Rep. 2.2); at *Leg.* 3.46 there are *nomophulakes* who 'used to observe the deeds of men and recall them to the laws'. Cicero associates the *nomophulakes* with the Roman censors, who also had a *cura morum* (Livy 4.8).

⁴³ See Gehrke (1978) 162-70 on the *gunaikonomoi*.

⁴⁴ For a survey of *gunaikonomoi*, see Garland (1981).

⁴⁵ Bayer (1942) 51, following Lipsius (1905) 98; the connection is rejected out of hand by Jacoby, commentary on *FGrHist* 328 F65, but he does not consider the similarities in supervision of dress and religious processions.

⁴⁶ Arist. *Pol.* 1321b (not specifically of Athens); Hesychius s.v. ἀστυνόμοι; Schol. Dem. 24.112; all focus on their sanitary functions.

⁴⁷ Of the *astunomoi* Rhodes (1993) 573 notes that

'concern with entertainers is an instance of their duty to enforce whatever sumptuary legislation there may be'.

⁴⁸ *Ath. Pol.* 50.2, repeated by Harpocration s.v. ἀστυνόμος. On the fixing of entertainers' prices, see also Hyp. 4.3.

⁴⁹ Diog. Laert. 6.90.

⁵⁰ For the enforcement of a dress code by *gunaikonomoi*, see Pouilloux (1954) no. 144. A list of *gunaikonomoi* enforcing such regulations is compiled by Gehrke (1978) 168 n.97.

⁵¹ For the *astunomoi*, *IG* ii² 380 (320/19); *IG* ii² 659 (287/86).

⁵² Pouilloux (1954) no.141.

⁵³ Arist. *Pol.* 1321b; Plato *Laws* 849a.

There may thus have been competences once held by the *astunomoi* which were transferred to the *gunaikonomoi* upon the establishment of those magistrates. There are also traces of alterations to the *astunomoi* which may have paved the way for the subsequent creation of *gunaikonomoi*. For most of the fourth century, the *astunomoi* numbered ten, with five allocated to the Piraeus and Athens respectively, but their number was reduced under an oligarchic regime which prevailed in Athens just prior to Demetrius (322-318 BC). From *IG ii² 380* (320/19 BC) we learn that the functions of the Piraeus five were transferred to the *agoranomoi*.⁵⁴ It is conceivable that this diminution of the *astunomoi* might have encouraged the subsequent creation of the board of *gunaikonomoi* to absorb some of their former functions.

This proposed evolution of the *gunaikonomoi* from *astunomoi* may provide a paradigm for the creation of *nomophulakes*. In the years leading up to the installation of Demetrius, there appears to have been a wide-ranging restructuring of minor sortitive officials: the *apodektai* (receivers of state revenue) were abolished, and it has been argued that the *diaitetai* (arbitrators of minor disputes) suffered a similar fate.⁵⁵ The *hendeka*, like the *astunomoi*, were a sortitive panel, and the re-organization of lot-appointed magistracies prior to the Demetrian regime may have been extended to them.⁵⁶ If so, they may have been reorganized during the Demetrian period in a new guise, with their responsibility for *kakourgoi* assumed by the newly named *nomophulakes*, just as a new board of *gunaikonomoi* probably performed some of the duties (in the matter of dress regulations, for example), of their predecessors, the *astunomoi*.

In the preceding pages, I have attempted to make a case for the acceptance of the tradition on *nomophulakes* as it stands in our sources: essentially, *nomophulakes* with the functions outlined by the excerpts of Philochorus belonged, as the *Lex. Cantab.* states, in the period of Ephialtes' reforms of the Areopagus, while almost a century and a half later, Demetrius of Phalerum created *nomophulakes* from the *hendeka*. My primary concern has been to show that the usual correction of this tradition, currently entrenched in studies of Demetrius' regime, is not necessary, and that a less convoluted reading of the sources is possible.

Ultimately, the substantiation of the view advanced here requires an overall re-evaluation of all the reforms attributed to Demetrius of Phalerum. That is a task well beyond the scope of this paper, but one which I hope soon to offer in a full-scale treatment of the period. In brief, however, I would suggest that the regulation of individual behaviour and curtailment of luxurious living were the key aims of Demetrius' reforms; this is borne out by the fact that the only legislation unambiguously attested as Demetrius' is a restriction on burial practices, while another law plausibly credited to his authorship curbed the extravagance of feasts, and by the fact that the other officials associated with his regime – the *gunaikonomoi* – were explicitly interested in

⁵⁴ This change was probably pragmatic: so Gehrke (1976) 94. *Astunomoi* are not epigraphically attested again until 287/86 with *IG ii² 659* ll.10-11, which documents their involvement in a procession of Aphrodite; their resumption of more general duties is nowhere evidenced.

⁵⁵ *Apodektai* may not have been actually supplanted by the theoretic commissioner, as Aesch. 3.25 implies, but they are not attested epigraphically after 323/22 BC (*IG ii² 1631*). For *diaitetai*, see the corrupt passage from Demetrius of Phalerum (*Lex. Cantab.* s.v. μή οὐσα δίκη) discussed by Rhodes (1993) 591.

⁵⁶ The main evidence cited for the eleven just prior to the Demetrian regime is a Samian decree, Habicht (1957) no.1, mentioning the eleven Athenian gaolers. But its date (321 according to Habicht's original view, 323 according to Errington (1975), Bosworth (1988) 226 and Habicht himself later) does not establish that the eleven were not altered during the course of this first oligarchic period (*pace* Wehrli (1962)). The only other evidence is an anecdotal allusion in Nepos, *Phocion* 4.2, where Nepos claims that the condemned oligarchs in 319/18 were led to death by *undecemviri*, which must be a rendering of the common Attic name for the gaolers.

eukosmia.⁵⁷ This concern for orderly behaviour is present also in his *nomophulakes*,⁵⁸ and it is a concern that locates Demetrius within the ambit of other fourth-century Athenians (most notably Lysurgus⁵⁹) who encouraged virtuous behaviour.

This recasting of Demetrius' *nomophulakes* has implications for our assessment of the political nature of his regime. The introduction in the late fourth century of officials of the sort described by Philochorus would arguably have represented something of a diminution of democratic mechanisms. The action of the Athenian council and assembly had long been subject to checks, but throughout the fourth century such checks had been imposed through the *graphe paranomon*. The introduction of Philochorus' *nomophulakes* would have seen the assessment of the legality of assembly resolutions pass from the large juries empanelled by lot which tried *graphe paranomon* cases, to a small board of officials who may well have been elected. To that extent, the introduction of Philochoran *nomophulakes* by Demetrius would have been in tension with democratic ideology. Modern scholars have deemed such *nomophulakes* consistent with the oligarchic tendencies that Demetrius is assumed to have manifested. The alternative interpretation of the *nomophulakes* offered above, however, casts doubt upon a central platform of Demetrius' 'oligarchic' reforms, and may indicate that a review of Demetrius' other interference in the mechanisms of the assembly and *dikasteria* is overdue.

Acceptance of Pollux' report of the *nomophulakes* at 8.102 encourages a different perspective on Demetrius' political reforms. The Areopagus of the fourth century appears to have been expanding some of its powers of scrutiny, and moving towards the exercise of some functions which contemporary orators and historians were attributing to the pre-462 BC body.⁶⁰ The evidence is often ambiguous, but one may note Dinarchus' claim, in his speech against Demosthenes (324/23 BC), that the Areopagus was currently competent to punish all law-breakers.⁶¹ In addition, there are anecdotes of the Areopagus (probably in the 330s or 320s) questioning two philosophers, Menedemus and Asclepiades, about their livelihoods.⁶² This kind of Areopagite scrutiny is the very aspect of *nomophulakia* in which Demetrius' *nomophulakes* may have taken an interest. The activity of the *nomophulakes* may thus have compromised the independence of the Areopagus, as their fifth-century predecessors had done.⁶³

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⁵⁷ Cic. *Leg.* 2.66 for burials; Athen. 245a-c for feasts. The *gunaikonomoi* policed the latter (Athen. 245a-c cf. Philoch. *FGrHist* 328 F65) and, on the analogy of *gunaikonomoi* in other states, probably the former also.

⁵⁸ Compare Arist. *Pol.* 1322b37, where it is claimed that states having a particular concern for the *eukosmia* of their citizens have officials for *nomophulakia* and *gunaikonomia*.

⁵⁹ On Lysurgus as champion of morality and proper religious observance, see Mikalson (1998) 11-45, esp. 24-32.

⁶⁰ Indeed, if this competence was not historically exercised by the early Areopagus (a possibility noted above, n.35), the fourth-century claims themselves, the product of ideologically driven speculation on the Areopagus, may have driven and justified this accretion of powers in the fourth century.

⁶¹ Din. 1.6, 162. For Hansen (1991) 291-2 and MacDowell (1978) 191, these statements indicate an Areopagite competence to try and judge infringements of

any law; Dinarchus' claims may alternatively, as some (including Wallace (1989) 115-19) have argued, be exaggerated references to a power of investigation and reporting called *apophasis*, a procedure which may have been restricted to treason offences.

⁶² Athen. 168a. Jacoby, commentary on Philoch. *FGrHist* 328 F196, ventured that these Areopagite investigations belonged to the period of Demetrius' supremacy (a view apparently predicated upon an assumption of increased Areopagite prestige in that period). On the basis of the ages of the Menedemus and Asclepiades, the investigations are better located earlier: so Wallace (1989) 120.

⁶³ The *gunaikonomoi* are stated to have acted 'with the Areopagus' (Philoch. *FGrHist* 328 F65). It would be interesting to know whether the creation of these officials, too, impinged in any way on an authority being exercised formerly by the Areopagus alone.

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