The Laws of Demetrius of Phalerum and their Guardians.

By William Scott Ferguson.

Most of the Athenian *ῥοι* or boundary-stone inscriptions fail to specify the time at which the transaction recorded was completed¹). There are some exceptional cases, however. Thus the following documents are dated precisely: (1) *IG* II 2 1133 in 315/4 B. C., (2) *Sitz. d. Berl. Akad.*, 1897 665 no. 4 in 315/4²), (3) *Ibid.*, 1898 783 no. 27 in 315/4, (4) *IG* XII 8 18 in 314/3, (5) *Ibid.*, 19i in 314/3, (6) *Ibid.*, 19ii in 314/3—307/6, (7) *IG* II 2 1134 in 313/2, (8) *Sitz. d. Berl. Akad.*, 1897 665 no. 5 in 312/1, (9) *IG* II 2 1136 in 305/4, (10) *Ibid.*, 1137 in 305/4—303/2, (11) *Ibid.*, 1138 in 302/1, and (12) *Ibid.*, 1141 in 276/5.

From this list two inferences may be made (1) that the practice of indicating the year in a boundary record was established by the law-code of Demetrius of Phalerum, and (2) that this code was promulgated in the year 316/5 B. C. On these points an argument is hardly required. The catalogue speaks for itself. We may simply mention that the *Parian Chronicle*³) enters the item, *Δημήτριος νόμους ἔθηκεν Ἀθήνησιν* under the archonship of Demogenes (317/6 B. C.), and that Syncellus (Hieronymus) enters under the year 316/5 B. C. the item, *Δημήτριος ὁ Φαληρεὺς ἐγνωρίζετο τρίτος νομοθέτης Ἀθήνησιν*. Neither of these reports, however, has any real weight. The *Parian Chronicle* simply dates the legislation of Demetrius in the year in which he assumed office — in which doubtless, he received the commission to revise the laws. The date of Hieronymus, though correct, is probably so by accident, since his determinations have in general the value only of approximations. We may mention also that *IG* II 584 (Ditt., *Syll.*², 164) with Wilhelm's restoration⁴) *νόμους*] *ἔθηκεν καλ[οὺς καὶ συμφερόντας τῇ πόλει*, places the legislation of Demetrius at the beginning of his decade of government in Athens, where, too, the general consideration that the reformer would be unlikely to defer long so essential a step as the revision of the laws places it. The inscriptions cited above, however, enable us to

1) These inscriptions are published in *IG* II 2 1103 ff., 5 1111 ff., Hitzig, *Das griech. Pfandrecht*, 62 f.; Ziebarth, *Sitz. d. Berl. Akad.*, 1897 664 ff., 1898 776 ff.; Tillyard, *Annual of the British School in Athens*, XI 1904/5 63 ff.; Robinson, *Amer. Jour. Phil.*, 1907 432; *IG* XII 8 18 ff. Cf. also Dareste, Reinach. and Haussoullier, *Recueil des inscr. jurid. grecq.*, 107 ff. The whole subject of mortgages and their publication and preservation is discussed by Beauchet, *Hist. du droit privé de la république athénienne*, vol. III 176 ff., 319 ff.; IV 60 ff.

2) Republished without identification in *Annual of the British School*, XI 63 ff. no. 20.

3) *IG* XII 5 1 444 CXIV. — 4) *GGA* 1903 784, 790.

Klio, Beiträge zur alten Geschichte XI 3.

fix the date of its promulgation in 316/5 B. C. In the following year the archon's name became an integral part of these records.

Another characteristic of the records inscribed on the boundary stones after 316/5 B. C. is the frequency with which a specification is made of the person with whom the original papers (*συνθήκαι*) are deposited. This is done in the case of (2), (4), (5), (6), (8), and also in the case of *IG* II 2 1139, II 5 1139 b, which Kirchner¹⁾ dates in *ca.* 300 B. C., and in the case of *IG* II 2 1140, *Sitz. d. Berl. Akad.*, 1898 nos. 26 and 28, of which all we can say is that they belong to the fourth century B. C. It is omitted, however, in (3), of which the date is 315/4 B. C., (7), of which the date is 313/2 B. C., and (9) to (11), of which the dates range from 305/4 to 302/1 B. C. (1) and (12) are mutilated and hence yield no information on this point. We cannot say with any degree of certainty that the holder of the contracts was ever specified before 316/5 B. C. We can simply affirm that after 316/5 B. C. his name, like that of the archon²⁾, was frequently, though not always, communicated.

The inscription on the *ῥχοι* was of course not an official, not *the* legal, record of indebtedness: it was simply an advertisement made in the interest of third parties, or by a creditor interested in having the fact of a loan known to his debtor's neighbors in order to secure himself for the future against a possible denial of obligation. The *ῥχοι* might be submitted as evidence in the courts, but a proof could be completed without them, and, in fact, the genuineness of the *ῥχοι* was often the question at issue in litigation³⁾. The sole purpose that the specification of the time of contracting a loan could have was to facilitate a search and above all establish publicly the sequence of several loans secured by a single piece of realty, and thus safeguard investors. How this had been done prior to 316/5 B. C. the inscription first published by Robinson shows⁴⁾. The property in question was sold with the right to repurchase for 1, 500, 1,200, 600, 150, and 100 drachmae successively. As the entire loan-value of the estate was gradually reached the size of the mortgage decreased. The order of entry thus decided the right to priority of claim. This sufficed when the whole transaction was completed at once, or when the successive mortgages were entered on the same slab; but when they were entered on different sides of the *ῥχος*, if that were possible, or on different *ῥχοι*, there was no obvious means of settling the order of claims without having resort to witnesses, as was usual, or to the original contracts, of which the place of deposit was nowhere specified, of which the

1) *PA* 3165, 7503.

2) The name of the archon is omitted in *IG* II 2 1139 and 5 1139 b.

3) On these points see Hitzig, and *Recueil*, *Loc. cit.*; also Beauchet, III 355 ff.

4) *Amer. Jour. Phil.*, *Loc. cit.* Republished by von Premerstein, *Athen. Mitt.* 1910 103 ff. Robinson very kindly tells me that he finds his readings of the numerals preferable to those of von Premerstein.

very existence might be successfully denied till it was too late, and which seem to have been frequently lost or destroyed¹⁾. After 316/5 B. C., we may assume, the *συνθήκαι* themselves were always dated precisely, and always deposited with a banker²⁾ or some other reliable person, it being, of course, with the original articles that the legislator dealt, not with their informal publication. What was required in the formal document became, however, as we have seen, common in the informal document.

To wills also (*διαθήκαι*) this regulation seems to have been applied. Hence, whereas in the testament of Aristotle³⁾ there is no specification of the party with whom it is to be deposited, this information is carefully conveyed in the other *διαθήκαι* preserved in Diogenes Laertius — these of Theophrastus, Straton, Epicurus, Arcesilaus, and Lycon⁴⁾ — all of which are posterior in time of composition to the legislation of Demetrius. Moreover, whereas Demosthenes⁵⁾ says flatly *διαθηκῶν οὐδεὶς πώποτε ἀντίγραφα ἐποιήσατο*, after the time of Demetrius it seems to have been customary for a man to make several copies of his will and indicate to the holder of each to whom the others were entrusted. Thus, this was done by Theophrastus and Arcesilaus⁶⁾.

In one case Demetrius apparently went still farther — in the matter of *δόσις* or transfer of property by gift during the owner's lifetime. Thus Harpocration defines *δόσις*: *ιδίως μὲν λέγεται παρὰ τοῖς ρήτορσι συμβόλαιον γραφόμενον όταν τις τὰ αὐτοῦ διδῶτιν διὰ τῶν ἀρχόντων, ὥς παρὰ Δεινάρχῳ*. The significant phrase is *διὰ τῶν ἀρχόντων*, which involves the consent of the magistrates before the transaction was legal. As Beauchet points out⁷⁾, there is no evidence for the official registration of such transfers during the period of the Orators; and it is hardly an accident that the lexicographer supports his affirmation by a reference to Dinarchus alone. Rather, we must assume, Dinarchus reflects the practice established by the Phalerian. So too at the time of the death of Epicurus, an *anagraphe* which, as Wilhelm has shown⁸⁾, always implies the accessibility to the public of the record, was made of the *δόσις* of the philosopher's property to his executors; and the *anagraphe* in question was published in the Metroon⁹⁾, the public record office of Athens. This sort of transfer of property needed special control because, in addition to the desirability that there should be no uncertainty as to ownership, it was necessary that a man should not be permitted to give away prior to death property which he could not alienate from his natural heirs by testament¹⁰⁾.

1) For the loss or destruction of documents see Beauchet, IV 60 ff.

2) *Sitz. d. Berl. Akad.*, 1898 782 no. 26. Cf. Koutorga, *Les trapézites*, 13, and Beauchet, IV 69. Dem., c. *Phorm.*, 6: *καὶ συγγραφὴν ἐθέμην παρὰ Κίττῳ τραπεζίτῃ*.

3) Diog. Laert., V 11 ff. — 4) *Ibid.*, V 57, 63; X 16 ff.; IV 44; V 70.

5) C. Steph., II 28. — 6) *Loc. cit.* in n. 4 above.

7) *Op. cit.*, III 123; cf. III 342 ff. — 8) *Beiträge zur griech. Inschriftenkunde*, 271 ff.

9) Diog. Laert., X 16 ff. — 10) Beauchet, III 125; cf. *P.-W.* V 1598.

The purpose of Demetrius in making these changes¹⁾ is obvious. It was to protect the Athenian men of means, whose welfare he made it the avowed purpose of all his legislation to promote, in investing their money in Athenian real estate.

Demetrius is designated in our tradition²⁾ as a pupil of Theophrastus. The philosopher was from twenty to twenty-five years his senior; hence, despite the fact that the statesman was already prominent in public life for two years or more when Theophrastus succeeded Aristotle in the Peripatos, we need not doubt that the two men were really teacher and pupil. Certainly the devotion of Demetrius to Theophrastus during his decade of rule is well attested, as is the persecution of the school by the Athenian democrats both during their brief restoration in 318 B. C. and after the expulsion of the Phalerian in 307 B. C. And it is this intimacy which beyond a doubt has obliterated in our tradition the fact that Demetrius must also have been a pupil of Aristotle.

Another factor should not, however, be disregarded in this connection, the indebtedness of Demetrius the law-giver to Theophrastus the jurist. Says M. Dareste, than whom no one has a better right to speak on these matters, *Théophraste a été un jurisconsulte, et le seul jurisconsulte considérable que la Grèce ait produit*; then he hastens to add: *nous ne parlons ici que du droit privé, car les travaux d'Aristote sur le droit public sont restés des chefs-d'oeuvre*³⁾. The loss of practically all of Theophrastus's great work *Περὶ νόμων* and of practically all of Demetrius's epoch-making *νόμοι* makes it impossible to measure the influence of the theorist upon the legislator; but the words of Cicero⁴⁾ — *post a Theophrasto Phalereus ille Demetrius mirabiliter doctrinam ex umbraculis eruditorum otioque non modo in solem atque pulverem, sed in ipsum discrimen aciemque produxit* — give us sufficient warrant for assuming that it was far-reaching and potent; and it is instructive to find among the relics of the work *Περὶ νόμων* the following passage⁵⁾: *νόμος καὶ οὗτος Μασσαλιώ-*

1) Dem., c. *Apatur.*, 36: πάντες ἄνθρωποι ὕταν πρὸς ἀλλήλους ποιῶνται συγγραφάς, τούτου ἕνεκα σημηνάμενοι τίθενται παρὰ οἷς ἂν πιστεύωσι. This shows that at the time oration XXVIII of Demosthenes was delivered there was no *νόμος* to this effect. Cf. Dem. c. *Spud.*, 21. It cannot of course be proved that Demetrius enacted such a *νόμος*: he made some change in the requirement, however, and none seems so plausible as this. How he dealt with fraud or carelessness in the case of the third parties — a not infrequent occurrence — we do not know. See, however, below p. 270.

2) Cic. *de fin.*, V 54, *de leg.*, III 14, *de off.*, I 3, *Brut.*, 37. Strabo, IX 398. Diog. Laert., V 39, 75. Cf. Martini, *P.-W.* IV 2818.

3) *Revue de législation française et étrangère* 1870/71 262 ff. In an article entitled *Le traité des lois de Théophraste*, Dareste has collected all the extant fragments of this work of Theophrastus.

4) *De leg.*, III 36.

5) Dareste, *Loc. cit.*, XXVIII. Aelian, *Var. Hist.*, II 38. *Athen.*, X 429 (Theoph.

τικός γυναικας μὴ δμιλεῖν οἶνω, ἀλλ' ὑδροποτεῖν πᾶσαν γυναικῶν ἡλικίαν. Λέγει δὲ Θεόφραστος καὶ παρὰ Μιλησίοις τὸν νόμον τοῦτον ἰσχύειν καὶ πείθεσθαι αὐτῷ τὰς Ἰάδας τὰς Μιλησίων γυναικας. The author of the well-known legislation on the public and private behaviour of women, the opponent in Athens of the social innovations of Hellenism, the creator of the Athenian *gynaeconomī*¹⁾ need not have gone back to Aristotle's *Politics*²⁾ to find a justification for coercing the suffragettes of his city. A policy such as his was impressed upon the ideal lawgiver in the treatise of Theophrastus. Thus the philosopher wrote³⁾: Οὐ γὰρ δὲ τὴν γυναικα δεινὴν ἐν τοῖς πολιτικοῖς ἀλλ' ἐν τοῖς οἰκονομικοῖς εἶναι. And again⁴⁾: Οὔτε δρᾶν οὔτε δρᾶσθαι γυναικα καὶ ταῦτα ἐξησκημένην πρὸς κάλλος· ἐπίσταται γὰρ ἀμφοτέρω πρὸς ᾧ μὴ δεῖ. And again⁵⁾: Ἀναγκαιοτάτη δ' ἐπὶ γυναικῶν ἢ τῶν γραμμμάτων δοκεῖ παίδευσις εἶναι καὶ αὐτὴ μεχρὶ χρησίμου πρὸς οἰκονομίαν· τὸ δ' ἐξακριβοῦμενον ἐπὶ πλέον ἀργότερας τε ποιεῖ πρὸς τᾶλλα καὶ λάλους καὶ περιέργους. The issue of such views must have been the commendation of *gynaeconomī* to regulate and supervise the *ἐξοδοί* of the women. And the general impatience of Demetrius at the utter abandon — the ζῆν ὥς τις βούλεται, the lack of respect of slaves for their masters, children for their parents, young for the old, private citizens for those in authority — characteristic of democratic Athens is reflected in his epigrammatic declaration⁶⁾: τοὺς νέους, ἔφη, δεῖν ἐπὶ τῆς οἰκίας τοὺς γονεῖς αἰδεῖσθαι, ἐν δὲ ταῖς ὁδοῖς τοὺς ἀπαντῶντας, ἐν δὲ ταῖς ἐρημίαις ξαντούς. Nor is it likely that the assailant of ὑπερβολὴ τῆς τρυφῆς⁷⁾, the *laudator* of the status τῶν μέτρια κεκτεμένων⁸⁾ was without influence upon the lawgiver who sought by checking extravagance of one kind or another to save the middle-class Athenian citizens from ruining themselves. Thus the restriction of the cost of burials, which stopped the erection of the beautiful but expensive family grave monuments in the Dipylon cemetery, was probably a prescription of Theophrastus; for in his will he gave instructions θάψαι δὲ καὶ ἡμᾶς ὅπου ἂν δοκῇ μάλιστα ἀρμόνιον εἶναι τοῦ κήπου, μηδὲν περιέργον περὶ τὴν ταφήν μήτε περὶ τὸ μνημεῖον ποιοῦντας⁹⁾. Something similar occurs in the wills of the successors of Theophrastus — Straton and Lycon (μήτε ἀνελεύθερος γένηται μήτε περιεργός)¹⁰⁾, while in that of Aristotle¹¹⁾ it is lacking as it is in that of Epicurus¹²⁾.

frg. CXVII, Wimmer). It is possible, however, that this passage, which is extant in two versions, comes from the work of Theophrastus *Περὶ μέθης*.

1) Martini, *P.-W.* IV 2826. — 2) IV 2 9; VI 5 13.

3) *Frg.* CLVIII (Stob., *Serm.*, 83 p. 481). — 4) *Frg.* CLVII (Stob., *Serm.*, 72 p. 439).

5) Stob., *Flor.*, II 31 31. — 6) Diog. Laert., V 5 82. — 7) *Frg.* LXXXVI.

8) *Frg.* LXXVIII.

9) Diog. Laert., V 53. The philosophic basis of the prohibition is apparent from Plato, *Laws*, XII p. 958 D.

10) *Ibid.*, V 61. — 11) Diog. Laert., V 11 ff. — 12) *Ibid.*, X 16 ff.

It accordingly seems probable that it was in this work of Theophrastus *Περὶ νόμων* that Demetrius found his mandate for improving the methods of safeguarding investments in Attic realty; for the longest fragment¹⁾ of this book which has come down to us discusses the expedients devised in various states and various codes for insuring publicity of sales and avoiding the evil consequences of uncertainty as to ownership of property. It then continues: οὐ γὰρ δ' ἀγνοεῖν ὅτι αἱ προγραφαὶ (characteristic of Athens) καὶ αἱ προκηρύξεις καὶ ὅλως ὅσα πρὸς τὰς ἀμφισβητήσεις ἐστὶ πάντ' ἢ τὰ πλεῖστα δι' ἑλλειψιν ἑτέρου νόμου τίθεται· παρ' οἷς γὰρ ἀναγραφὴ τῶν κτημάτων ἐστὶ καὶ τῶν συμβολαίων, ἐξ ἐκείνων ἐστὶ μαθεῖν εἰ ἐλεύθερα καὶ ἀνέπαφα καὶ τὰ αὐτοῦ πωλεῖ δικαίως, εὐθὺς γὰρ καὶ μετεγγράφει ἡ ἀρχὴ τὸν ἐωνημένον.

The context shows that Theophrastus had in mind mortgages and all similar servitudes, as well as sales, when recommending public registration of transactions in realty; but even though this were not the case, mortgages would still be involved, for what else in Attica was mortgaging but selling with the reservation of the right to repurchase? The law, of which the jurist noted the lack in Athens²⁾, Demetrius, as we have seen, enacted, but he did not do so in the form suggested by his teacher. To create a new bureau for the public ἀναγραφὴ τῶν κτημάτων καὶ τῶν συμβολαίων would have doubled the work of administration and led to violent interferences with the traditional ways of doing business. It would have precipitated, in fact, an administrative and economic revolution³⁾; for the accounts hitherto kept by the collectors of the *ἐκατοστή* on sales, being in the first place not an *anagraphe* in that they were not accessible of right to the public and in the second place merely rough and indefinite memoranda for the guidance of the *ἐκατοσφόροι*, or whatever the farmers of this particular toll may have been called, in no way superseded the arrangements made privately by the contracting parties or disclosed to the curiosity of the crowd the particulars of each transaction⁴⁾. Not the state but the *telonae* were the makers of these records. With much less machinery and much less inquisition into private affairs than a public *anagraphe* would have involved Demetrius seems to have aimed to provide the courts with a working basis for settling disputes over real estate by requiring the deposit of the *συνθήκαι*, *διαθήκαι*, or other documents carefully dated, with third parties, who were, doubtless, made legally responsible for their safe-keeping.

1) Dareste, *Op. cit.*, XXII. A better text is given in Stob., *Flor.*, IV 44 20 ed. Hense. Cf. Thalheim, *Griech. Rechtsaltertümer*, 128.

2) See also the remarks of Wilamowitz, *Aristoteles und Athen*, I 236.

3) It is conceivable that submission to such systematic control would have been regarded by the Athenians as Asiatic or Egyptian and unworthy of freemen.

4) Beauchet, III 336 ff.; *IG* II 784—788.

In the seventh book of his *Atthis*, which dealt with the time of Demetrius of Phalerum, Philochorus, as quoted in *Lex. cant.*, reports: νομοφύλακες ἑτεροὶ εἰσι τῶν θεσμοθετῶν, ὡς Φιλόχορος ἐν τῇ ἑβδόμῃ. οἱ μὲν γὰρ ἄρχοντες ἀνέβαινον εἰς Ἄρειον πάγον ἐστεφανωμένοι, οἱ δὲ νομοφύλακες σιρόφια λευκὰ ἔχοντες καὶ ἐν ταῖς θείαις ἐναντίον τῶν ἀρχόντων ἐκαθέζοντο καὶ τὴν πομπὴν ἔπεμπον τῇ Παλλάδι· τὰς δὲ ἀρχὰς ἡνάγκαζον τοῖς νόμοις χρῆσθαι, καὶ ἐν τῇ ἐκκλησίᾳ καὶ ἐν τῇ βουλῇ μετὰ τῶν προέδρων ἐκάθηντο, κωλύοντες τὰ ἀσύμφορα τῇ πόλει πράττειν. ἐπὶ δὲ ἦσαν, καὶ κατέστησαν, ὡς Φιλόχορος, ὅτε Ἐφιάλτης μόνος κατέλιπε τῇ ἐξ Ἀρείου πάγου βουλῇ τὰ ὑπὲρ τοῦ σώματος. It is hard to disassociate the creation of the *nomophylaces*¹⁾ from the creation of the new νόμοι, especially since Aristotle (and doubtless also Theophrastus) commended such an office²⁾ — Aristotle, whose ideal form of government, the Polity, Demetrius championed in a scientific treatise and put into effect in Athens³⁾. Yet evidence, in addition to the report of Philochorus, points to the existence of a college with this name prior to 317/6 B. C. Thus they were mentioned by Dinarchus in an oration against Himeræus⁴⁾, the democratic brother of Demetrius of Phalerum, who was put to death in 322 B. C., a few days after the entry of the Macedonian garrison into Athens at the end of the Lamian War⁵⁾. Hence not only did they exist before the régime of Demetrius began, but also before the aristocratic reform of 322/1 B. C. occurred, since this did not go into effect till the end of the year⁶⁾.

They were also mentioned in the *Anonymus Argentinensis* (*Hermes*, 1907 411 § 24: νομοφυλάκων ἀρχ[ῇ . . . ἀν]δρῶν ιά), which Wilcken claims to be the epitome of a commentary on Demosthenes' speech *contra Androtion*⁷⁾, but which Laqueur, while admitting the connection with the oration, takes to be the *capitulatio* or prologue of a more general work like that of Didymus *Περὶ Δημοσθένους*⁸⁾. However that may be, it was admittedly based upon the accusation of Androtion which was made by Demosthenes in 355 B. C. That *nomophylaces* existed as early as this year Polenz⁹⁾ finds incredible: all that is proved, in his judgment, is that the abridgement included matter not referred to in the oration.

1) See *Lex. cant.*, Photius, Suidas, Harpocr., *s. v.*; Pollux, VIII 94, 102; Bekk., *Anecd.*, p. 283 16, p. 191 20; Schol. Aesch., *c. Ctesiph.*, 13. Cf. Starker, *De nomophylacibus Athen.* (Diss.) Breslau 1880. — 2) *Politics*, IV 11 9; 12 8; VI 5 13.

3) Martini, *P.-W.* IV 2827, 2832. 8. This was also the ideal of Theophrastus. See *Frg.* LXVIII. In two quotations extant from his work Demetrius is found to have met the charge, that Aristides and Socrates would have been excluded from citizenship in the Polity, by affirming that the former was a *pentacosioedimnus* (Plut., *Aristid.*, 1), the latter at least a *zeugites*; hence both qualified for the franchise.

4) See below p. 273. — 5) Kirchner, *PA* 7578. — 6) *Hellenistic Athens*, 21.

7) *Hermes*, 1907 374 ff. — 8) *Ibid.*, 1908 220 ff.

9) *Ibid.*, 228 n. 2.

He suggests that the officials in question were first created in the *Restaurationszeit*¹⁾ in the twenties.

There is, however, another, and, as it seems to me, a better way out of Polenz's difficulty. That is to assume that the epitomator, like many of the ancient lexicographers and scholiasts, has confused the Eleven with the *nomophylaces*. How this was possible the following passage from Pollux²⁾ discloses: οἱ ἑνδεκα εἰς ἀφ' ἐκάστης φυλῆς ἐγίνετο καὶ γραμματεὺς αὐτοῖς συνηριθμεῖτο· νομοφύλακες δὲ κατὰ Φαληρέα μετνωμασθήσαν. A real change of nomenclature did take place in later Athens, as the following *scholium* on Aristophanes's *Wasps* V 1108, shows: ἐτήρουν οἶδε (οἱ ἑνδεκα) τοὺς δεδεμένους. οὗτοι δὲ νῦν θεσμοφύλακες καλοῦνται, where θεσμοφύλακες is manifestly merely a textual corruption³⁾ for δεσμοφύλακες. What the *Anonymus* should have written is, therefore, something like this, to quote a scholiast an another passage of Demosthenes (XXII 26): ἀπροσδιορίστως ἄρχοντας ἐκαλοῦν τὴν ἀρχὴν τῶν δεσμοφυλάκων· αὕτη δὲ ἦν τὸν ἀριθμὸν ἰὰ ἀνδρῶν.

The facts seem to be these: (1). Prior to 321 (or 317) B. C. there existed οἱ ἑνδεκα — the Eleven — police magistrates as well as policemen and gaolers. After this time their duties as police magistrates — jurisdiction over *κακοῦργοι* — passed over to the Areopagus⁴⁾, or, as seems probable for the period 317—307 B. C., to the *nomophylaces* and Areopagus combined⁵⁾. To aristocrats it was obvious that men suited to act as executioners and gaolers had no necessary qualifications for handling petty crimes or crimes detected in the act, and already at the time of the Thirty Tyrants the Eleven had been displaced by a council and *desmophylaces*⁶⁾. Moreover, procedure was simplified by giving the Areopagus jurisdiction in minor as well as in major criminal cases. After 307 B. C. Athens ceased to have the Eleven altogether, but in their place it had magistrates designated simply *desmophylaces*, who were still eleven in number and had merely the duties implied in their name⁷⁾ (2). Prior to 317/6 B. C. there existed in Athens a board of seven *nomophylaces* created, as Philochorus states, when Ephialtes in 462/1 B. C. destroyed the political power of the Areopagus⁸⁾. They probably had charge of the

1) Wilamowitz, *Op. cit.*, I 353. — 2) VIII 102.

3) Wachsmuth, *Die Stadt Athen*, II 1 386 n. 3.

4) Lipsius, *Das attische Recht*, I 79; *IG* II 476. I have erred (*Klio*, 1904 9 f.) in dating this change in 103/2 B. C. — 5) See below pp. 275 f.

6) Xen., *Hell.*, II 3 54; Aristot., *Const. of Athens*, 35 1.

7) Sundwall (*Acta societatis scientiarum fennicae* 1907 14 n. 6) has discovered the name in the inscription of the year 304/3 B. C. published by Tod in the *Annual of the British School*, IX 1902/3 156 f.

8) Aristotle (*Const. of Athens*, 8 4) remarks: (Solon) τὴν δὲ τῶν Ἀρεοπαγιτῶν (βουλὴν) ἔταξεν ἐπὶ τὸ νομοφυλακεῖν. The work of the reformers in 321 and 317 B. C. was ostensibly a restoration of the laws of Solon (Diod., XVIII 18 5; Ostermann,

*nomophylacium*¹⁾: in other words, they were simply caretakers, in the literal sense of this term, of the νόμοι, until the Phalerian, following the teaching of his Peripatetic masters, elevated them into a position of influence comparable to that of the Ephors in Sparta. They were set aside, of course, with their creator in 307 B. C., so that at a later time the confusion of the Eleven, *nomophylaces*, and *desmophylaces*, is not unintelligible.

Harpocration defines the *nomophylaces* as follows: Νομοφύλακες, ἀρχή τις παρ' Ἀθηναίοις οὕτω ἐκαλεῖτο διαφέρουσα τῶν θεσμοθετῶν. Δείναρχος καθ' Ἱμεραίου, καὶ ἐν τῷ κατὰ Πυθέου. Φιλόχορος δὲ ἐν τῷ ἐβδόμῳ ἄλλα τέ τινα διεξῆλθε περὶ αὐτῶν, καὶ οὐ οὕτοι τὰς ἀρχὰς ἐπηνάγκαζον τοῖς νόμοις χρῆσθαι δῆλον. The death of Himeraeus, after which the speech of Dinarchus cannot have been spoken, having occurred in 322 B. C., and Aristotle's *Constitution of Athens*, at the time of the composition of which the *nomophylaces* lacked the powers attributed to them by Philochorus, having been written after 329/8 B. C.²⁾, the conclusion of Polenz that these magistrates were given greatly enlarged powers in the twenties, is the one which presents itself first to the enquirer. It was in support of an εἰσαγγελία brought against Himeraeus that Dinarchus pled³⁾. It seems improbable that such a charge could have got a hearing after the outbreak of the Lamian War in 323 B. C.; for at that time Himeraeus was an active member of the dominant party. Hence the trial must in all likelihood have occurred in 324/3 B. C. or earlier. Pytheas was a member of the aristocratic government of 322/1—319/8 B. C., having been banished for Macedonian sympathies during the preceding war. Against him Dinarchus prepared two orations, one *Κατὰ Πυ-*

de Demetrii Phalerei vita, II 30 frg. XXVIII—XXX). That the *nomophylaces* were connected with the Areopagus and shared its fate is clear (See below p. 275). That the number of the *nomophylaces* was seven indicates either that Demetrius, to whom the idea of tribal representation had no value, determined it, or that the office dates, despite Philochorus, from before the times of Clisthenes.

1) The name *nomophylacium* occurs in Pollux, VIII 102; Heysch., s. v. *Charonium*; Suidas, s. v. *Νομοφυλακεῖον*. It is possible that the confusion of *desmophylaces* and *nomophylaces* has led alone to the invention of a name *nomophylacium* in Athens instead of the correct term, *δεσμωντήριον*. Still, we may have a reminiscence of old usage in the confusion. Why otherwise was not a *δεσμοφυλάκιον* invented first? Many cities and other parallel organizations had a *γραμματοφυλάκιον* in charge of a *γραμματοφύλαξ* (Wilhelm, *Op. cit.*, 266 ff.), and a *χρεωφυλάκιον* in charge of *chreophylaces* (Dareste, *BCH* 1882 241 ff.; Beauchet, IV 64 ff.; *BCH* 1888 232 l. 35). Orchomenus had a *thesmophylacium* (*Recueil*, 280 l. 77). Why may not Athens have had a *nomophylacium* in charge of *nomophylaces*? In Roman times *nomophylaces* were common in the private associations (Poland, *Gesch. d. griech. Vereinswesens*, 404). The laws were of course kept in the *prytaneum* (Paus., I 18 3: *πλησίον δὲ πρυτανεῖον ἐστὶ, ἐν ᾧ νόμοι τε οἱ Σόλωνός εἰσι γεγραμμένοι*), but their part of the *prytaneum* may have been called the *nomophylacium*.

2) *Const. of Athens*, 54 7; Busolt, *Griech. Gesch.*, II² 17 f.

3) Dion. Hal., *de Dinarcho*, 10 p. 652 6; cf. Kirchner, *PA* 7578.

θέου ξενίας and another *Περὶ τῶν κατὰ τὸ ἐμπόριον εἰσαγγελία*¹). Since the trial ξενίας established the citizenship of Pytheas, it doubtless took place at the beginning of his political career. Hence the second of the two orations is probably the one in which the *nomophylaces* were mentioned, since nothing prevents us from dating it in the twenties.

Accordingly, the period 328—324/3 B. C., and, since the *Constitution of Athens* probably belongs a few years after 329/8 B. C., the latter part of it rather than the former, is marked by the first appearance of the *nomophylaces* in the literature which the scholiasts interpreted and the lexicographers ransacked. The sole question is this: does their appearance in these orations of Dinarchus imply their possession of the powers attributed to them by Philochorus, or is it motivated adequately by their exercise of purely routine duties in the Athenian record office? We have no assurance, I think, that the former was the case. In fact, it is not clear to me that Dinarchus on publishing his speeches against Himeraeus and Pytheas between 317 and 307 B. C., let us assume, may not have given point to an argument and a defence of the legislation of his friend and fellow pupil, the Phalerian, and of the ideas of their common teacher, Theophrastus, by observing how much trouble would have been avoided, how frequently *εἰσαγγελίαι* would have been unnecessary, if the magistrates and others in authority were prevented from violating the laws in the first instance through the interference of *nomophylaces*. Nor is the possibility excluded that these orations are cited simply through the lexicographical confusion of *desmophylaces*, *nomophylaces*, and the Eleven.

For these various reasons I am unable to agree with Polenz that prior to the oligarchic reconstruction of 321 B. C. *nomophylaces* forced the magistrates to use the laws, and sat with the *proedri* at the meetings of the senate and the ecclesia *κωλύοντες τὰ ἀσύμφορα τῇ πόλει πράττειν*. If this were the case, they could hardly have escaped mention in connection with the deification of Alexander, the restoration of the exiles, the Harpalus case, and the outbreak of the Lamian War. It is, moreover, unthinkable that the democrats would have instituted such a powerful check on the *demos*. On the other hand, I am unable to agree with the view finally reached by Starker²) that the *nomophylaces* were established by Ephialtes, but disestablished under Pericles, and reestablished by Demetrius. The only real argument adduced is the *argumentum ex silentio*, which would be decisive if we were dealing with a powerful office like that of the *nomophylaces* between 317 and 307 B. C., but which has little or no weight when we are dealing merely with custodians of the legal records in the *prytaneum*³). From them, in fact, it seems probable that the real clerical duties were taken by the *γραμματεὺς* whom Aristotle defines as *ἐπὶ τοὺς νόμους*, and who is called upon

1) Kirchner, *PA* 12342. — 2) See above 271 n. 1. — 3) Paus., I 18 3.

in the speeches of the Orators to produce and read the νόμοι in court. From them, however, was not taken the care of the ζόανον of Athena Pallas with which they as officials of the *prytaneum* had to do, this being, as the scholiast on Aristid., Vol. III p. 48 Dind. says, a *hieron* of Pallas (τὸ δὲ πρυτανεῖον τόπον εἶναι λέγουσι τῆς Παλλάδος ἱερὸν). Hence, in the time of Demetrius of Phalerum, as Photius (Philochorus) tells us ¹⁾, the *nomophylaces* καὶ τῇ Παλλάδι τὴν πομπὴν ἐκόσμου, ὅτε κομίζοιτο τὸ ζόανον ἐπὶ τὴν θάλασσαν. This was probably their chief work at the time of Aristotle, and they are not mentioned by him in his *Constitution of Athens* because he omits altogether a reference to the *Plynteria*, as the festival was called of which the *pompe* to Pallas was the centre. Of course, Demetrius did not introduce the *Plynteria* ²⁾, nor do we see any reason why he should have given the management of the *pompe* to the *nomophylaces* had this board not possessed this function from of old ³⁾. And in fact it is impossible to suppose that an innovation of this sort was made by Ephialtes in 462/1 B. C. Rather, the guardianship of the *prytaneum* and its contents — the νόμοι and the cultus in particular — was simply transferred from the Areopagus to the seven *nomophylaces*, who were then for the first time clearly distinguished from it. Their connection with the Areopagus was always one of intimacy; hence the insistence of Philochorus and the scholiasts and lexicographers that they were not identical with the *thesmothetae*; hence their revival simultaneously with the revival of the Areopagus in 317—307 B. B.; but whether they were Areopagites and in a sense its executive committee, or simply the heirs of some of the old Areopagite functions, or connected with the Areopagus in some other way ⁴⁾, we cannot say.

From the inscriptions we learn that the *anagrapheus*, hitherto an obscure officer and hence not mentioned in the *Constitution of Athens*, was elevated in 321 B. C. to the post of registrar and custodian and publisher of public documents. The reformers thus systematized the ἀναγραφὴ τῶν δημοσίων γραμμάτων ⁵⁾, the ἀναγραφὴ τῶν κτημάτων καὶ συμβολαίων, for which Theophrastus had argued, being left, as we have seen,

1) *S. v. Νομοφύλακες*; cf. Starker, 4.

2) A. Mommsen, *Feste d. Stadt Athen*, 491 ff.

3) The maintenance of decorum during the procession belonged to the sphere of duties of *gynaeconomi* rather than of *nomophylaces*.

4) Starker (11 ff.) interprets the passage of *Lex. cant.* quoted above on p. 271 to mean that the *nomophylaces*, like the *thesmothetae*, ἀνέβαινον εἰς τὸν Ἀρειὸν πάγον. That, however, could only signify that *ex-nomophylaces*, like *ex-archons*, became Areopagites. This, however, is improbable even for 317—307 B. C. What the lexicographer says is clearly that the archons, after having been commended at the end of their term (ἐστεφανωμένοι), entered the Areopagus, while the *nomophylaces*, whose insignia of office were σφόδρα λευκά, both sat opposite the magistrates at the festivals and conducted the *pompe* to Pallas.

5) On this subject see Wilhelm, *Op. cit.*, 271 ff.

for subsequent action. It is barely possible that they elevated the *nomophylaces* at the same time¹). But for this view no evidence exists, whereas all the probabilities favor the attribution of this far reaching reform to Demetrius of Phalerum.

The erroneous statement of Pollux that the Eleven were renamed *nomophylaces* by Demetrius connects definitely the first appearance of the name *nomophylaces* with the person of the Phalerian. The inauguration of a board of control advocated first by Xenophon and Plato and latterly by Aristotle (and Theophrastus)²), that is to say, a pet reform of the political scientists, who, according to Cicero, found for the first time an executor of their ideas in Demetrius, is hardly to be disassociated from the government of the Peripatetic legislator. The curbing of the ecclesia between 317/6 and 307 B. C., which is obvious to us still in the paucity of extant decrees and which is implied in the tyranny later attributed to Demetrius, as well as the apparently almost complete cessation of lawlessness on the part of the magistrates or — what amounts to nearly the same thing — of accusations of lawlessness made against magistrates before the senate and ecclesia and tried by them or by the *heliæa* (*εἰσαγγελίαι*)³), presupposes the activity of some such magistracy as that described by Philochorus in his seventh book — the one in which the régime of Demetrius⁴) was treated.

One further bit of evidence leading to the same conclusion must finally be noticed. The Greek law-code of Ptolemy Soter was, we are told on credible authority, the work of Demetrius of Phalerum⁵). The tradition is, moreover, confirmed by the code itself, some sections of which, recently discovered⁶), show unmistakable indebtedness to the *νόμοι* of Athens⁷). Now Egypt had *nomophylaces* also⁸). Hence we are led to infer their creation by Demetrius in both places. In Egypt they have moreover jurisdiction in the case of *κακοῦργοι* — powers which prior to 321—317/6 B. C. had belonged to the Eleven in Athens, which apparently were transferred to the *nomophylaces* and the Areopagus by Demetrius, and which remained with the Areopagus alone on the abolition of the collaborating magistracy in 307 B. C.

Cambridge Mass. U. S. A.

1) Gaetano de Sanctis, *Beloch's Studi*, II 4. — 2) See especially Starker, 32 ff.

3) This, however, may be sufficiently explained by the change made by Demetrius in the size of the jury competent to try *εἰσαγγελίαι*. Cf. Spangenberg, *de Athen. publ. institutis aet. Mac. comm.* (Diss.) Halle 1884 17 f.

4) Boeckh, *Kleine Schriften*, V 421 ff.

5) Aelian, *Var. Hist.*, III 17: καὶ ἐν Αἰγύπτῳ δέ, συνὼν τῷ Πτολεμαίῳ, νομοθεσίας ἤρξε (Δημήτριος).

6) *Papyri grecs de Lille*, I 2 124 ff.

7) Bouché-Leclercq, *C. R. Acad. Inscr.*, 1908 383; Perdrizet, *Ibid.*, 448 ff.; Haus-soullier, *Revue de Philologie*, 1910 133. — 8) *Papyri grecs*, *Loc. cit.*