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MINING CASES IN ATHENIAN LAW

The silver mines in the Laureion district of south-east Attika formed an important part of the Athenian economy, but the surviving evidence about them is not easy to interpret. Modern study began with Boeckh and, after other nineteenth-century contributions, reached its apogee in Ardaillon's book, published in 1897.¹ The most significant contribution of the twentieth century was the mining leases inscribed on stone by the officials called *poletai*, the sellers of state property; these were published by Crosby² and discussed at length by Hopper.³ The inscriptions have thrown much light on the system used for leasing the mines, but not much on the relevant legal proceedings. The best account of Athenian mining law and legal procedure is still Ardaillon's,⁴ but since a century has passed since its appearance, I think it is time to present some of his points afresh and add a few others of my own.

The literary evidence for legal proceedings, including references in the later lexica, is probably all related to the second half of the fourth century BC, and the inscriptions of the leases all date from the period between 367 and 300. Consequently my comments about the legal proceedings all refer to that period; we cannot say how far the same procedures were used in earlier times.

Before coming to the legal actions I must first explain briefly the principles of tenure of the mines. This used to be a very controversial subject, but since Crosby's publication of the inscriptions and Hopper's discussion of them it seems to be generally agreed that the mines were all regarded as belonging to the state, which let them on lease to the individuals operating them.⁵ This was true even when the surface of the ground above a mine was the private property of an individual citizen. A few bits of evidence have in the past been thought to show that privately owned

¹ Edouard Ardaillon, *Les Mines du Laurion dans l'antiquité* (Paris, 1897).

² Margaret Crosby, "The Leases of the Laureion Mines," *Hesperia* 19 (1950) 189-312, and "More Fragments of Mining Leases from the Athenian Agora," *Hesperia* 26 (1957) 1-23. The texts have been republished with minor revisions by Merle K. Langdon, "Poletai Records," *The Athenian Agora* 19 (1991) 53-143.

³ R.J. Hopper, "The Attic Silver Mines in the Fourth Century B.C.," *BSA* 48 (1953) 200-54, and "The Laurion Mines: A Reconsideration," *BSA* 63 (1968) 293-326. On the social and economic significance of the mines see also Robin Osborne, *Demos: The Discovery of Classical Attika* (Cambridge, 1985) 111-26.

⁴ Ardaillon, *Les Mines* 200-9.

⁵ For discussion of the prices see Hopper, *BSA* 48 (1953) 224-39; K.M.W. Shipton, "The Prices of the Athenian Silver Mines," *ZPE* 120 (1998) 57-63.

mines also existed, the most significant being a passage of Hypereides which tells us that a jury decided that a certain mine was ἴδιον.⁶ But it is now generally agreed that this expression can mean simply that Epikrates was the lessee of the mine, not that he owned it outright, and there is no clear evidence that any mines were owned outright by private individuals.⁷ Distinct from a mine (μέταλλον) was a workshop (ἐργαστήριον), which was a building or area on the surface for processing ore obtained from a mine.⁸ A workshop was owned by an individual, not by the state.

If we accept that all mines belonged to the state, it naturally follows that anyone who opened up a new mine, even if it was under land belonging to himself, was required to report it to the authorities and pay the appropriate rent for it. It is also likely that sometimes a man who dug a shaft and found a vein of silver under his own land, or perhaps in a rough area not farmed by anyone, might avoid reporting it, so as to be able to keep the silver without paying the rent. This explains one kind of legal action mentioned by Hypereides and the lexica.

Hyp. *Eux.* 34: Τείσιδος ... ὑπισχνουμένου τὴν Φιλίππου καὶ Ναυσικλέους ἀπογράψειν, καὶ λέγοντος ὡς ἐξ ἀναπογράφων μετάλλων πεπλουτήκασι ...

“When Teisis promised to list the (sc. property) of Philippos and Nausikles, and said that they had got rich from unregistered mines ...”

Names of Cases (Δικῶν ὀνόματα, Bekker *Anecdota Graeca* 1) 184.27-8: ἀγράφου μετάλλου διὰ τῶν λάθρα ἐργαζομένων ἀργύριον εἰσήγοντο οἱ συγγινώσκοντες.

“For an unregistered mine, those who shared knowledge of it were brought in (sc. to court) by those working silver secretly.”

Phot. *Lex.* α 255: ἀγράφου μετάλλου δίκη· οἱ τὰ ἀργύρεια μέταλλα ἐργαζόμενοι, ὅπου βούλονται καινοῦ ἔργου ἄρξασθαι, φανερόν ἐποιοῦντο τοῖς ἐπ’ ἐκείνοις τεταγμένοις ὑπὸ τοῦ δήμου καὶ ἀπεγράφοντο τοῦ τελεῖν ἕνεκα τῷ δήμῳ εἰκοστὴν τετάρτην τοῦ καινοῦ μετάλλου. εἴ τις οὖν ἐδόκει λάθρα ἐργάζεσθαι μέταλλον, τὸν (μὴ) ἀπογραψάμενον ἐξῆν τῷ βουλομένῳ γράφεσθαι καὶ ἐλέγχειν.

“Case of an unregistered mine: men working the silver mines, wherever they wanted to open up new work, declared it to those appointed for that purpose by the people, and registered it for payment to the people of a twenty-fourth of the new mine. If anyone was found to be working a mine secretly, anyone who

⁶ Hyp. *Eux.* 36 ἔγνωσαν ἴδιον εἶναι τὸ μέταλλον, regarded as proof of private ownership by J.H. Lipsius, *Das attische Recht und Rechtsverfahren* (Leipzig, 1905-15) 311 note 8.

⁷ Hopper, *BSA* 48 (1953) 206-7; A.R.W. Harrison, *The Law of Athens* 1 (Oxford, 1968) 203 note 1.

⁸ On the nature of an ἐργαστήριον for a silver mine see Crosby, *Hesperia* 19 (1950) 194-5.

wished was allowed to prosecute him who had not registered it, and to prove him guilty.”

The entry in the *Souda* lexicon α 345 is identical.

In all these passages it is clear that it was an offence to operate a mine which had not been registered with the proper authorities, presumably the *poletai*. Hypereides uses the adjective *ἀναπόγραφος*, the lexicographers *ἄγραφος*, but there is no need to imagine a distinction of meaning between those two words; they are just synonyms meaning “unregistered.” But we should distinguish *ἀπογράφω* from *ἀπογράφομαι*: the middle voice is regularly used in the inscriptions for registering a mine for one’s own use, but the active voice denotes a method of public prosecution. Prosecution by *apographe* (listing) involved submitting a list of property which the prosecutor asserted should be forfeited to the state.⁹ If it is correct that this procedure was used to prosecute for an unregistered mine, presumably the prosecutor would list items of the defendant’s property or money equal in value to the amount of silver which he was alleged to have obtained from the mine illegally. In the particular case mentioned by Hypereides, Teisis, alleging that unregistered mines were the sole source of the wealth of Philippos and Nausikles, may have threatened to list the whole of their property. However, Photios does not call prosecution for this offence *apographe*, but uses the simple verb *γράφεσθαι*, implying that the method of prosecution was an ordinary *graphe*. The rest of the passage from Photios casts no light on this discrepancy. His reference to “a twenty-fourth” is not to be taken as meaning the penalty on conviction for this offence, but a tax which the defendant had avoided paying; the figure, though, is not mentioned elsewhere and may be an error.¹⁰

As for the *Names of Cases* entry, it does not name the prosecution procedure at all, but seems to be saying that other persons who knew about an unregistered mine (neighbouring farmers, for example) could be brought into the case. How that would happen is obscure. More useful, perhaps, are some passages in the Demosthenic speech *Against Phainippos*. This speech belongs to a case of *antidosis*, but the speaker, whose name is not known, mentions several times an earlier case which he lost.

Dem. 42.3: τὸ τελευταῖον νυνὶ με δεῖ τῇ πόλει τρία τάλαντα καταθεῖναι, τάλαντον κατὰ τὴν μερίδα· μετέσχον γάρ, ὡς μή ποτ’ ὄφελον, κἀγὼ τοῦ δημευθέντος μετάλλου.

“Now finally I have to pay the city 3 talents, a talent for each part; for I too had a share in the confiscated mine – I wish I hadn’t!”

⁹ On *apographe* generally see A.R.W. Harrison, *The Law of Athens* 2 (Oxford, 1971) 211-17, but he does not consider its application to cases of unregistered mines.

¹⁰ Cf. Crosby, *Hesperia* 19 (1950) 203 note 44.

Dem. 42.20: πόλλ' ἐκ τῶν ἔργων τῶν ἀργυρείων ἐγώ, Φαίνιππε, πρότερον αὐτὸς τῷ ἑμαυτοῦ σώματι πονῶν καὶ ἐργαζόμενος συνελεξάμην· ὁμολογῶ. νυνὶ δὲ πλὴν ὀλίγων ἄπαντ' ἀπολώλεκα.

“I previously amassed a substantial amount from the production of silver, Phainippos, by my own physical labour and work; I admit it. But now I have lost it all, except for a little.”

Dem. 42.32: καὶ γὰρ εἰ οἰκέτης ὑμῶν, μὴ πολίτης ἦν, ὀρώντες ἄν μου τὴν φιλεργίαν καὶ τὴν εἰς ὑμᾶς εὖνοιαν, ἀνεπαύσατ' ἄν με τῶν ἀναλωμάτων καὶ ἐπὶ τὸν δραπετεύοντα τῶν ἄλλων ἤλθετε. τὸν αὐτὸν τρόπον καὶ νῦν, ἐπειδὴν ἀποτείσω τὰ τρία τάλανθ' ἃ ὄφλον, ...

“For if I had been your servant, not a citizen, on seeing my industriousness and goodwill towards you, you would have relieved me of expenditure and turned to someone else who shirked it. In the same way, as it is, after I pay the 3 talents which I was condemned to pay, ...”

The speaker has been ordered to perform an expensive liturgy, but he claims that he now has little money and Phainippos, who is richer, ought to perform it in his place. He is therefore proceeding against Phainippos by *antidosis*, challenging him either to perform the liturgy or to exchange properties with him. The sentences which I have quoted explain why he has become poor. The reason is that he was condemned to pay a heavy fine in a previous case concerning a silver mine. He says that he worked hard at the mine, but now it has been confiscated and he has been condemned to pay 3 talents to the state. But several things remain obscure.¹¹ He does not explain why the mine was confiscated or why he had to pay a fine. He says that he shared the mine, and the words “3 talents, a talent for each part” imply that he had two partners; but in that case why did he have to pay all three shares of the fine? Clearly he is assuming that the jurors listening to his speech already have some knowledge of the affair concerning the mine; for he speaks of “*the* confiscated mine” as if it were one of which the jurors were already aware, and he says “I *too* had a share” implying that the jurors are already aware of the other partners. Perhaps the affair of the mine was one of general notoriety in Athens; perhaps Phainippos had been talking about it in public. I find it intriguing that in 42.32 the speaker imagines himself as a servant of the Athenians, and I wonder whether he was indeed a servant in some sense. One possibility is that the other two partners were prominent men who employed the speaker as manager of the mine, and when they were found guilty on a charge related to the mine they fled from Athens leaving the manager to pay the whole penalty. Then, when Phainippos declares that the manager has got rich on the proceeds from the mine, he retorts that he was not merely an employee of the two partners, as might have been assumed, but was actually a third

¹¹ Cf. Ardaillon, *Les Mines* 186-7.

partner himself, and as the only partner now left in Athens he has been landed with the whole of the fine.

That is just a speculative explanation of the wording of 42.3, and may be wrong. But here I am concerned rather with the legal case against the partners: why was the mine confiscated and a large fine imposed in addition? We cannot say for certain, but the best suggestion is Hopper's,¹² that the mine had not been officially registered; so a prosecution for an unregistered mine was brought by some citizen (Phainippos?) against the men operating it, and when found guilty they had not only to hand the mine over but also to pay a large sum, which may have been the estimated value of the silver which they had already extracted from it. This seems to me the best way of explaining the double character of the penalty: confiscation of the mine and a heavy fine in addition. But if it is right, we should notice that the legal procedure does not look like *apographe*. The speaker talks of a fine of a specified amount which he will have to pay; he does not say that some of his property is being forfeited. That seems to imply that the procedure is *graphe*. So perhaps both procedures, *graphe* and *apographe*, were available for prosecution for an unregistered mine, and we can accept the apparent reference to *graphe* in Photios as well as the reference to *apographe* in Hypereides.

We may next look at the sentences which follow almost immediately in the speech *Against Euxenippos*.

Hyp. *Eux.* 35-6: φήναντος γὰρ Λυσάνδρου τὸ Ἐπικράτους μέταλλον τοῦ Παλληνέως (ὡς) ἐντὸς τῶν μέτρων τετμημένον, ὃ ἠργάζετο μὲν ἤδη τρία ἔτη, μετεῖχον δ' αὐτοῦ οἱ πλουσιώτατοι σχεδόν τι τῶν ἐν τῇ πόλει, ὃ δὲ Λύσανδρος ὑπισχνεῖτο τριακόσια τάλαντα εἰσπράξειν τῇ πόλει (τοσαῦτα γὰρ εἰληφέναι αὐτοὺς ἐκ τοῦ μετάλλου)· ἀλλ' ὅμως οἱ δικασταὶ ... ἔγνωσαν ἴδιον εἶναι τὸ μέταλλον.

“When Lysandros revealed that the mine of Epikrates of Pallene had been cut inside the limits – a mine which he had already been working for three years, and pretty well the richest men in the city were partners in it – and Lysandros promised to exact 300 talents for the city (for that was the amount he said they had obtained from the mine), still the jurors ... decided that the mine was his own.”

In this case, by contrast with the previous one, the legal procedure is clear, and it is the definition of the offence which is obscure. The procedure is clear from the first word, φήναντος, which I have translated “revealed.” This refers to the procedure of *phasis*, which I have discussed previously.¹³

¹² Hopper, *BSA* 48 (1953) 225.

¹³ Douglas M. MacDowell, “The Athenian Procedure of *Phasis*,” *Symposion 1990* (1991) 187-98, with a response by M.H. Hansen on pages 199-201.

In that paper I distinguished three types of *phasis*, and in a more recent paper Wallace has argued that its range was wider still.¹⁴ However, the case of Lysandros and Epikrates clearly belongs to the best known type, in which the prosecutor initiated the action by pointing out some object or property with which an offence had been committed. In this case the property which Lysandros pointed out was a silver mine. Hypereides does not tell us to which magistrates he pointed it out, but we can guess that it was the *poletai*, because they were the officials in charge of leasing mines. But two problems in this passage remain unsolved.

First, there is the definition of the offence. The text says that the mine had been cut *ἐντός τῶν μέτρων*, literally “inside the measures.” Although the word *μέτρον* has a variety of applications, I think we can safely assume that the “measures” of a mine are the definition or limits within which digging should take place. But surely it would be an offence to cut a mine outside, not inside the limits. Many suggestions have been made to explain the phrase, but they are almost entirely unconvincing. The simplest is Cobet’s: he proposed to alter the text by changing *ἐντός* to *ἐκτός*, “outside.” That gives perfect sense, but the objection to it is that virtually the same phrase, *τῶν μέτρων ἐντός*, is used in a sentence of Demosthenes’ speech *Against Pantainetos* (37.36, quoted below) referring to what must be the same offence, although *phasis* is not mentioned there. It is difficult to believe that exactly the same scribal error occurred in both places. But if we keep *ἐντός*, how can that be interpreted to mean cutting a mine beyond the proper limits? Hopper at first suggested that cutting a mine “inside the boundaries” means cutting through them.¹⁵ Later he suggested that it means either cutting down supporting pillars or exceeding some regulation distance between them.¹⁶ It seems to me that, if *ἐντός* is correct, the reference can only be to cutting within the limits of a neighbouring mine.¹⁷ But the sense required is given so exactly by *ἐκτός* that I would not rule out Cobet’s emendation of the text, even though it does mean postulating a coincidence of errors.

The other problem concerns the penalty. In *phasis* the normal penalty on conviction was that the object or property concerned in the offence was confiscated and sold, and the proceeds were divided equally between the successful prosecutor and the public treasury. But clearly the present case was a little different. A mine belonged to the state anyway. Probably Epikrates, if he had lost the case, would have forfeited his lease, but the prospective penalty mentioned by Hypereides is a payment to the state of 300 talents, the total amount which Epikrates and his partners were alleged to have obtained from the mine. The best way to explain this is to assume that, when *phasis* concerned a mine, the property at which it was directed

¹⁴ Robert W. Wallace, “*Phainein* in Athenian Laws and Legal Procedures,” *Symposion 1999* (2003) 167-81, including a brief discussion of mining cases on pages 173-4.

¹⁵ Hopper, *BSA* 48 (1953) 220-1.

¹⁶ Hopper, *BSA* 63 (1968) 306.

¹⁷ For this and other views, see David Whitehead, *Hypereides: The Forensic Speeches* (Oxford, 2000) 248-9.

was not the mine itself but the silver extracted from it. This (or its value in money) is what was confiscated to the state, and – though Hypereides does not mention it – half of it (in this case that would have been 150 talents) was then handed over to the prosecutor.

The measures or limits (μέτρα) of a mine must have been a distance measured horizontally underground from the vertical shaft or other starting-point of the mine. Miners digging a tunnel horizontally, if they went beyond the limits, would not necessarily meet the tunnel of the neighbouring mine (and indeed would gain little by entering a tunnel from which the ore had already been extracted), but would probably be trying to dig down to a lower level not already exploited. I believe therefore that we have further references in the lexica to *phasis* for cutting beyond the limits.

Lex. Cant. 25.15-17:¹⁸ Καϊκίλιος δὲ φάσιν φησὶν εἶναι ἢν κατὰ τῶν τὰ δημόσια μέταλλα ὑπορυττόντων ἀποφέρουσι καὶ καθόλου κατὰ τῶν τὰ κοινὰ κλεπτόντων.

“*Kaikilios says it is phasis which they bring against those digging under public mines, and in general against those stealing public property.*”

Lex. Rhet. (Bekker *Anecdota Graeca* 1) 315.16-18: φάσις· μήνυσις πρὸς τοὺς ἄρχοντας κατὰ τῶν ὑπορυττόντων τὸ μέταλλον, ἢ κατὰ τῶν ἀδικούντων χωρίον ἢ οἰκίαν ἢ τι τῶν δημοσίων.

“*Phasis: denunciation to the magistrates against those digging under a mine, or against those committing offences against land or a building or any public property.*”

The entry in the *Souda* lexicon at the end of φ 125 is similar.

Kaikilios was a rhetorician of the first century BC who wrote important studies of the Attic orators and is likely to have got his information directly from them. Although only one of these lexical entries mentions him by name, both are probably derived from him and through him from some Athenian speech now lost. It appears that in that speech *phasis* was mentioned as the procedure used for an offence called μέταλλον ὑπορύττειν. The verb ὑπορύττω means “dig under” or “undermine,” and the offence of digging under a mine must be that of digging into the area belonging to a neighbouring mine.¹⁹ I suggest that this is simply a different form of words having the same meaning as ἐντὸς (or ἐκτὸς) τῶν μέτρων τέμνειν, and confirms that *phasis* was the procedure used for prosecution for that offence.

¹⁸ *Lexicon Rhetoricum Cantabrigiense*, ed. E.O. Houtsma, reprinted in *Lexica Graeca Minora*, ed. K. Latte and H. Erbse (Hildesheim, 1965) p. 85.

¹⁹ Hopper, *BSA* 48 (1953) 222, takes ὑπορύττειν τὸ μέταλλον to be synonymous with τοὺς μεσοκρινεῖς ὑφελεῖν, but that is a less obvious interpretation of “dig under.”

Another public offence concerning the mines is mentioned in the section on Lykourgos in the *Lives of the Ten Orators* attributed to Plutarch.

[Plu.] *Ethika* 843d-e: ἔκρινε δὲ καὶ Δίφιλον, ἐκ τῶν ἀργυρείων μετάλλων τοὺς μεσοκρινεῖς, οἱ ἐβάσταζον τὰ ὑπερκείμενα βάρη, ὑφελόντα καὶ ἐξ αὐτῶν πεπλουτηκότα παρὰ τοὺς νόμους· καὶ θανάτου ὄντος ἐπιτιμίου ἀλῶναι ἐποίησε, καὶ πεντήκοντα δραχμὰς ἐκ τῆς οὐσίας αὐτοῦ ἐκάστω τῶν πολιτῶν διένειμε, τῶν πάντων συναχθέντων ταλάντων ἑκατὸν ἐξήκοντα· ἢ, ὡς τινες, μῶν.

“(Lykourgos) also put Diphilos on trial because he had removed from the silver mines the pillars which supported the weight above, and had enriched himself from them illegally. The penalty was death; he got him convicted, and distributed 50 drachmas from his property to each of the citizens, the total amount being 160 talents – or, according to some people, a mna.”²⁰

The μεσοκρινεῖς were pillars of the original rock, perhaps containing ore, which had been left in place to support the roof.²¹ Removal of those supports would increase the risk of a collapse of the roof and endanger the lives of those who worked in the mine. Consequently it was regarded as a very serious offence. The word ἐπιτίμιον usually means a penalty fixed by law,²² rather than one assessed by a jury, and so the present passage probably means that there was a law prescribing death, with confiscation of property, as the penalty for removing the pillars from a mine. The text does not say what procedure was used to prosecute for this offence, but it must surely have been a public case of some sort, probably *graphe*.

That completes our information about public prosecutions concerning the mines, but there were also private prosecutions, for Arist. *Ath. Pol.* 59.5 includes μεταλλικὰς in a list of private cases taken into court by the thesmothetai. For details we rely entirely on the speech *Against Pantainetos* (Dem. 37). This is a speech written by Demosthenes for delivery by a man named Nikoboulos in a *paragraphe* trial, probably in 346 BC. Pantainetos was the lessee of a mine and had a workshop (ἐργαστήριον) near the mine with thirty slaves for processing the ore. He did not own the workshop and workmen outright; Nikoboulos and his friend Euergos were the owners (or part-owners), and Pantainetos held the workshop and workmen by lease or “sale with right of redemption” – the terminology and details of the arrangement are difficult and need not be discussed here.²³ Pantainetos failed to pay

²⁰ A total of 160 talents would provide 50 drachmas (half a mna) each for 19200 citizens, or a mna for 9600. The number of citizens at this time is not known, but the latter figure is certainly too low.

²¹ Pollux 3.87. Hopper, *BSA* 48 (1953) 222-3, rejects this definition on grounds which seem inadequate.

²² E.g. Ant. 4.1.4, Lyk. *Leo.* 4, Dem. 18.14.

²³ See Edward M. Harris, “When is a Sale not a Sale? The Riddle of Athenian Terminology for Real Security Revisited,” *CQ* 38 (1988) 351-81.

the rent or interest, and so Euergos, in Nikoboulos' absence abroad, repossessed the workshop and workmen; but Pantainetos then prosecuted Euergos for this and some related incidents, and won the case. He also prosecuted Nikoboulos, after his return to Athens, on the same charge. This was a prosecution for damage (βλάβη, in the sense of causing him financial loss). Much of the charge is quoted in the surviving speech. The following were apparently the principal accusations.

- 1 Nikoboulos ordered his slave Antigenes to seize the money which was to have been taken to the state treasury to pay the rent for Pantainetos' mine, thus causing Pantainetos to incur an additional payment as a debtor to the treasury.
- 2 Nikoboulos sent Antigenes to repossess the workshop and workmen.
- 3 Nikoboulos told the workmen to stop working for Pantainetos.
- 4 Nikoboulos took over the ore in the workshop and kept the silver extracted from it.
- 5 Nikoboulos sold the workshop and workmen to other purchasers, in contravention of the agreement giving Pantainetos the right to buy it.
- 6 There were other accusations involving "assault and insolence and offences of violence and against heiresses" (37.33), but details of these are not given.

Nikoboulos then resorted to the *paragraphe* procedure to try to prevent Pantainetos' prosecution from coming to trial, and the surviving text is his speech arguing that it is illegal. His main argument is that Pantainetos had previously given him release from all charges, but here we are concerned with his secondary argument, which is that some of Pantainetos' accusations are ones which should have been taken to different magistrates, not to the thesmothetai who were the magistrates responsible for mining cases. He calls for the mining law (τὸν μεταλλικὸν νόμον) to be read out. The text of the law is not preserved, but after it is read he makes these comments.

Dem. 37.35-6: οὗτος σαφῶς ὁ νόμος διείρηκεν ὧν εἶναι δίκας προσήκει μεταλλικάς. οὐκοῦν ὁ μὲν νόμος, ἐάν τις ἐξίλλη τινα τῆς ἐργασίας, ὑπόδικον ποιεῖ· ἐγὼ δ' οὐχ ὅπως αὐτὸς ἐξίλλω, ἀλλ' ὧν τοῦτον ἄλλος ἀπεστέρει, τούτων ἐγκρατῆ κατέστησα καὶ παρέδωκα, καὶ πρατῆρ τούτου δεηθέντος ἐγενόμην. ναί, φησίν· ἀλλὰ κἄν ἄλλο τι ἀδικῆ τις περὶ τὰ μέταλλα, καὶ τούτων εἰσὶν δίκαι. ὀρθῶς γ' ὦ Πανταίνετε· ἀλλὰ ταῦτα τί ἐστιν; ἂν τύφη²⁴ τις, ἂν ὄπλ' ἐπιφέρῃ, ἂν ἐπικατατέμῃ τῶν μέτρων ἐντός. ταῦτ' ἐστὶν τᾶλλα, ὧν οὐδὲν δῆπου πέπρακται πρὸς ὑμᾶς ἐμοί, πλὴν εἰ τοὺς κομιζομένους ἅ προεϊντό σοι, μεθ' ὄπλων ἤκειν νομίζεις. εἰ δὲ ταῦθ' ἤγει, πρὸς ἅπαντας τοὺς προἰεμένους τὰ ἐαυτῶν εἰσὶ σοι δίκαι μεταλλικαί. ἀλλ' οὐ δίκαιον.

²⁴ On the alternative reading ὑφάψη, see Ardaillon, *Les Mines* 203 note 2.

“This law clearly defines the proper subjects for mining cases. The law, then, makes liable to prosecution anyone who excludes anyone from his workings; but I, so far from excluding him myself, have given him control of what someone else was keeping from him, and handed it over to him, and acted as vendor at his request. ‘Yes,’ he says, ‘but prosecutions can be brought also for other offences concerning the mines.’ Quite right, Pantainetos, but what are they? Causing smoke; attacking with weapons; cutting a mine inside the limits. Those are the other offences, and surely I haven’t committed any of them against you – unless you consider that creditors recovering their money from you are armed attackers! If you think that, you can bring mining cases against all men who lend you their money. But that’s not right.”

Elsewhere in the speech he remarks that these are monthly cases (δίκαι ἔμμηνοι, Dem. 37.2), which Edward Cohen some years ago showed to be cases for which prosecutions were accepted every month.²⁵ We may therefore say that on a certain day every month the thesmothetai²⁶ received applications to prosecute for the offences of excluding a lessee from the mine he had leased, for raising smoke or attacking someone with weapons in a mine, or for cutting a mine inside the limits. The last offence in this list gives us another instance (in fact the only other instance) of the expression “inside the limits,” which I have already discussed in connection with Hyp. *Eux.* 35.

But that raises a question about the procedure. The case of Pantainetos in Dem. 37 is a private *dike*; Arist. *Ath. Pol.* 59.5 includes mining cases in a list of private *dikai* assigned to the thesmothetai; two lost λόγοι μεταλλικοί attributed to Deinarkhos are listed by Dionysios as speeches for private cases;²⁷ and one might assume that the offences listed in Dem. 37.35-6 as being included in the mining law were all subjects of private *dikai*. Yet in Hyp. *Eux.* 35 it is clearly stated that the procedure used by Lysandros to denounce Epikrates’ mine as cut inside the limits was *phasis*, a type of public prosecution; the public nature of that case is confirmed by the statement that the penalty on conviction was to be payment of a large sum to the state. There are two possible explanations. One is that the procedure for prosecuting for cutting inside the limits was always *phasis*, and that the same law about mining provided for that type of public prosecution as well as for private prosecutions for other mining offences. The other is that the offence of cutting inside the limits appeared in two different laws providing for different methods of

²⁵ Edward E. Cohen, *Ancient Athenian Maritime Courts* (Princeton, 1973) 23-59.

²⁶ The *hypothesis* to Dem. 37 mentions τῷ μεταλλικῷ δικαστηρίῳ but this may be a misapprehension by Libanios. It is unlikely that the thesmothetai had a special building for mining cases.

²⁷ Dion. Hal. *Deinarkhos* 12 (p. 319.2 Radermacher) and 13 (p. 320.20 Radermacher). Details of the former case are not given; in the latter the speaker complained of being turned out of his mine by the lessee of neighbouring mines.

prosecution, so that either a public case of *phasis* or a private *dike* could be raised. Since we know that there were other offences which could be the subject of either a public or a private case,²⁸ I am inclined to think this latter explanation preferable. If it is right, a private *dike* for cutting inside the limits could be brought only by the lessee of a neighbouring mine of which the boundaries had been invaded, and he, if successful, would receive financial compensation. A public *phasis* for this offence could be brought by anybody (ὁ βουλόμενος), and any penalty paid would be shared between the state and the prosecutor; this would be the only procedure available if the mining rights to the neighbouring ground had not been leased.

We cannot be sure that Nikoboulos' list of offences included in the mining law is complete; there may have been other offences connected with mining which he does not mention. But he is surely correct in saying that some of the things of which Pantainetos accused him were not mining offences. Among the accusations as I have numbered them, no. 1 was about theft of money, no. 5 was about a breach of contract involving sale with right of redemption, and no. 6 included offences against heiresses; none of those can have been matters for the mining law. As Nikoboulos himself points out (Dem. 37.33), prosecutions for some of these offences needed to be taken to different magistrates, not to the thesmothetai. But what evidently happened is that Pantainetos wanted to make several accusations against Nikoboulos, and because some of those accusations concerned a mine he took the whole list to the thesmothetai on the day for acceptance of monthly cases about mines. Nikoboulos by his *paragraphe* objected that it was illegal to bring a hybrid prosecution in that way. Whether the jury agreed with him, we do not know.

I conclude by listing the legal procedures for which we have evidence in mining cases.

- 1 For operating an unregistered mine, either *graphe* or *apographe*.
- 2 For removing a mine's supporting pillars, some kind of public case, probably *graphe*.
- 3 For cutting a mine inside the limits (whatever that means), either *phasis* or a private *dike*.
- 4 For excluding a lessee from his mine, or for raising a smoke or attacking with weapons in a mine, a private *dike*.

²⁸ The best known example is theft; cf. Dem. 22.26-7.

