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1) Introduction.

What is the origin of the Solonian procedural remedy called ἔφεσις εἰς τὸ δικαστήριον? What is its legal nature and its political impact? What are its consequences under legal procedure, as well as under criminal, civil and administrative law (if I am allowed to make modern distinctions)? Both historians of political institutions and legal historians have proposed many different interpretations. The current communis opinio interprets the ἔφεσις εἰς τὸ δικαστήριον in terms of a ‘right of appeal’ and often repeats the views of earlier scholars, who analyzed the procedure at greater length.¹

¹ Cf., for instance, Todd (1994: 100, nt. 2); Welwei (1998: 154); Schubert (2000: 53);
In recent years, a few scholars have maintained – albeit with some doubts – that from its introduction at the beginning of the sixth century, ἔφεσις was the ‘transfer’ of a case from the authority of a magistrate to the popular court rather than an ‘appeal’ to a court, which was instructed to retry a case already decided by the magistrate.²

2) The opinion considering the Solonian ἔφεσις a true appeal.

According to the traditional and nowadays predominant view, the Solonian procedure ἔφεσις is viewed as an actual ‘appeal’ (even many who hold this view do not use this noun as a terminus technicus and therefore do not appreciate all the legal implications of their use of this term). Indeed, a true appeal produces a ‘suspensive effect’ (i.e. it interrupts the enforceability of a judgment given at first instance). It directly produces a ‘devolutive effect’ (i.e. it is the private remedy that, once filed by the aggrieved party, brings about the introduction of the case before a new judge). It is characterized by a ‘substitutive effect’ (i.e. it involves a second instance procedure ending with a new judgment that entirely replaces the first judgment)³.

3) The opinion considering the Solonian ἔφεσις a mandatory reference.

According to a different explanation, one could define ἔφεσις, in strictly legal terms, as a ‘mandatory transfer’ of a case from any political body (at first a single magistrate, but also a board of citizens or other political body) to the popular judges. From a legal perspective, this idea implies the following consequences. ἔφεσις is the act of an official or an act of a public officer or public board, rather than a private and discretionary act, which initiated an appellate review. Consequently, after the Solonian reform, the ἡλιαία would have passed judgments exclusively as a court of first instance, and it would have been the only (or the main) court empowered to give final judgments. As a result, magistrates – depending on the interpretation – would have lost practically all or, at least, much of their judicial power.⁴

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² Cf., in these terms, Gagarin (2006: 263-264).
³ Cf., among those who describe the Solonian reform in terms of a true appeal, Hudtwalker (1812); Tittmann (1822: 219); Thalheim (1905: 2773); Lipsius (1905-1915: 27-30, 230, 440); Busolt - Śwoboda (1926: 851, 1151, 1457); Ralph (1936=1941); Bonner - Smith (1930-1938: 1.231); Wade-Gery (1958: 192-195); Harrison (1971: 72-73); MacDowell (1978: 31); Rhodes (1981: 160-162); Ostwald (1986: 28, 12); Tamburini (1990). This view is mainly based on Ath. Pol. 9.1 and Plut. Sol. 18.2.
⁴ Cf., among those who describe the Solonian reform in terms of ‘transferal’, Schöll (1875: 19, nt. 1); Pridik (1892: 111); Wilamowitz-Moellendorff (1893: 1.60); Ruschenbusch (1961); Ruschenbusch (1965); Hansen (1982: 37); Sealey (1983: 294-296); Hansen (1989: 260). This view considers the following testimonia unreliable because of strong influences played by Roman ideas: Plut. Sol. 18.2; Plut. Publ. 25.2; Poll. 8.62; Luc. Bis acc. 12.
4) The view that interprets the Solonian ἔφεσις as a remedy with negative effects.

A third view has received less attention in studies published in recent years. This view denies that one can characterize ἔφεσις as either a right of appeal or a transfer of jurisdiction. According to this view, ἔφεσις is a ‘claim’ submitted by the citizen who has suffered some bodily harm, monetary damages, or personal disadvantages from an ‘authoritative’ order issued by a magistrate. Yet, such a procedural remedy either would bear a resemblance to a private ‘veto’, that formally blocks the issuing of a final ruling, or it would turn out to be the ‘opposition to the enforcement of an authoritative act.’

It follows therefore that ἔφεσις produces only ‘negative effects’; either halting the enforceability of a decision coming from an official, a body, or a board different from the people, or preventing the validity – if not practically the existence – of such a decision. Moreover, if ἔφεσις basically removes any proposed judgment and award, as well as any administrative measure – on the level of either effects, or validity, or existence – the popular judges neither amend, nor quash, nor approve a previous ruling. In other words, the δικαστήριον substantially plays the role of a court of first instance before which the case, after an ἔφεσις is submitted, must or can be ex novo introduced (παλινδικία). In the present contribution, I will try to give some support to this neglected view.

5) The basic information provided by the Aristotelian ‘Constitution of the Athenians’ and by Plutarch.

Three important passages from the Aristotelian Constitution of the Athenians, together with some information from Plutarch’s Life of Solon, provide the following information.

Before ἔφεσις to the popular court was introduced by Solon, ἀρχαί were both κύριοι (i.e. qualified to pass decisions that could not be amended or rescinded) and αὐτοτελεῖς (i.e. qualified to initiate ex officio legal procedures). In other words, in the

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5 Yet, see Loddo (2015), who gives a hybrid view of the Solonian remedy, as she keeps on labeling it as ‘appeal’ and yet, at the same time, adheres to the thesis qualifying it in terms of ‘veto’.

6 Cf. Steinwenter (1925=1971); Paoli (1950); Lepri (1960); Just (1965); Just (1968); Just (1970).

7 Ath. Pol. 9.1: τρίτον δὲ ὁ καὶ μάλιστα φασιν ἵσχυκέναι το πλῆθος, ἡ εἰς το δικαστήριον ἔφεσις: κύριος γὰρ ὄν ὁ δήμος τῆς ψήφου, κύριος γίγνεται τής πολιτείας; Ath. Pol. 3.5: κύριοι δ’ ἦσαν καὶ τάς δίκας αὐτοτελεῖς κρίνειν, καὶ οὐχ ὡσπερ νῦν προανακρίνειν; Ath. Pol. 4.4: ἐξῆν δὲ τῷ ἀδικουμένῳ πρὸς τὴν τῶν Ἀρεοπαγιτῶν βουλὴν εἰσαγγέλειν, ἀποφαίνοντι παρ’ ὅν ἀδικεῖται νόμον; Plut. Sol. 18.2: ὁ καὶ ἄρχα μὲν οὐδὲν, ὡστερον δὲ παμμέγεθες ἔφαν; τά γὰρ πλείστα τῶν διαφόρων ενέπιπτεν εἰς τοὺς δικαστὰς, καὶ γὰρ διὰ ταῖς ἄρχαῖς ἔταξε κρίνειν, ὡμοίως καὶ περὶ ἐκείνων εἰς τὸ δικαστήριον ἔφεσες ἔδωκε τοῖς βουλομένοις. See Harris (2006: 3-28), on the aims of Solon and the early Greek lawgivers.

pre-Solonian legal system ἀρχαί were entitled to pass final judgments and to impose penalties on their own initiative (at least as far as the Greek perceptions of the fourth century on the Archaic age are concerned). If the magistrate enacted an ‘unjust’ judicial or administrative measure (for either procedural or substantive reasons), the citizen directly affected by the decision was only allowed to report it to the Areopagus (by filing – it is impossible to be more precise – a ‘reipersecutory’ claim or a penal one). The magisterial judgment was nevertheless final and directly enforceable.

Solon’s procedural reforms had an immediate effect on the legal nature of the magistrates’ acts, granting any Athenian citizen the right to have his case judged by a court of pairs. Indeed, any citizen – if dissatisfied by the magistrate’s decision – was allowed to submit ἔφεσις to obtain a trial in a popular court. Accordingly, on the one hand, ἔφεσις can be labeled as a voluntary procedural remedy available to any party. On the other hand, Solon seems to have just ‘strengthened’ an existing body, that is, the Athenian people as a judicial court (through the attribution of new functions and powers, as well as through its renewed composition).

Once the previous legal characteristics have been specified, one can go further, albeit cautiously. If one believes that the original Solonian remedy and its later applications shared the same and basic legal features, one can use this evidence to refine our interpretation of the data found in the Constitution of the Athenians and in Plutarch’s Life of Solon. Indeed, other testimonia from the Classical period about later periods of Athenian history reveal further features and essential characteristics of

9 On the new (Solonian) composition of the previous (pre-Solonian) ἡλιαιία, cf. Plut. Sol. 18.2 (οἱ δὲ λοιποὶ πάντες ἐκαλοῦν ἡθηκαί, οὐς ὀδεμίαν ἄρχειν ἐδωκεν ἄρχην, ἀλλὰ τῶν συνεκκλησίαζειν καὶ δικάζειν μόνον μετεῖχον τῆς πολιτείας); Ath. Pol. 7.3 (τοῖς δὲ τῶν θητικῶν τελοῦσιν ἐκκλησίας καὶ δικαστηρίων μετέδωκε μόνον). See, moreover, Arist. Pol. 1273b35 – 1274a5 (Σόλωνα δ’ ἐνίοτον οὖν νομοθέτην γενέσθαι σπουδαῖον: ὀλιγαρχίαν τε γὰρ καταλῦσαι λίαν ἄρχατον ὄσον, καὶ δουλεύοντα τὸν δῆμον παῦσαι, καὶ δΗμοκρατίαν καταστῆσαι τὴν πάτριον, μείξαντα καλῶς τὴν πολιτείαν: εἶναι γὰρ τὴν μὲν ἐν Ἀρείῳ πάγω βουλήν ὀλιγαρχίκην, τὸ δὲ τὰς ἄρχας αἱρέτας ἀριστοκρατικῶν, τὰ δὲ δικαστήρια δημοτικῶν. έστι δὲ ἔσων ἐκείνα μὲν ὑπάρχοντα πρότερον ὧν καταλύσας, τὴν τε βουλήν καὶ τὴν τῶν ἄρχων ἀρίστως, τὸν δὲ δῆμον καταστῆσας, τὰ δικαστήρια ποιῆσας ἐκ πάντων). In this passage, the lawgiver is said both to have preserved the existing bodies, and to have founded the ‘ancestral democracy’ (rather than the ‘popular court’ itself) by opening the existing δικαστήρια (that is, plausibly, the articulations of the same institution, i.e. the ἡλιαιία) to everybody (rather than creating ex novo the δικαστήρια): cf. Rhodes (2006: 255, nt. 60). On the importance of the judicial functions ascribed to the Athenian people by Solon, see Maffi (2004: 305-306); Mirhady (2006: 4); Loddo (2015: 99).
the ἔφεσις-remedy. The following paragraphs will deal with the ἀποδοκιμασία of the nine ἄρχοντες (§ 6), with the extraordinary and ordinary ἀποψηφίσεις of Athenian citizens (§ 7), and with the γνώσεις of arbitrators (§ 8). Finally, on the grounds of the data analyzed in this article, some speculative conclusions on the legal nature of ἔφεσις εἰς τὸ δικαστήριον – as far as the Solonian era is concerned – will be proposed (§ 9).

6) The ἀποδοκιμασία of the nine ἄρχοντες.

The main sources for the δοκιμασία (that is the ‘vetting’) of the nine ἄρχοντες (or, better, ‘elected candidates to the nine magistracies’) are Ἀθ. Πολ. 45.3 and Ἀθ. Πολ. 55.2, together with Dem. 20.90.12 If I am not wrong, the following picture emerges from these three passages.

During a first phase (that is before the reform of the rules in force), if the elected ἄρχων (who had to undergo a scrutiny before the Council) was rejected, the procedure stopped and the citizen who failed the δοκιμασία was not entitled to file an action against the negative vote at all. On the contrary, if he passed this first scrutiny at the vote of the Council, he was examined once more before the popular court.

Sometime later a change in the previous arrangement occurred. During a second phase those who did not pass the first scrutiny of the Council exercised their own right to be ‘newly judged’ before the Athenian people by submitting ἔφεσις. The popular decision that – in practice – could either confirm or deny the vote of the Council was final. In the case of a positive vote at the scrutiny the procedure did not change. If this reading is exact, Demosthenes’ interpretation is confirmed. It is correct to maintain that the θεσμοθέται (as well as any other major magistrate), once elected, were to pass a double δοκιμασία in order to enter office. This statement, directly confirmed by Ἀθ. Πολ. 55.2, is not inconsistent with the rules given at Ἀθ. Πολ. 45.3.

As a result, on the basis of these sources: 1. ἔφεσις is not a mandatory transfer, but a remedy to be used only by the rejected citizen against the vote of the Council (as

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12 Dem. 20.90: τούς μὲν θεσμοθέτας τοὺς ἐπὶ τοὺς νόμους κληρουμένους διὰ δοκιμασθέντας ἄρχειν, ἐν τῇ βουλῇ καὶ παρ' ὅμιν ἐν τῷ δικαστηρίῳ.
one can infer by considering the presence of the dative τούτοις and the persistent link existing between ἔφεσις and the verb ἀποδοκιμάζειν only); 2. the scrutiny before the people was a completely new one (which means that the popular court neither quashes, nor amends, nor approves a decision of ‘first instance’); 3. the candidate must be evaluated ex novo, this implying that a new procedure – rather than the second instance of the same procedure – is commenced before the popular court; 4. the rejected ἄρχων does not play the role of appellant before the people; again, he is a ‘candidate under scrutiny’ before the people.

7) Extraordinary and ordinary ἀποψηφίσεις.

In 346/5 B.C., in order to remedy suspected infractions, the Athenians passed the proposal of Demophilus. It stipulated a general ‘scrutiny of the adult citizens’, referred to as a διαψήφισις τῶν ἐγγεγραμμένων τοῖς ληξιαρχικοῖς γραμματείοις. If the demesmen voted under oath against a scrutinized citizen, the latter, once ‘rejected by vote’ (ἀποψηφισθείς), was entitled to submit ἔφεσις in the view of a popular judgment. If the popular court rejected the ἀποψηφισθείς, he had de facto to leave the city: if he lost, he was sold into slavery. If, on the other hand, the vote did not go against him, he remained a citizen (πολίτης) recorded on the deme’s register. Our information about this special procedure mainly comes from Demosthenes’ speech Against Eubulides. In this case, Euxitheus contends that he was unjustly deprived of his citizenship as a result of the maneuverings of one of his enemies, Eubulides (who happened to be either the demarch or the mere representative of the deme of Halimous). This source provides a considerable amount of data dealing with the legal effects of ἔφεσις.

At first, the final removal from the deme’s register (ἐξαλείφεσθαι) is the result of the deme’s ἀποψήφισεις and, at the same time, the consent of the ἀποψηφισθείς. In other words the vote of the deme (which substantially consists of an ‘administrative act’, whereas it formally resembles a ‘judicial pronouncement’) is not legally valid if the citizen does not ἐμμένειν (i.e. ‘to abide by, to stand by, to be true to’, or – that is to say – ‘to agree, to accept’). Accordingly, the relationship between the mere citizen and the ‘administrative body’, resembling the relationship between two ‘parithetic parties’ based on their agreement, turns out to be completely different from our

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15 Cf. LSJ s.v. ἐμμένω.
conceptions in which any ‘authority’ vested with administrative functions is hierarchically superior and entitled to exercise iure imperii a power conferred by public law.

Secondly, since the ἐφιείς plays the role of κατεγορούμενος before the popular court, he is definitely not a real appellant. As a result, the ἔφεσις, as an act filed by the dissatisfied ἀποψηφισθείς, results in a ‘denial of consent’ rather than in a ‘claim’ or in ‘means tending to commence a procedure of second instance’. In other words, if an ἔφεσις is submitted, the demesmen are the only party interested in a new scrutiny, as well as in a popular vote on the same matter. They would therefore start a new procedure only if they remain convinced that the ἀποψηφισθείς does not ἐμμένει, no change occurs. The final removal of the registered citizen cannot take place.

Mutatis mutandis, Ath. Pol. 42.1 confirms the previous legal framework. This passage describes the ordinary ‘scrutiny for citizenship’ (or, better to say, the ordinary ‘δοκιμασία to become ephebes’). The demesmen, acting like judges, voted on the candidates, assessing whether they were the right age and whether they were free and born according to the laws. If a candidate passed, he was immediately recorded. If he did not pass, he could submit ἔφεσις. Once the ἔφεσις is submitted, the demesmen must start the proceedings before the people. This case, in fact, involves a particular interest which it is impossible to satisfy without the ‘public cooperation’. Ath. Pol. 42.1 (along with Dem. 57) provides the following information. If ἔφεσις is submitted by a rejected candidate, the decision of the deme (here consisting of a ‘denial of registration’, and not of a ‘removal from the register’) is not completed since an essential requirement is missing, i.e. the scrutinized young adult’s consent. If ἔφεσις

16 Dem. 57.1: πολλὰ καὶ ψευδῆ κατηγορήκοτος ἡμῶν Εὐβουλίδου, καὶ βλασφημίας οὐτε προσηκούσας οὐτε δίκαια πεποιημένου, πειράσομαι τάληθη καὶ τά δίκαια λέγων, ὦ ἄνδρες δικασταί, δεῖξαι καὶ μετὸν τῆς πόλεως ἡμῶν καὶ πεποιηθός ἐμαυτὸν οὐχί προσήκονθ’ ὑπὸ τοῦτου; Dem. 57.1: ἐπειδὴ τοῖνυν οὗτος εἰδὼς τοὺς νόμους καὶ μᾶλλον ἡ προσήκον, ἀδίκως καὶ πλεονεκτικῶς τὴν κατηγορίαν πεποίηται, ἀναγκαίως ἐμοὶ πρεσβύτερος πρῶτον εἰπεῖν; Dem. 57.17: νῦν δὲ δίκαια νομίζω καὶ τί παρεσκεύασμαι ποιεῖν, ἄνδρες δικασταί; δεῖξαι πρὸς ὑμᾶς ἁμαρτίαν ἅμα τά πρὸς πατρός καὶ τά πρὸς μητρός, καὶ κατηγορούμενος αἱροῦνται πέντε ἄνδρας ἐξ αὑτῶν, κἂν μὲν δόξῃ δικαίως ἐγγράφεσθαι, ἀναγκαία τὰς λοιδορίας καὶ τὰς ἁμαρτίας ἀνελεῖν; Liban. hypoth. Dem. 57: … ἐὰν δὲ ἀποφύγωσι.

17 Ath. Pol. 42.1: μετέχοντι μὲν τῆς πολιτείας οἱ ἐξ ἀμφοτέρων γεγονότες ἀστῶν, ἐγγράφονται δ’ εἰς τοὺς δημοτὰς ὄχθων ἐκ τοῦ νόμου ὁ μὲν ἐν τοῖς δημοταῖς ἐγγραφοῦται καὶ κατηγορούμενος, ὁ δὲ ἐγγράφωνται, διαφιλοσοφοῦνται περὶ αὐτῶν ὁμόφωντες οἱ δημοταί, πρῶτον μὲν εἰ δικοῦσα γεγονέναι τήν ἑλικίαν τῆς ἐκ τοῦ νόμου, κἀν μὴ δύσως, ἀπέρχονται πάλιν εἰς παῖδας, δεύτερον δ’ εἰ ἐλεύθερος ἐστι καὶ γέγονεν κατὰ τοὺς νόμους. ἐπεί’ δὲ ἀποφημίζωσιν μὴ εἴην ἐλεύθερον, ὁ μὲν ἐγέρσιν εἰς τὸ δικαστήριον, οἱ δὲ δημοταί κατηγούροις αἰφνίζοντας πεντε ἄνδρας ἐξ αὐτῶν, κἂν μὲν μὴ δόξῃ δικαίως ἐγγράφεσθαι, πωλεῖ τοῦτον ἡ πόλις: ἐὰν δὲ νικησί, τοῖς δημοταῖς ἔπαναγκές ἐγγράφεσθαι.
is submitted (if the young adult, interested in the record of his own name in the deme register, does not ἐμμένειν – abide by – the ‘denial of registration’), the demesmen, in order to overcome the resulting stalemate, are to proceed by selecting the accusers, and by starting a new scrutiny-procedure before the people. Since the ἐφιείς plays the role of κατεγορούμενος (accused/defendant) before the popular court, he does not file any appeal neither in form, nor in substance.

On the contrary, Is. 12 shows a different and exceptional example of application of ἔφεσις. In my opinion these are the facts.

Euphiletus, once removed from his deme’s register, started a legal action for damages before the public arbitrators. The particular legal proceedings may make sense if one assumes that the demotic scrutiny takes place before the proposal of Demophilus is passed. Accordingly, as far as this time-phase is concerned, the citizen’s consent is not an essential requirement for the removal from the registry and ἔφεσις cannot be submitted. The citizen suffering damages for an unjust removal is allowed to bring a δίκη βλάβης against the demesmen: this is the only procedural remedy provided by the Athenian legislator. After two years, Euphiletus wins the case.20 It is only then that he submits an ἔφεσις to the people (conceivably by supporting an extensive use of the remedy, after the Athenians passed the proposal of Demophilus) and, therefore, sues the demesmen before the people21.

In other words, in this case, the ἐφιείς formally plays the role of διώκων before the popular court. He indeed attacks an already existing, enforceable and binding ‘administrative act of removal’. On the contrary, in Dem. 57 as well as is Ath. Pol. 42.1, in order to surpass the stalemate, the demesmen are to start a new legal procedure before the popular court, and only if they obtain a favorable popular judgment, the negative effects produced by the ἔφεσις are overridden. Yet, the dispute shows, from a substantive point of view, a dialectical structure in which the demesmen act as

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19 Cf., for a short introduction to the speech (and for its Italian translation), Cobetto Ghiggia (2012: 468-479); for different interpretations of the case, see Wyse (1904); Bonner (1907: 416-418), Ralph (1936=1941: 42); Paoli (1950); Just (1968); Hansen (1976: 64, nt. 26); Rhodes (1981: 500); Carey (1997: 213-216); Kapparis (2005).


κατήγοροι, whereas the ἔφεσις-προσκαλεσάμενος acts as a κατεγορούμενος. This use of the ἔφεσις, once compared with the other cases, is revealed to be a fundamental precondition for the legal procedure before the people, rather than a kind of ‘statement of claim’ initiating the legal procedure before the people.

8) The arbitral γνώσις.

As it is well recognized by the current communis opinio, during the fourth century the majority of δίκαι (in accordance with the principle of ‘residuality’) fell under the jurisdiction of the Forty. For private legal actions involving more than ten drachmai, these magistrates – obviously after a first summary decision at least concerned with the value of the matter at issue – referred the case to a board of public arbitrators. A stage of the procedure which partially resembled the ἀνάκρισις took place before them (even though evidence was not just presented, but also examined; the arbitrators made an attempt at conciliation; the δίκη was susceptible to end if the arbitrators, with the agreement of the disputants, passed a final decision).

If that is true, with regard to the legal procedure before public arbitrators, ἔφεσις is neither an appeal, nor a mandatory transfer. Aristotle, along with Demosthenes, presents it as ‘the denial of consent’ expressed by either party (if not by both parties), which is a ‘negative requirement’ of the binding force of the decision of the arbitrator.

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22 Is. 12.8: ἔτα, ὦ ἄνδρες δικασταί, εἰ μὲν οὗτοι ἐκινδύνευον, ἥξιον ἃν τοῖς αὐτῶν οἰκείοις ὑμᾶς πιστεύειν μαρτυροῦσι μᾶλλον ἢ τοῖς κατηγόροις.


24 Steinwenter (1925=1971: 71); Wolff (1946: 79); Thür (2008: 56).

Obviously, if the claimant was dissatisfied by the proposal of the arbitrator, after submitting the ἔφεσις he had an actual interest in obtaining a binding and final judgment ‘on the same matter’ passed by the popular court. On the other hand, if the dissatisfied defendant submitted the ἔφεσις and, accordingly, nullified de facto the decision of the arbitrators, he clearly had no interest in having the case heard again before a popular court. In other words, after the submission of the ἔφεσις, the claimant was the only litigant interested in starting a new procedure before the people and, thence, in a new popular judgment (whether he was the ἐφιείς or not). For such reasons, the case disputed before the arbiter – perhaps due to practice – was referred to the popular court by means of the competent magistrates. This can be inferred from a literal interpretation of Ath. Pol.: the passage under consideration suggests taking the indicative present tense ‘παραδίδοασι’ (the subject of which in my opinion is ‘the parties’ and not the arbiters or the magistrates) on deontic value.

Despite this, ἔφεσις is completely different from a magisterial εἰσαγωγή and from a true appeal. It stands for ‘absence of ἐμμένειν’ (‘the absence of consent’) and, as a negative requirement, it prevents a final and binding award. It provokes the referral, but it cannot be identified with the latter itself (so that, in such cases, the devolutive effect is just an indirect and passing one). It is not a magisterial act (but, clearly, an act of a disputant). It is not a mandatory act (since its submission takes place only according with one party’s will).

9. Some conclusions on the legal nature of the Solonian reform.

If one is allowed to extend to the original ἔφεσις the traits characterizing the more recent applications of this procedural institution, the following legal figure, though conjecturally, emerges. The Solonian ἔφεσις:
- is an ‘act of any dissatisfied citizen’ affected by a formal ‘authoritative decision’ pronounced by a magistrate (as well as by a public body or by an arbitrator, in later times); 28

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26 Lex. Seg. s.v. ἔφεσις: εἴσοδος ἡ εἰς ἄλλο δικαστήριον ἐφιεμένη ὑπὲρ τοῦ κριθῆναι αὐθίς τὸ αὐτὸ πράγμα.

27 This practice may be considered the ground for several lexicographic definitions: they seem to confuse the effect with the cause (probably influenced by the Hellenistic ἔκκλητος δίκη, a legal procedure which ended up overlapping with ἔφεσις: cf. Cataldi [1979]): Harp. s.v. ἔφεσις: ἡ ἔξοδος δικαστηρίου εἰς ἔτερον μεταγωγή· τὸ δὲ αὐτὸ καὶ ἐκκλήτος καλεῖται; Diogen. s.v. ἔφεσις: ἡ ἀπὸ τοῦ δικαστηρίου εἰς ἔτερον δικαστήριον μετάβασις; Etym. Mag. s.v. ἔφεσις: ἡ ἔξοδος δικαστηρίου εἰς ἔτερον δικαστήριον μεταγωγή· τὸ δὲ αὐτὸ καὶ ἐκκλήτος καλεῖται. τὸ οὖν ἔφεσις ἀπὸ τοῦ ἐφεῖναι ῥήματος.

28 Cf. Ath. Pol. 53.2; Dem. 40.17; Dem. 40.31; Dem. 40.55. See, moreover, Ath. Pol. 45.1-2: ὁ δὲ δήμος ἀφείλετο τῆς βουλῆς τὸ θανατοῦν καὶ δεῖν καὶ χρήμασι ζημιοῦν, καὶ νόμον
- is a ‘negative requirement’, that prevents the binding force and the enforceability of the ‘authoritative decision’ (which is not necessarily a ‘judicial ruling’ only, but can also be an ‘administrative and coercive measure’);

- is a ‘pre-condition of the popular procedure’; by blocking the previous decision, it does not introduce, from a strict procedural point of view, a ‘revisio prioris instansiae’ or a ‘prosecutio prioris instansiae’;

ἔθετο, ἂν τίνος ἀδίκειν ἡ βουλὴ καταγνῷ ἢ ζημιώσῃ, τὰς καταγνώσεις καὶ τὰς ἐπιζημιώσεις εἰσάγειν τοὺς θεσμοθέτας εἰς τὸ δικαστήριον, καὶ ὅ τι ἄν οἱ δικασταὶ ψήφισσον, τοῦτο κύριον εἶναι. κρίνει δὲ τὰς ἀρχὰς ἡ βουλή τὰς πλείστας, καὶ καταγνῷ ἢ δοξάσῃ διαχειρίζουσιν: οὐ κυρία δ’ ἡ κρίσις, ἂλλ’ ἐφέσις εἰς τὸ δικαστήριον. ἔξεστι δὲ καὶ τοῖς ἀδικοῦσιν εἰς τὸ δικαστήριον, ἐὰν αὐτῶν ἡ βουλὴ καταγνῶ (according to Lipsius [1905-1915: 198], if the Council voted against the denounced magistrate and condemned him to a fine within the τέλος of five-hundred drachmai, he was allowed to ‘appeal’ to the people; contra, cf. Bonner - Smith [1930-1938: 2.240-243], who believe that the verb εἰσάγειν and the noun ἔφεσις overlap and imply only a mandatory transfer when a fine exceeding five-hundred drachmai is at stake). On the contrary, Dem. 34.21, quoted by Ruschenbusch (1961: 389), is not relevant, if one reads ἀφῆκεν (cf., in this sense, Wade-Gery [1958: 193, nt. 4]).

For ἔφεσις as a voluntary act of the dissatisfied party, even the following inscriptions are relevant. Cf. IG II² 1128, 20 (regulations passed by Karthaia, Koresos and Ioulis on Kea in response to Athenian decrees concerning the export of ruddle), where the procedural remedy at issue is submitted by the dissatisfied accuser after a simple vote by the officials (and not as ‘cause of replacement-procedure for the initial decision’): τὴν δὲ ἔνδειξιν εἶναι αἰς πρὸς τοὺς ἀστυνόμους, τοὺς δὲ ἀστυνόμους δοῦναί τὴν ψῆφον περὶ αὐτῆς τριάκοντα (…)/ (…) τῶι δικαστήριον, τῶι δὲ φήναντι ἢ ἐνδείξαντι (…) / (…) τῶι ἡμισέωι· ἐὰν δὲ δοῦλος ἦι ὁ ἐνδείξας, ἐὰμ μὲν τῶι ἐξαγόντωι ἢ, ἐλεύθερος / / ἔστω καὶ τὰ τρία μέρη ἐστω αὐτῶι· ἐὰν δὲ ἄλλου τινὸς ἦι, ἐλεύθερος ἔστω καὶ (…) / (…) ἔφεσιν Ἀθήναζε καὶ τῶι φήναντι καὶ τῶι ἐνδείξαντι (cf., moreover, IG II¹ 111,49; IG II² 404, 17; IG II² 179, 14); IG II² 1183, 20-21 (regulation of the Deme of Hagnous concerning the duties of the demarch), where it is stipulated that, if the ten elected men condemn the demarch who is undergoing the euthynai–procedure, the latter is allowed to submit the decision to a vote by all the demesmen: τὴν δὲ ψῆφον διδότω ὁ νέος δήμαρχος καὶ ἐξορκοῦτω αὐτοῖς διανοθήκην καὶ διδάσκαλον νὰς δημοτῶι· ἐὰν δὲ τις ἐφῆ, ἐξορκοῦτω ὁ δήμαρχος τοὺς δημοταίς - / / ὡς ὁ δήμαρχος καταψηφίζω τις τῶι δημοταίς· ἐὰν δὲ τις ἐφῆ, ἐξορκοῦτω ὁ δήμαρχος τοὺς δημοταίς - / / ὡς ὁ δήμαρχος καταψηφίζω τις τῶι δημοταίς· ἐὰν δὲ τις ἐφῆ, ἐξορκοῦτω ὁ δήμαρχος τοὺς δημοταίς - / / ὡς ὁ δήμαρχος καταψηφίζω τις τῶι δημοταίς; IG II² 1237, 29-40 (Athenian phratry decrees of Dekelea), where a provision allows anyone who is rejected by the phratry to submit ἔφεσις and, accordingly, to undergo a re-trial before the Demotionidai: ἐ- / / ἐὰν δὲ τοὺς δημοταίς ἐφῄνω τοὺς δημοταίς· ἐὰν δὲ καταψηφίζω τοὺς δημοταίς· ἐὰν δὲ τις ἐφῇ τοὺς δημοταίς - / / ὡς ὁ δήμαρχος καταψηφίζω τις τῶι δημοταίς· ἐὰν δὲ τις ἐφῇ τοὺς δημοταίς - / / ὡς ὁ δήμαρχος καταψηφίζω τις τῶι δημοταίς· ἐὰν δὲ τις ἐφῇ τοὺς δημοταίς - / / ὡς ὁ δήμαρχος καταψηφίζω τις τῶι δημοταίς.

Against my view, IG I³ 179, 14; IG I³ 305, 1-8 (Athenian phratry decrees of Dekelea), where a provision allows anyone who is rejected by the phratry to submit ἔφεσις and, accordingly, to undergo a re-trial before the Demotionidai: ἐ- / / ἐὰν δὲ τοὺς δημοταίς ἐφῄνω τοὺς δημοταίς, ἐὰν δὲ καταψηφίζω τοὺς δημοταίς, ἐὰν δὲ τις ἐφῇ τοὺς δημοταίς, ἐὰν δὲ καταψηφίζω τοὺς δημοταίς. ἐὰν δὲ τις ἐφῇ τοὺς δημοταίς, ἐὰν δὲ καταψηφίζω τοὺς δημοταίς, ἐὰν δὲ τις ἐφῇ τοὺς δημοταίς, ἐὰν δὲ καταψηφίζω τοὺς δημοταίς.

I would like to thank Edward Harris for pointing out these passages to me.
- brings about a new legal procedure before the people, without being neither a proper ‘statement of claim’ at first instance, nor a formal ‘appeal’ from a lower judge to a higher one;
- produces negative effects on the (proposed) ‘authoritative decision’. This also means that the legal procedure before the popular court is a new one on the same matter and between the same parties playing the same role (παλινδικία), as well as that the popular ruling (by declaring the ἔφεσις founded or unfounded) neither quashes, nor amends, nor confirms the decision challenged by the ἔφιες, but constitutes a final judgment given for the first time;
- is a ‘denial of consent’ which means that, from Solon on, the ‘agreement’ is conceived of as an essential element for any ‘official act’ both substantially determined by a public authority (different from the people) and directly affecting one member of the people.

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29 If this is true (i.e. if after Solon passed his procedural reform on ἔφεσις the ‘agreement of the parties’ was an ‘essential element’ for a final decision), on the basis of a well known passage from the corpus Demosthenicum, i.e. Dem. 43.75, one could suggest some further ‘speculative considerations’ (rather than ‘historically grounded considerations’, as Edward Harris per epistulam has pointed out to me, given that the document at issue is probably a forgery): ὁ ἄρχων ἑπιμελείσθω τῶν ὀρφανῶν καὶ τῶν ἐπίκληρων καὶ τῶν ὀικῶν τῶν ἔξερημούμενων καὶ τῶν γυναικῶν, ὅσα μένουσιν ἐν τοῖς ὀικοῖς τῶν ἀνδρῶν τῶν τεθνηκότων φάσκουσαι κυεῖν. τούτων ἑπιμελείσθω καὶ μὴ ἐάτω ὑπερίζειν μηδένα περὶ τούτους, ἐὰν δὲ τις ὑβρίζῃ ἢ ποιῇ τι παράνομο, κύριος ἔστω ἐπιβάλλειν κατὰ τὸ τέλος, ἐὰν δὲ μείζονος ζημίας δοκῇ ἄξιος εἶναι, προσκαλεσάμενος πρόπεμπτα καὶ τίμημα ἐπιγράψάμενος, ὃ τι ἄν δοκῇ αὕτῳ, εἰσαγέτω εἰς τὴν ἡλιαίαν. ἐὰν δὲ ἁλῷ, τιμάτω ἡ ἡλιαία περὶ τοῦ ἁλόντος, ὃ τι χρὴ αὐτὸν παθεῖν ἢ ἀποτεῖσαι (see, moreover, Ἀθ. Πολ. 56.7: ἑπιμελεῖται δὲ καὶ τῶν ὀρφανῶν καὶ τῶν ἐπικλήρων, καὶ τῶν γυναικῶν ὅσα ἄν τελευτήσαντος τοῦ ἀνδρὸς αὐτοῦ κύειν. καὶ κύριος ἄτοις ἀδικοῦσιν ἑπιβάλλειν ἢ εἰσάγειν εἰς τὸ δικαστήριον). The νόμος stipulates that the ἄρχων – who had to take care of children without fathers, ἐπίκληρος, οἶκοι left destitute of heirs, and all pregnant women who remained in the οἴκοι of their deceased husbands – was entitled to prohibit ‘anyone’ (rather than only relatives or guardians) from committing ὑβρῖς to the protected individuals, as well as to punish the offender by giving a final decision, provided that the τέλος imposed by law was respected (i.e. the fine was imposed both ratione materiae, i.e. according to the ἄρχων’s competence, and within a given value-limit). It is noteworthy to highlight that such rules do not make any allusion to ἔφεσις to the popular court. They just deal with a ‘magisterial referral’ in terms of ἐισάγειν. They describe an archaic procedure and show an example of prosecutorial discretion of the ἄρχων; no mention to ὁ βουλόμενος occurs. The name ἡλιαία does not prove the post-Solian origin of the rules. On these grounds, if one supposes that the νόμος reproduced in the document is (substantially) a Solonian one, but even repeating earlier provisions, the following diachronic shift appears (provided that the referral was always compulsory if the magistrate proposed penalties that were higher than a certain amount). Before Solon’s reforms (cf. Ἀθ. Πολ. 4.4), the person aggrieved was entitled to take a new legal action before the Areopagus, denouncing the violation perpetrated by the ἄρχων (if he infringes his own competence ratione materiae or goes beyond the given value-limit: cf., amplius, Pelloso [2014-2015]). Once Solon introduced ἔφεσις, even if the fine was within the legal
By the time of Solon, one could hardly qualify the ἔφεσις εἰς τὸ δικαστήριον as an ‘appeal to the people’; by the time of Solon, one could hardly qualify the ἔφεσις εἰς τὸ δικαστήριον as an ‘obligatory reference’; by the time of Solon, one – albeit tautologically – could qualify the ἔφεσις just as ἔφεσις.
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