CARLO PELLOSO (VERONA)

EPHESIS EIS TO DIKASTERION: REMARKS AND SPECULATIONS ON THE LEGAL NATURE OF THE SOLONIAN REFORM

Summary: 1) Introduction. - 2) The opinion considering the Solonian ἔφεσις a true appeal. - 3) The opinion considering the Solonian ἔφεσις a mandatory reference. - 4) The view that interprets the Solonian ἔφεσις as a remedy with negative effects. - 5) The basic information provided by the Aristotelian *Constitution of the Athenians* and by Plutarch. - 6) The ἀποδοκιμασία of the nine ἄρχοντες. - 7) Extraordinary and ordinary ἀποψηφίσεις. - 8) The arbitral γνῶσις. - 9) Some conclusions on the legal nature of the Solonian reform. - Bibliography.

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]

Almeida (2003: 66); Mirhady (2006); Rhodes (2006: 255); Noussia-Fantuzzi (2010: 26-27); Leão - Rhodes (2015: 67-68).

[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 - Swoboda (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.[5] 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).[6] 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*,[7] 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).[8] In other words, in the

[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 ᾧ καὶ μάλιστά φασιν ἰσχυκέναι τὸ πλῆθος, ἡ εἰς τὸ δικαστήριον ἔφεσις: κύριος γὰρ ὢν ὁ δῆμος τῆς ψήφου, κύριος γίγνεται τῆς πολιτείας; *Ath. Pol.* 3.5: κύριοι δ' ἦσαν καὶ τὰς δίκας αὐτοτελεῖς κρίνειν, καὶ οὐχ ὥσπερ νῦν προανακρίνειν; *Ath. Pol.* 4.4: ἐξῆν δὲ τῷ ἀδικουμένῳ πρὸς τὴν τῶν Ἀρεοπαγιτῶν βουλὴν εἰσαγγέλλειν, ἀποφαίνοντι παρ' ὃν ἀδικεῖται νόμον; Plut. *Sol.* 18.2: ὃ κατ' ἀρχὰς μὲν οὐδέν, ὕστερον δὲ παμμέγεθες ἐφάνη: τὰ γὰρ πλεῖστα τῶν διαφόρων ἐνέπιπτεν εἰς τοὺς δικαστάς. καὶ γὰρ ὅσα ταῖς ἀρχαῖς ἔταξε κρίνειν, ὁμοίως καὶ περὶ ἐκείνων εἰς τὸ δικαστήριον ἐφέσεις ἔδωκε τοῖς βουλομένοις. See Harris (2006: 3-28), on the aims of Solon and the early Greek lawgivers.

[8] Cf., *amplius*, Pelloso (2014-2015).

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).[9] In *Constitution of the Athenians* Solon is said to have created a new procedure introduced by 'ἔφεσις' (rather than to have created the 'popular court' at the same time). Moreover, in Plutarch's account, from Solon on, the popular court judged the majority of legal disputes (but not all of them), 'even' those included under the jurisdiction of magistrates (i.e. all those proceedings started before a magistrate, alongside other, although not better identified, disputes).

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 ἐκαλοῦντο θῆτες, οἷς οὐδεμίαν ἄρχειν ἔδωκεν ἀρχήν, ἀλλὰ τῷ συνεκκλησιάζειν καὶ δικάζειν μόνον μετεῖχον τῆς πολιτείας); *Ath. Pol.* 7.3 (τοῖς δὲ τὸ θητικὸν τελοῦσιν ἐκκλησίας καὶ δικαστηρίων μετέδωκε μόνον). See, moreover, Arist. *Pol.* 1273b35 - 1274a5 (Σόλωνα δ' ἔνιοι μὲν οἴονται νομοθέτην γενέσθαι σπουδαῖον: ὀλιγαρχίαν τε γὰρ καταλῦσαι λίαν ἄκρατον οὖσαν, καὶ δουλεύοντα τὸν δῆμον παῦσαι, καὶ δημοκρατίαν καταστῆσαι τὴν πάτριον, μείξαντα καλῶς τὴν πολιτείαν: εἶναι γὰρ τὴν μὲν ἐν Ἀρείῳ πάγῳ βουλὴν ὀλιγαρχικόν, τὸ δὲ τὰς ἀρχὰς αἱρετὰς ἀριστοκρατικόν, τὰ δὲ δικαστήρια δημοτικόν. ἔοικε δὲ Σόλων ἐκεῖνα μὲν ὑπάρχοντα πρότερον οὐ καταλῦσαι, τήν τε βουλὴν καὶ τὴν τῶν ἀρχῶν αἵρεσιν, τὸν δὲ δῆμον καταστῆσαι, τὰ δικαστήρια ποιήσας 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 ἡλιαία) 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 γνῶσις 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')[10] are *Ath. Pol.* 45.3 and *Ath. Pol.* 55.2,[11] 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 *Ath. Pol.* 55.2, is not inconsistent with the rules given at *Ath. Pol.* 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

---

[10] Cf. Feyel (2009: 25-27, 148-197, 171-181, 363-370).

[11] *Ath. Pol.* 45.3: δοκιμάζει δὲ καὶ τοὺς βουλευτὰς τοὺς τὸν ὕστερον ἐνιαυτὸν βουλεύσοντας καὶ τοὺς ἐννέα ἄρχοντας. καὶ πρότερον μὲν ἦν ἀποδοκιμάσαι κυρία, νῦν δὲ τούτοις ἔφεσίς ἐστιν εἰς τὸ δικαστήριον; *Ath. Pol.* 55.2: δοκιμάζονται δ' οὗτοι πρῶτον μὲν ἐν τῇ βουλῇ τοῖς φ', πλὴν τοῦ γραμματέως, οὗτος δ' ἐν δικαστηρίῳ μόνον ὥσπερ οἱ ἄλλοι ἄρχοντες πάντες γὰρ καὶ οἱ κληρωτοὶ καὶ οἱ χειροτονητοὶ δοκιμασθέντες ἄρχουσιν, οἱ δ' ἐννέα ἄρχοντες ἔν τε τῇ βουλῇ καὶ πάλιν ἐν δικαστηρίῳ. καὶ πρότερον μὲν οὐκ ἦρχεν ὅντιν' ἀποδοκιμάσειεν ἡ βουλή, νῦν δ' ἔφεσίς ἐστιν εἰς τὸ δικαστήριον, καὶ τοῦτο κύριόν ἐστι τῆς δοκιμασίας. On the temporal scanning of the amendments of the rules at issue, cf. Wilamowitz-Moellendorff (1893: 2.189); Hignett (1952: 205); Rhodes (1972: 176-178, 205, 316, 538); Rhodes (1981: 616-617); Lepri Sorge (1987: 432-433).

[12] Dem. 20.90: τοὺς μὲν θεσμοθέτας τοὺς ἐπὶ τοὺς νόμους κληρουμένους δὶς δοκιμασθέντας ἄρχειν, ἔν τε τῇ βουλῇ καὶ παρ' ὑμῖν 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.[13] 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 ἀποψήφισις and, at the same time, the consent of the ἀποψηφισθείς.[14] 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').[15] 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

---

[13] On the διαψηφίσεις, cf. Whitehead (1986: 99-109); Feyel 2009 (143-148).

[14] Liban. *hypoth.* Dem. 57: Γράφεται νόμος παρ' Ἀθηναίοις γενέσθαι ζήτησιν πάντων τῶν ἐγγεγραμμένων τοῖς ληξιαρχικοῖς γραμματείοις εἴτε γνήσιοι πολῖταί εἰσιν εἴτε μή, τοὺς δὲ μὴ γεγονότας ἐξ ἀστοῦ καὶ ἐξ ἀστῆς ἐξαλείφεσθαι, διαψηφίζεσθαι δὲ περὶ πάντων τοὺς δημότας, καὶ τοὺς μὲν ἀποψηφισθέντας καὶ ἐμμείναντας τῇ ψήφῳ τῶν δημοτῶν ἐξαληλίφθαι καὶ εἶναι μετοίκους, τοῖς δὲ βουλομένοις ἔφεσιν εἰς δικαστὰς δεδόσθαι, κἂν μὲν ἁλῶσι καὶ παρὰ τῷ δικαστηρίῳ, πεπρᾶσθαι, ἐὰν δὲ ἀποφύγωσιν, εἶναι πολίτας; cf., moreover, Dem. 57.12: … καὶ ὅ τι γνοίησαν περὶ ἐμοῦ, τούτοις ἤθελον ἐμμένειν. The source is reliable: cf. Rhodes (1981: 502) and Harris (2013: 76 and nt. 52), *pace* MacDowell (2009: 288).

[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.[16] 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 must be removed from the register, without being compelled to file the case before the popular court. Since a super-individual interest is concerned, it is up to the administrative body to continue the procedure. Otherwise, given that the ἀποψηφισθείς does not ἐμμένειν, no change occurs. The final removal of the registered citizen cannot take place.

Mutatis mutandis, *Ath. Pol.* 42.1 confirms the previous legal framework.[17] This passage describes the ordinary 'scrutiny for citizenship' (or, better to say, the ordinary 'δοκιμασία to become ephebes').[18] 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 κατηγορηκότος ἡμῶν Εὐβουλίδου, καὶ βλασφημίας οὔτε προσηκούσας οὔτε δικαίας πεποιημένου, πειράσομαι τἀληθῆ καὶ τὰ δίκαια λέγων, ὦ ἄνδρες δικασταί, δεῖξαι καὶ μετὸν τῆς πόλεως ἡμῖν καὶ πεπονθότ' ἐμαυτὸν οὐχὶ προσήκονθ' ὑπὸ τούτου; Dem. 57.1: ἐπειδὴ τοίνυν οὗτος εἰδὼς τοὺς νόμους καὶ μᾶλλον ἢ προσῆκεν, ἀδίκως καὶ πλεονεκτικῶς τὴν κατηγορίαν πεποίηται, ἀναγκαῖον ἐμοὶ περὶ ὧν ἐν τοῖς δημόταις ὑβρίσθην πρῶτον εἰπεῖν; Dem. 57.17: νῦν δὲ τί δίκαιον νομίζω καὶ τί παρεσκεύασμαι ποιεῖν, ἄνδρες δικασταί; δεῖξαι πρὸς ὑμᾶς ἐμαυτὸν Ἀθηναῖον ὄντα καὶ τὰ πρὸς πατρὸς καὶ τὰ πρὸς μητρός, καὶ μάρτυρας τούτων, οὓς ὑμεῖς ἀληθεῖς φήσετ' εἶναι, παρασχέσθαι, τὰς δὲ λοιδορίας καὶ τὰς αἰτίας ἀνελεῖν; Liban. *hypoth.* Dem. 57: … ἐὰν δὲ ἀποφύγωσιν.

[17] *Ath. Pol.* 42.1: μετέχουσιν μὲν τῆς πολιτείας οἱ ἐξ ἀμφοτέρων γεγονότες ἀστῶν, ἐγγράφονται δ' εἰς τοὺς δημότας ὀκτωκαίδεκα ἔτη γεγονότες. ὅταν δ' ἐγγράφωνται, διαψηφίζονται περὶ αὐτῶν ὀμόσαντες οἱ δημόται, πρῶτον μὲν εἰ δοκοῦσι γεγονέναι τὴν ἡλικίαν τὴν ἐκ τοῦ νόμου, κἂν μὴ δόξωσι, ἀπέρχονται πάλιν εἰς παῖδας, δεύτερον δ' εἰ ἐλεύθερός ἐστι καὶ γέγονε κατὰ τοὺς νόμους. ἔπειτ' ἂν μὲν ἀποψηφίσωνται μὴ εἶναι ἐλεύθερον, ὁ μὲν ἐφίησιν εἰς τὸ δικαστήριον, οἱ δὲ δημόται κατηγόρους αἱροῦνται πέντε ἄνδρας ἐξ αὑτῶν, κἂν μὲν μὴ δόξῃ δικαίως ἐγγράφεσθαι, πωλεῖ τοῦτον ἡ πόλις: ἐὰν δὲ νικήσῃ, τοῖς δημόταις ἐπάναγκες ἐγγράφειν.

[18] Cf. Pélékidis (1962: 86-89); Scafuro (1994); Lape (2000: 191-198); Robertson (2000).

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[19]. 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 people[21].

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

[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).

[20] Is. 12.11: ἔλαχεν ὁ Εὐφίλητος τὴν δίκην τὴν προτέραν τῷ κοινῷ τῶν δημοτῶν καὶ τῷ τότε δημαρχοῦντι, ὃς νῦν τετελεύτηκε, δύο ἔτη τοῦ διαιτητοῦ τὴν δίαιταν ἔχοντος; Is. 12.11: τοῖς δὲ διαιτῶσι μέγιστα <ταῦτα> σημεῖα ἦν τοῦ ψεύδεσθαι τούτους, καὶ κατεδιῄτησαν αὐτῶν ἀμφότεροι; Is. 12.12: ὡς μὲν τοίνυν καὶ τότε ὦφλον τὴν δίαιταν, ἀκηκόατε.

[21] Dion. Hal. *Is.* 14.19-20: ἡ ὑπὲρ Εὐφιλήτου πρὸς τὸν Ἐρχιέων δῆμον ἔφεσις; Dion. Hal. *Is.* 16.25-37: ποιήσω καὶ τοῦτο, προχειρισάμενος τὸν ὑπὲρ Εὐφιλήτου λόγον, ἐν ᾧ τὸν Ἐρχιέων δῆμον εἰς τὸ δικαστήριον προσκαλεῖταί τις τῶν ἀποψηφισθέντων ὡς ἀδίκως τῆς πολιτείας ἀπελαυνόμενος. ἐγράφη γὰρ δή τις ὑπὸ τῶν Ἀθηναίων νόμος ἐξέτασιν γενέσθαι τῶν πολιτῶν κατὰ δήμους, τὸν δὲ ἀποψηφισθέντα ὑπὸ τῶν δημοτῶν τῆς πολιτείας μετέχειν, τοῖς δὲ ἀδίκως ἀποψηφισθεῖσιν ἔφεσιν εἰς τὸ δικαστήριον εἶναι, προσκαλεσαμένεοις τοὺς δημότας, καὶ ἐὰν τὸ δεύτερον ἐξελεγχθῶσι, πεπρᾶσθαι αὐτοὺς καὶ τὰ χρήματα εἶναι δημόσια. κατὰ τοῦτον τὸν νόμον ὁ Εὐφίλητος προσκαλεσάμενος τοὺς Ἐρχιέας ὡς ἀδίκως καταψηφισαμένους αὐτοῦ τὸν ἀγῶνα τόνδε διατίθεται.

κατήγοροι, whereas the ἐφιείς-προσκαλεσάμενος acts as a κατεγορούμενος.[22] 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* γνῶσις.

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).[23] Since the claimant and the defendant had to express their agreement about the substance of the γνῶσις suggested by the public arbitrators, such a decision cannot be easily defined as a 'binding award', or as a proper 'judgment'. It rather looks like a proposal submitted to the disputants.[24] 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.[25]

---

[22] Is. 12.8: εἶτα, ὦ ἄνδρες δικασταί, εἰ μὲν οὗτοι ἐκινδύνευον, ἠξίουν ἂν τοῖς αὑτῶν οἰκείοις ὑμᾶς πιστεύειν μαρτυροῦσι μᾶλλον ἢ τοῖς κατηγόροις.

[23] Harrison (1971: 66-68, 73-74); MacDowell (1971); Biscardi (1982: 264); Todd (1993: 128-129); Scafuro (1997: 35-37, 383-391). On the features of ἀνάκρισις, see Harris (2013: 210-213).

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

[25] Cf. *Ath. Pol.* 53.2: οἱ δὲ παραλαβόντες, ἐὰν μὴ δύνωνται διαλῦσαι, γιγνώσκουσι, κἂν μὲν ἀμφοτέροις ἀρέσκῃ τὰ γνωσθέντα καὶ ἐμμένωσιν, ἔχει τέλος ἡ δίκη. ἂν δ' ὁ ἕτερος ἐφῇ τῶν ἀντιδίκων εἰς τὸ δικαστήριον, ἐμβαλόντες τὰς μαρτυρίας καὶ τὰς προκλήσεις καὶ τοὺς νόμους εἰς ἐχίνους, χωρὶς μὲν τὰς τοῦ διώκοντος, χωρὶς δὲ τὰς τοῦ φεύγοντος, καὶ τούτους κατασημηνάμενοι, καὶ τὴν γνῶσιν τοῦ διαιτητοῦ γεγραμμένην ἐν γραμματείῳ προσαρτήσαντες, παραδιδόασι τοῖς δ# τοῖς τὴν φυλὴν τοῦ φεύγοντος δικάζουσιν; Dem. 23.59: οἱ δικασταὶ δ' ἀκούσαντες, εἰς οὓς ἐφῆκεν, ταὐτὰ καὶ τοῖς τούτου φίλοις καὶ τῷ διαιτητῇ περὶ αὐτῶν ἔγνωσαν καὶ δέκα ταλάντων ἐτίμησαν; Dem. 40.17: καὶ οὗτος συνειδὼς αὑτῷ ἀδίκως ἐγκαλοῦντι οὔτε ἐφῆκεν εἰς τὸ δικαστήριον, οὔτε νῦν περὶ ἐκείνων εἴληχέ μοι δίκην οὐδεμίαν; Dem. 40.31: ἔτι δὲ πάντες ὑμῖν οἱ πρὸς τῷ διαιτητῇ παρόντες μεμαρτυρήκασιν ὡς οὗτος παρὼν αὐτός, ὅτε ἀπεδιῄτησέ μου ὁ διαιτητής, οὔτε ἐφῆκεν εἰς τὸ δικαστήριον ἐνέμεινέ τε τῇ διαίτῃ. καίτοι ἄτοπον δοκεῖ μοι εἶναι, εἰ οἱ μὲν ἄλλοι, ὅταν οἴωνται ἀδικεῖσθαι, καὶ τὰς πάνυ μικρὰς δίκας εἰς ὑμᾶς ἐφιᾶσιν, οὗτος δέ μοι περὶ προικὸς δίκην ταλάντου λαχών, ταύτης, ὡς αὐτός φησιν, ἀδίκως ἀποδιαιτηθείσης ἐνέμεινεν; Dem. 40.55: τούτοις δ', εἰ φασὶν ἀδίκως ἀποδιαιτῆσαί μου τὸν διαιτητὴν τὰς δίκας, καὶ τότ' ἐξῆν εἰς ὑμᾶς ἐφεῖναι καὶ νῦν ἐγγενήσεται πάλιν, ἐὰν βούλωνται, παρ' ἐμοῦ λαβεῖν ἐν ὑμῖν τὸ δίκαιον.

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'[26] 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.[27] This can be inferred from a literal interpretation of *Ath.Pol.*: the passage under consideration suggests taking the indicative present tense 'παραδιδόασι' (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]

---

[26] Lex. Seg. s.v. ἔφεσις: εἴσοδος ἡ εἰς ἄλλο δικαστήριον ἐφιεμένη ὑπὲρ τοῦ κριθῆναι αὖθις τὸ αὐτὸ πρᾶγμα.

[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 ἐξ ἑτέρου δικαστηρίου εἰς ἕτερον μεταγωγή· τὸ δὲ αὐτὸ καὶ ἔκκλητος καλεῖται; Diogen. s.v. ἔφεσις: ἡ ἀπὸ τοῦ δικαστηρίου εἰς ἕτερον δικαστήριον μετάβασις; Etym. Mag. s.v. ἔφεσις: Ἡ ἐκ δικαστηρίου οἱουδήποτε ἐφ' ἕτερον δικαστήριον μεταγωγή· ἡ εἰς ἄλλο δικαστήριον ἐφιεμένη δίκη ὑπὲρ τοῦ κριθῆναι πάλιν (cf., moreover, Lex. Simeonis); Lex. Seg. s.v. ἔφεσις: εἴσοδος ἡ εἰς ἄλλο δικαστήριον ἐφιεμένη ὑπὲρ τοῦ κριθῆναι αὖθις τὸ αὐτὸ πρᾶγμα; Lex Byz. Jur.: Ἔφεσις λέγεται ἡ ἔκκλητος; Suda s.v. ἔφεσις: ἡ ἐξ ἑτέρου δικαστηρίου εἰς ἕτερον μεταγωγή. τὸ δὲ αὐτὸ καὶ ἔκκλητος 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 δῆμος 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 instantiae*' or a '*prosecutio prioris instantiae*';

ἔθετο, ἄν τινος ἀδικεῖν ἡ βουλὴ καταγνῷ ἢ ζημιώσῃ, τὰς καταγνώσεις καὶ τὰς ἐπιζημιώσεις εἰσάγειν τοὺς θεσμοθέτας εἰς τὸ δικαστήριον, καὶ ὅ τι ἂν οἱ δικασταὶ ψηφίσωνται, τοῦτο κύριον εἶναι. κρίνει δὲ τὰς ἀρχὰς ἡ βουλὴ τὰς πλείστας, καὶ μάλισθ' ὅσαι χρήματα διαχειρίζουσιν: οὐ κυρία δ' ἡ κρίσις, ἀλλ' ἐφέσιμος εἰς τὸ δικαστήριον. ἔξεστι δὲ καὶ τοῖς ἰδιώταις εἰσαγγέλλειν ἣν ἂν βούλωνται τῶν ἀρχῶν μὴ χρῆσθαι τοῖς νόμοις: ἔφεσις δὲ καὶ τούτοις ἐστὶν εἰς τὸ δικαστήριον, ἐὰν αὐτῶν ἡ βουλὴ καταγνῷ (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* II^2 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 εἶν]- // αι πρὸς τοὺς ἀστυνόμους, τοὺς δὲ ἀστυνόμους δοῦνα[ι τὴν ψῆφον περὶ αὐτῆς τριάκοντα ἡ]- // μερῶν εἰς τὸ δικαστήριον· τῶι δὲ φήναντι ἢ ἐνδείξαντ[ι (...) // (...) τῶν ἡμι]- // σ[έ]ων· ἐὰν δὲ δοῦλος ἦι ὁ ἐνδείξας, ἐὰμ μὲν τῶν ἐξαγόν[των ἦι, ἐλεύθερος // ἔστω καὶ τὰ τρ]- // [ί]α μέρη ἔστω αὐτῶι· ἐὰν δὲ ἄλλου τινὸς ἦι, ἐλεύθερος ἔστ[ω καὶ (...) // (...) εἶν]- // αι [δὲ] καὶ ἔφεσιν Ἀθήναζε καὶ τῶι φήναντι καὶ τῶι ἐνδεί[ξαντι (cf., moreover, *IG* II^2 111,49; *IG* II^2 404, 17; *IG* II^2 179, 14); *IG* II^2 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 ν]-[έ]ος δήμαρχος καὶ ἐξορκού[τ]ω αὐτοὺς ἐναντίον τῶν δημο[τῶ]- // [ν]· εἶναι δὲ καὶ ἔφεσιν αὐτῶι [ε]ἰς ἅπαν̣τας τοὺς δημότας· ἐ[ὰν] // [δ]έ τις ἐφῆι, ἐξορκούτω ὁ δήμα[ρ]χος τοὺ<ς> δημότας καὶ διδό[τω] // [τ]ὴν ψῆφον ἐὰν παρῶσιν μὴ ἐλάττους ἢ ΔΔΔ ἐὰν δὲ καταψη[φίζ]- // ωνται αὐτο̣ῦ οἱ δημόται, ὀφειλέτω τὸ ἡμιόλιον ὅσου ἂν [τιμ]- // ηθεῖ αὐτῶι ὑπὸ τῶν δέκα τῶν αἱρ[ε]θέντων; *IG* II^2 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- // ὰν δέ τις βόληται ἐφεῖναι ἐς Δημοτιων- // ίδας ὧν ἂν ἀποψηφίσωνται, ἐξεῖναι αὐ- // τῶι· ἑλέσθαι δὲ ἐπ' αὐτοῖς συνηγόρος τ- // ὸν Δεκελειῶν οἶκον πέντε ἄνδρας ὑπὲ- // ρ τριάκοντα ἔτη γεγονότας, τούτος δὲ // ἐξορκωσάτω ὁ φρατρίαρχος καὶ ὁ ἱερε- // ὺς συνηγορήσεν τὰ δικαιότατα καὶ ὀκ // ἐάσεν ὀδένα μὴ ὄντα φράτερα φρατρίζ- // εν. ὅτο δ' ἂν τῶν ἐφέντων ἀποψηφίσωντα- // ι Δημοτιωνίδαι, ὀφειλέτω χιλίας δρα- // χμὰς ἱερὰς τῶι Διὶ τῶι Φρατρίωι. Against my view, *IG* I^3 40 [= ML 52], 70 (amendment to the Athenian decree laying down rules for the people of Khalkis in Euboia; cf. Maffi [1984]; Dreher [2006]) is not decisive, since the legal terminology used in the inscription is quite imprecise. 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 ἐφιείς, 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[29].

---

[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 ἐπιμελείσθω τῶν ὀρφανῶν καὶ τῶν ἐπικλήρων καὶ τῶν οἴκων τῶν ἐξερημουμένων καὶ τῶν γυναικῶν, ὅσαι μένουσιν ἐν τοῖς οἴκοις τῶν ἀνδρῶν τῶν τεθνηκότων φάσκουσαι κυεῖν. τούτων ἐπιμελείσθω καὶ μὴ ἐάτω ὑβρίζειν μηδένα περὶ τούτους. ἐὰν δέ τις ὑβρίζῃ ἢ ποιῇ τι παράνομον, κύριος ἔστω ἐπιβάλλειν κατὰ τὸ τέλος. ἐὰν δὲ μείζονος ζημίας δοκῇ ἄξιος εἶναι, προσκαλεσάμενος πρόπεμπτα καὶ τίμημα ἐπιγραψάμενος, ὅ τι ἂν δοκῇ αὐτῷ, εἰσαγέτω εἰς τὴν ἡλιαίαν. ἐὰν δ' ἁλῷ, τιμάτω ἡ ἡλιαία περὶ τοῦ ἁλόντος, ὅ τι χρὴ αὐτὸν παθεῖν ἢ ἀποτεῖσαι (see, moreover, *Ath. Pol.* 56.7: ἐπιμελεῖται δὲ καὶ τῶν ὀρφανῶν καὶ τῶν ἐπικλήρων, καὶ τῶν γυναικῶν ὅσαι ἂν τελευτήσαντος τοῦ ἀνδρὸς σκήπτωνται κύειν. καὶ κύριός ἐστι τοῖς ἀδικοῦσιν ἐπιβάλλειν 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 οἶκοι of their deceased husbands – was entitled to prohibit 'anyone' (rather than only relatives or guardians) from committing ὕβρις 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 εἰσάγειν. 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-Solonian 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. *Ath. Pol.* 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.

τέλος (i.e. if the magistrate 'proposed', rather than 'imposed', a fine both according to his competence and within a given value-limit), the decision could anyway be 'attacked' for any abuse of power or any lack of power (cf., for the conjectural 'Solonian kernel' of the Demosthenic passage, Scafuro [2006]).

BIBLIOGRAPHY

Almeida, J. A. 2003. *Justice as an Aspect of the Polis Idea in Solon's Political Poems* (Leiden and Boston).

Biscardi, A. 1982. *Diritto greco antico* (Milano).

Bonner, R. J. 1907. 'The Jurisdiction of Athenian Arbitrators', *CPh* 2: 407-418.

Bonner, R. J. - Smith, G. 1930-1938. *The Administration of Justice from Homer to Aristotle*, voll. I-II (Chicago).

Busolt, G. - Swoboda, H. 1926. *Griechische Staatskunde*, vol. II (München).

Carey, C. 1997. *Trials from classical Athens* (London).

Cataldi, S. 1979. 'Atene *polis ekkletos*. *Ephesiomoi* ed *ekkletoi dikai*', *Annali della Scuola Normale Superiore di Pisa. Classe di Lettere e Filosofia* 9: 1-37.

Cobetto Ghiggia, P. 2012. *Iseo. Orazioni. Introduzione, testo rivisto, traduzione, note e glossario giuridico attico* (Alessandria).

Dreher, M. 2006. 'Bürgerstaat und Basisdemokratie Ideologische Begriffe in der Geschichtswissenschaft', *Dike* 8: 115-162.

Feyel, C. 2009. *'Dokimasia': la place et le rôle de l'examen préliminaire dans les institutions des cités grecques* (Nancy).

Gagarin, M. 2006. 'Legal Procedure in Solon's Laws', in Blok, J. and Lardinois, A. (eds.), *Solon of Athens: New Historical and Philological Approaches* (Leiden): 261-275.

Hansen, M. H. 1975. *'Eisangelia': The Sovereignty of the People's Court in Athens in the Fourth Century B.C. and the Impeachment of Generals and Politicians* (Odense).

Hansen, M. H. 1976. *Apagoge, Endeixis, and Ephegesis against Kakourgoi, Atimoi, and Pheugontes* (Odense).

Hansen, M. H. 1982. 'The Athenian *Heliaia* from Solon to Aristotle', *ClassMed* 33: 9-47.

Hansen, M. H. 1989. *The Athenian 'Ekklesia' II* (Copenhagen).

Harris, E. M. 2006. *Democracy and the Rule of Law in Classical Athens: Essays on Law, Society and Politics* (Cambridge and New York).

Harris, E. M. 2013. *The Rule of Law in Action in Democratic Athens* (Oxford).

Harrison, A. R. W. 1971. *The Law of Athens: Procedure* (Oxford).

Hignett, C. 1952. *A History of the Athenian Constitution to the End of the Fifth Century B.C.* (Oxford).

Hudtwalcker A. H. (1812). *Über die öffentlichen und privat-Schiedsrichter - Diäteten - in Athen* (Jena).

Just, M. 1965. *Die 'Ephesis' in der Geschichte des attischen Prozesses. Ein Versuch zur Deutung der Rechtsnatur der 'Ephesis'* (Würzburg).

Just, M. 1968. 'Le rôle des *diaitetai* dans Isée 12, 11', *RIDA* 15: 107-118.

Just, M. 1970. 'Die *apodokimasia* der athenischen *Boule* und ihre Anfechtung', *Historia* 19: 132-140.

Kapparis, K. 2005. 'Immigration and Citizenship Procedures in Athenian Law', *RIDA* 52: 71-113.

Lape, S. 2010. *Race and Citizen Identity in the Classical Athenian Democracy* (Cambridge).

Leão, D. F. - Rhodes, P. J. 2015. *The Laws of Solon: A New Edition with Introduction, Translation and Commentary* (London and New York).

Lepri Sorge, L. 1987. 'Ancora in tema di *ephesis*: la *dokimasia* degli arconti', in *Studi in onore di A. Biscardi*, VI (Milano): 427-434.

Lepri, L. 1960. s.v. ἔφεσις, *NNDI* 6: 603-604.

Lipsius, J. H. 1898. 'Beiträge zur Geschichte griechischer Bundesverfassungen II', *Berichte der sächs. Gesellschaft der Wiss.* 50: 145-176.

Lipsius, J. H. 1905-1915. *Das attische Recht und Rechtsverfahren* (Leipzig).

Loddo, L. 2015. 'Le moment de la fondation: un tribunal du peuple à l'époque de Solon?' in Bearzot, C. - Loddo, L., Le rôle du tribunal populaire dans l'utopie constitutionnelle oligarchique. De Solon aux Trente Tyrans, *Politica Antica* 5: 99-138.

MacDowell, D. M. 1971. 'The Chronology of Athenian Speeches and Legal Innovations in 401-398 B.C.', *RIDA* 18: 267-273.

MacDowell, D. M. 1978. *The Law in Classical Athens* (London).

MacDowell, D. M. 2009. *Demosthenes the Orator* (Oxford).

Maffi, A. 1984. 'Il decreto su Calcide (ML 52) e la repressione penale nella *polis* classica', in *Du châtiment dans la cité. Supplices corporels et peine de mort dans le monde antique* (Rome): 429-438.

Maffi A. 2004. 'Funzione giurisdizionale e regimi politici nella Grecia arcaica e classica', in Cataldi, S. (ed.), *'Poleis' e 'Politeiai'. Esperienze politiche, tradizioni letterarie, progetti costituzionali. Atti del Convegno Internazionale di Storia Greca, Torino, 29 maggio - 31 maggio 2002* (Alessandria): 305-314.

Mirhady, D. 2006. 'Aristotle and the Law Courts', *Polis* 23: 1-17.

Noussia-Fantuzzi, M. 2010. *Solon the Athenian, the Poetic Fragments* (Leiden and Bristol).

Ostwald, M. 1986. *From Popular Sovereignty to the Sovereignty of Law* (Berkeley and Los Angeles).

Paoli, U. E. 1950. 'La ἔφεσις εἰς τὸ δικαστήριον en droit attique', *RIDA* 5: 325-334.

Pélékidis, C. 1962. *Histoire de l'éphébie attique des origines à 31 avant Jésus-Christ* (Paris).

Pelloso, C. 2014-2015. 'Popular Prosecution in Early Athenian Law: the Drakonian Roots of the Solonian Reform', Ε.Κ.Ε.Ι.Ε.Δ. 45: 9-58.

Pridik, A. 1892. *De Cei insulae rebus* (Berolini).

Ralph J. D. 1936 (= 1941). *'Ephesis' in Athenian Litigation* (Chicago).

Rhodes, P. J. 1972. *The Athenian 'Boule'* (Oxford).

Rhodes, P. J. 1981. *A Commentary on the Aristotelian 'Athenaion Politeia'* (Oxford).

Rhodes, P. J. 2006. 'The Reforms of Solon: An Optimistic View', in Blok, J.

- Lardinois, A. (eds.), *Solon of Athens: New Historical and Philological Approaches* (Leiden): 248-260.

Robertson, B. 2000. 'The Scrutiny of New Citizens at Court', in Hunter, V. - Edmondson, C. (eds.), *Law and Social Status in Classical Athens* (Oxford): 149-174.

Ruschenbusch, E. 1961. '῎Εφεσις. Ein Beitrag zur griechischen Rechtsterminologie', *ZRG* 78: 386-390.

Ruschenbusch, E. 1965. 'Ἡλιαία. Die Tradition über das solonische Volksgericht', *Historia* 14: 381-384.

Ruschenbusch, E. 1966. ΣΟΛΟΝΟΣ ΝΟΜΟΙ. *Die Fragmente des Solonischen Gesetzwerkes mit einer Text- und Überlieferungsgeschichte* (Wiesbaden).

Scafuro, A. C. 1994. 'Witnessing and False Witnessing: Proving Citizenship and Kin Identity in Fourth-Century Athens', in Boegehold, A. L. - Scafuro, A. C. (eds.), *Athenian Identity and Civic Ideology* (Baltimore): 156-198.

Scafuro, A. C. 1997. *The Forensic Stage: Settling Disputes in Graeco-Roman New Comedy* (Cambridge).

Scafuro, A. C. 2006. 'Identifying Solonian Laws', in Blok, J. - Lardinois, A. (eds.), *Solon of Athens: New Historical and Philological Approaches* (Leiden): 175-196.

Schöll, R. 1875. *De synegoris Atticis* (Jena).

Schubert, C. 2000. 'Der Areopag. Ein Gerichtshof zwischen Politik und Recht', in Burckhardt, L. A. - von Ungern-Sternberg, J. (eds.), *Große Prozesse im antiken Athen* (München): 50-65.

Sealey, R. 1983. 'The Athenian Courts for Homicide', *CPh* 78: 275-296.

Steinwenter, A. 1925 (= 1971). *Die Streitbeendigung durch Urteil, Schiedsspruch und Vergleich nach griechischem Rechte* (Berlin).

Tamburini, E. 1990. 'Problemi relativi ad *eliea* ed *ephesis* in età soloniana', *Critica Storica* 27.2: 193-208.

Thalheim, T. 1905. s.v. ἔφεσις, *PWRE* 5: 2773.

Thür, G. 2008. 'The Principle of Fairness in Athenian Legal Procedure: Thoughts on *Echinos* and *Enklema*', *Dike* 11: 51-74.

Tittmann, F. W. 1822. *Darstellung der griechischen Staatsverfassungen* (Leipzig).

Todd, S. C. 1993. *The Shape of Athenian Law* (Oxford).

von Wilamowitz-Möllendorff, U. 1893. *Aristoteles und Athen*, voll. I-II (Berlin).

Wade-Gery, H. T. 1958. *Essays in Greek History* (Oxford).

Welwei, K.-W. 1998. *Die griechische 'Polis': Verfassung und Gesellschaft in archaischer und klassischer Zeit* (Stuttgart).

Whitehead, D. 1986. *The Demes of Attica (508/7- ca. 250 B.C.). A Political and Social Study* (Princeton).

Wolff, H. J. 1946. 'The Origin of Judicial Litigation Among the Greeks', *Traditio* 4: 31-87.

Wyse, W. 1904. *The Speeches of Isaeus* (Cambridge).