but any citizen could stop the voting with a legal challenge. One rational man could bring the issue to legal review, while no one person or group could pass a proposal. The all-too-frequent examples of the Assembly taking an action and then regretting it later were, to some extent, alleviated by these challenges and the closer, more deliberate, examination afforded to any particular issue.

5. Fundamental Law, Ancient and Modern The Athenian reforms provide a series of parallels to the American Founding, as well as to our own day. The parallels begin with the recognition of the need for fundamental laws, to which political institutions must conform. In Federalist No. 78, Alexander Hamilton defined the American conception of a constitution as embodying fundamental laws that are enforceable by an independent judiciary: "The interpretation of the laws is the proper and peculiar province of the courts. A constitution is, in fact, and must be regarded by the judges as, a fundamental law. It therefore belongs to them to ascertain its meaning as well as the meaning of any particular act proceeding from the legislative body. If there should happen to be an irreconcilable variance between the two, that which has the superior obligation and validity ought, of course, to be preferred; or, in other words, the Constitution ought to be preferred to the statute, the intention of the people to the intention of their agents."

The American Founders understood the need to resolve potential conflicts between the legislators and the political principles on which the nation was founded, even though they left open the specific means to accomplish this. They also had to define the terms of popular consent, in order to prevent inappropriate attempts by the people to tamper with the principles of the constitution. The “intention of the people” does not mean the people’s agreement with the particular acts of the legislature as determined by regular popularity contests, but rather the original consent to fundamental principles—the fundamental laws upon which political action is founded. The so-called supremacy clause in the Constitution itself (Article VI) establishes the Constitution as the “supreme Law of the Land,” and binds the judges in every state to the Constitution. The courts have assumed the authority to define and protect those principles, through judicial review of legislation. Although the Founders did not define the procedures for federal judicial review of state legislation, they did establish a conceptual, political, and legal hierarchy to govern the relationships between legislation and the fundamental laws. In their late-fifth-century reforms, the Athenians recognized all of these hierarchies, as they applied to their nomoi.

Federalist No. 49 speaks against too often referring to the decisions of the people, and Federalist No. 50 rejects both periodic and particular appeals to the people.

The central lesson from the Athenians as to what a constitution should do is that it should stand above the popular and legislative winds of the moment and hold firm to its principles. One essential similarity between the Athenian and American systems, as each developed over time, is that the particular enactments of the popular institutions must not be allowed to supersede the fundamental principles written into the laws. Should legislation—or popular referenda —contradict the constitution, those enactments are invalid.

In other words, the Athenians tell us that the whims of popular opinion — either in public assembly or through the decisions of legislators—must not be made superior to the fundamental laws. In a similar vein, Hamilton continues his discussion of the judiciary in Federalist No. 78, explaining both the nature of the people’s consent and how legislative acts are to be evaluated: "Where the will of the legislature, declared in its statutes, stands in opposition to that of the people declared in the