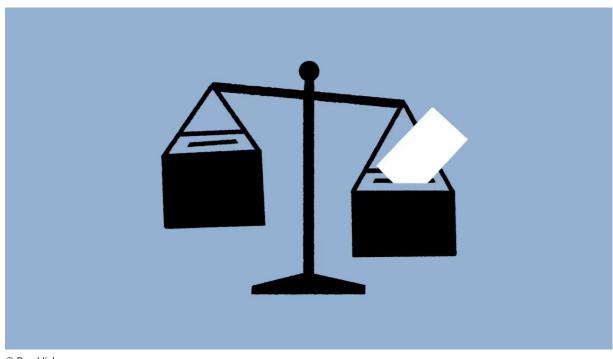Opinion **US politics & policy**

What ancient Athens can teach modern America about law and democracy

Despite the claims of Donald Trump and his supporters, there is nothing undemocratic about courts simply doing their job

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In December the Supreme Court in the American state of Colorado held that former President Donald Trump was constitutionally ineligible to run for election again due to the Fourteenth Amendment's prohibition on insurrectionists holding office. Michigan's Supreme Court held the exact opposite: Trump must be placed on the ballot.

It is now up to the US Supreme Court to resolve the conflict. But for a growing number of observers, conservatives and liberals alike, the fact that courts are playing such a central role is something to be lamented. In their view, the answer to a threat to democracy is not judicial intervention, but rather more democracy. If you want to see Trump finally defeated, you have to beat him in a free and fair election.

But is it really true that law and democracy are so at odds? Must we choose between enforcing our laws and saving our democracy? I think not. If anything, the history of law teaches us the opposite lesson. The surest protection against tyranny is a devotion to the rule of law. And nowhere was this clearer than in ancient Athens.

The democratic constitution of classical Athens was laid down by three great

lawgivers — Draco, Solon and Cleisthenes — but it began with an insurrection. In 632BC, an Athenian nobleman named Cylon attempted to overthrow the city's traditional system of aristocratic rule. With aid from a foreign adversary, the tyrant of Megara, Cylon seized the citadel of Athens and sought to install himself as dictator. The Athenians eventually managed to defeat Cylon, but soon after recognised that their city needed firmer foundations. Draco drafted his famous written legal code a decade later and thereafter Athenian law remained centrally concerned with the prevention of tyranny.

The link between law and democracy was made explicit in a strange and imaginative procedure that Athenians invented for banishing politicians from the scene. Introduced in 508BC by Cleisthenes, known as the "father of Athenian democracy", the procedure, called ostracism, sought to guard Athenians against the conniving ways of corrupt men.

Each year, the assembly would take a vote on whether they wished to initiate an ostracism, in effect the banishment of a citizen from the city. But importantly, Athenians did not know who in advance would be banished — they simply voted on whether to trigger the ostracism process itself.

If a majority voted in favour of triggering an ostracism, then two months later, the ostracism vote itself would take place. In this later vote, each citizen would scratch the name of the leader he wanted banished on a broken piece of pottery known as a potsherd, or *ostraca*. If at least 6,000 potsherds were cast, then the person whose name appeared most frequently on the potsherds would be "ostracised" or banished from the city for a period of 10 years. For nearly a century, ostracism served as a powerful check on the ambitions of would-be tyrants.

Athenians came to view their democratic laws with nearly religious reverence. Indeed, Greek mythology held that it was Zeus, the king of the gods, who had first given law to man. The philosopher Aristotle wrote that law made human society possible. "For as man is the best of animals when perfected," Aristotle wrote, "so he is the worst of all when sundered from law and justice."

Law, of course, was responsible for its fair share of mischief, too. Athenians were famously litigious — Aristophanes joked in his play *The Clouds* that "this can't be Athens; I don't see any law courts". Some abused the legal system to harass and harry their enemies, a practice that came to be known as sycophancy.

But these flaws notwithstanding, Athenians continued to believe deeply in their laws.

There was no greater testament to their success than the resilience of Athenian democracy itself. Their constitution introduced a period of political stability that lasted (with a few brief exceptions) for more than a century and a half, from 508 to 322BC. This accomplishment is nothing short of miraculous when one considers the violent world surrounding the city, including its major wars with Persia and Sparta.

In this time of fierce arguments over the future of American democracy, we would do well to remember the wisdom of the ancients. Law is our greatest protection against tyranny. It is what makes rule by the people possible. And it only works if we the people are committed to it.