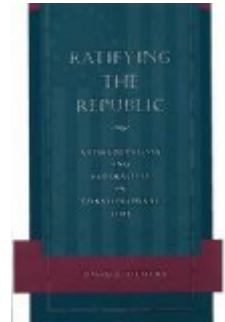


David J. Siemers. *Ratifying the Republic: Antifederalists and Federalists in Constitutional Time.* Stanford: Stanford University Press, 2002. xvii + 292 pp. \$55.00, cloth, ISBN 978-0-8047-4106-4.



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Playing by the Rules

In the past three decades, thanks largely to the "documentary editing revolution" that has transformed study of early American history, we have a more subtle, nuanced, and sophisticated understanding of the origins of the American constitutional and political systems.[1] In particular, we have moved beyond the sterile clichés that used to overshadow our understandings of the ratification of the Constitution in 1787-1788. We now recognize both the diversity of those we know as Antifederalists and the seriousness and the complexity of Antifederalist critiques of the Constitution.[2] We are also beginning to understand that the Constitution's supporters were actually a coalition more diverse and less unified than the term "Federalists" might imply.

This challenging, insightful monograph builds on and extends these interpretative advances. David J. Siemers, assistant professor of political science at the University of Wisconsin at Oshkosh, presents a close and attentive investigation of the period from the struggle for ratification (1787-1788) through the end of the First Federal

Congress (1791), with additional study of the period 1791-1801. Throughout his work, he focuses on the process by which the Constitution achieved the status of legitimacy in the eyes of both political leaders and the great body of the people. In a model of interdisciplinary scholarship, Siemers shows just how contingent and problematic the legitimation of the Constitution was—and just how remarkable it was that the Constitution did achieve legitimacy in the public mind. Integral to Siemers's enterprise is his establishing of a carefully considered, persuasive historical timeline for understanding the various stages of the process of the Constitution's legitimation. This timeline, in turn, demonstrates the validity of Siemers's concept of "constitutional time," by which he means the development of American politics within a series of successive constitutional contexts, each posing its own set of political challenges and constraints, each calling for a different set of principled and pragmatic arguments and actions by both Antifederalists and Federalists.

In his first chapter, Siemers notes that the partisan vigor and bitterness of the constitutional

arguments between Antifederalists and Federalists may well have misled later historians. He rightly insists that, given just how bitter this argument seemed, to them and to us, we must seek an explanation for why so many leading Antifederalists not only accepted their defeat in the ratification controversy but urged their allies to do the same. Antifederalist plans to shift to a fallback position of seeking to control the process of implementing the Constitution through the first federal elections and the workings of politics under the Constitution are only part of the story. In his second chapter, Siemers persuades us that Antifederalists' reverence for the rule of law, even a fundamental law whose effects on liberty they feared would be pernicious, induced them to accept their defeat and channel their energies within the matrix of national politics established by the Constitution.[3] At the same time, Siemers points out, Antifederalist politicians and polemicists recognized that they had a new and useful armory of political weapons in the Constitution itself and in the assurances given by various Federalists during 1787-1788. Examining Antifederalist constitutional arguments in the First Congress, Siemers's third chapter shows that these politicians sought repeatedly to hold Federalists to their reassuring words, invoking both the Constitution and Federalists' statements in support of it, such as James Wilson's 1787 speech and the essays of *The Federalist*. In the process, they helped not only to plant the Constitution at the center of American public life but to make loyalty to the Constitution a core component of American politics.

At the same time that Siemers skillfully anatomizes the changing responses of Antifederalists to different stages of constitutional time, he also focuses on leading Federalists James Madison and Alexander Hamilton, and subjects them to the same nuanced analysis. Siemers is convinced, and convincing, that Madison and Hamilton either did not fully discern how different their constitutional philosophies were in 1787-1788 or that they chose to ignore those differences in the service of

securing the Constitution's ratification. Siemers portrays the Madison-Hamilton partnership as Janus-faced, with Madison looking backward, first to the problems of the 1780s and then to the understandings of the Constitution rooted in its framing and ratification; Hamilton, by contrast, looked forward to the future of a constitutional system shaped by vigorous and creative interpretation into something more vigorous than the sketch of government set forth in the Constitution and debated in 1787-1788.

In one particularly intriguing segment of his argument (chapter 5, but the point is also pre-saged in chapter 4), Siemers suggests that James Madison moved into opposition in 1790-1791 because, contrary to the expectations he voiced in *The Federalist No. 10*, he saw a minority faction coalescing within Congress under Hamilton's leadership advancing policies that he saw as dangerous to the general good. Realizing, further, that his hoped-for cure for faction--the institutional design comprising the extended republic and a system of checks and balances on the federal level--had not staved off such a dangerous faction, Madison then embraced the need for partisan politics. [4] To be sure, recent scholarship by Larry D. Kramer has shown that Madison's arguments about factionalism in *The Federalist* were of more than passing interest only to Madison himself, and thus should not be taken as a reliable guide to American constitutional thought in the early national period.[5] Even so, Madison's theory of faction and the extended republic was vitally important to him, and Siemers does full justice to its evolution as Madison confronted the rapidly shifting politics of the early Republic. Siemers also provides thoughtful and highly suggestive examinations of the gradual acceptance of partisanship in the Federalist era (chapter 6) and the interaction between partisan alliances and evolving institutional structure within the early Congress (chapter 7). His concluding chapter revisits and elaborates on the ironic role of Antifederalists as

legitimizers of the Constitution and the constitutional system.

One question that Siemers's discussion does not take up is why Madison and his colleagues should not have realized that different politicians, reasoning from different premises, could come to equally sincere, but widely diverging, conceptions of the public good and the best means to achieve the public good. The bitterness with which, for example, Madison and Hamilton each accused the other of betrayal would suggest that each man was so wedded to his own view of the public good that he could not even conceive that the other might have reason to think differently.

Another issue that I wish Siemers had addressed more explicitly is that many Antifederalists waged an often-bitter struggle during ratification against the very rules of the ratification controversy that they abided by at its close. Often, Antifederalist politicians and polemicists questioned the validity of the Constitution as a proposal under Article 13 of the Articles of Confederation, charging that the Federal Convention had exceeded its mandate from the Confederation Congress under its resolution of February 21, 1787. Indeed, at the opening of the Virginia ratifying convention in June 1788, Patrick Henry sought to raise the issue, only to be squelched by convention president Edmund Pendleton. Ruling that the Constitution was a proposal validly before the convention, Pendleton declared that the Constitution's legitimacy as a proposal had been established by the Confederation Congress's acceptance of it in late 1787 and by the Virginia legislature's authorization of the elections for the ratifying convention. In light of these arguments and the tenacity with which many Antifederalists clung to them, their acquiescence in the Constitution's adoption in 1788 is all the more remarkable, and so too is their devotion to the rule of law as Siemers has elucidated it.

But these are, at most, quibbles with an admirable study. Siemers brings to bear a variety of

methodological tools, including roll-call analysis and close textual analysis. Further, he has taken full advantage of the work of such valuable projects as *The Documentary History of the Ratification of the Constitution*, *The Documentary History of the First Federal Elections*, and *The Documentary History of the First Federal Congress*.^[6] Although he writes within the intersection of political science and history, his book is refreshingly free from jargon and is often a pleasure to read. Finally, no fair-minded reader of this book would make the mistake afterward of ruling Antifederalists out of the discussion of the origins, adoption, or implementation of the Constitution. Siemers's project thus complements the fine 1999 study by Saul Cornell, *The Other Founders*, which similarly establishes the vital roles of Antifederalism and Antifederalists, of varying sorts, in the making of the Constitution.^[7] *Ratifying the Republic* deserves a wide and appreciative audience.

Notes

[1]. See generally William W. Freehling, *The Reinterpretation of American History* (New York: Oxford University Press, 1994), chap. 1.

[2]. See generally Saul Cornell, *The Other Founders: Antifederalism and the Dissenting Tradition in America, 1788-1828* (Chapel Hill: University of North Carolina Press, 1999).

[3]. Constitutional and legal historians bemused by their law-school colleagues' continuing wrangles over *Bush v. Gore* (2000) will find the Antifederalists' reluctant acquiescence in the triumph of the Constitution to be of more than passing interest.

[4]. I made a similar argument in 1987, but only in passing, and without anywhere near the detail and documentation that Siemers offers. Richard B. Bernstein with Kym S. Rice, *Are We to Be a Nation? The Making of the Constitution* (Cambridge: Harvard University Press, 1987), chap. 8.

[5]. See generally Larry D. Kramer, "Madison's Audience," *Harvard Law Review* 111 (1999): pp. 612-679.

[6]. Merrill M. Jensen, John P. Kaminski, Gaspare J. Saladino, Richard Leffler, and Charles Schoenleber, eds., *The Documentary History of the Ratification of the Constitution*, 17 vols. to date (Madison: State Historical Society of Wisconsin, 1976-); Merrill M. Jensen, Robert A. Becker, and Gordon denBoer, eds., *The Documentary History of the First Federal Elections, 1788-1790*, 4 vols. (Madison: University of Wisconsin Press, 1976-1980); and Linda Grant DePauw, Charlene Bangs Bickford, Kenneth R. Bowling, Helen E. Veit, and William C. DiGiacomantonio, eds., *The Documentary History of the First Federal Congress*, 14 vols. to date (Baltimore: Johns Hopkins University Press, 1972-).

[7]. Cornell, note 2 above, *passim*.

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