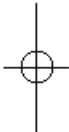


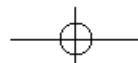
Preface



Jack N. Rakove points out that *The Federalist* gained authoritative status for an ironic reason. With major portions of the work aimed at “demonstrat[ing] that the Constitution had not established the leviathan its worst detractors imagined,” early opponents of expansive national power were able to use Publius as an ally in the fight against those who would extend federal authority.¹ The handiwork of Hamilton, Madison, and Jay was thus legitimated as a constitutional authority because of its usefulness in partisan battle. The rancor of the times, rather than its native persuasiveness, cemented the reputation of *The Federalist*. This book argues that the same is true of the Constitution itself: its high reputation and its central position in American political discourse resulted from the partisan fragility of the immediate postratification era.

As much as anything, fear, uncertainty, and political maneuvering allowed the Constitution to succeed. With New Hampshire’s ratification on June 21, 1788, the framework of government designed at Philadelphia became law. Yet whether this law of the Federalists and their supporters would be accepted by the politically active public as a whole was an open question. In light of nearly a year of pointed criticism by Antifederalists, many of whom believed the seeds of tyranny were sown in the Constitution, leaders of both camps were unsure whether this system could be authoritative.

By 1788 the American revolutionaries had experienced tragedy along with the triumph of independence. To a person they knew casualties of the war: friends and relatives had been killed, families displaced, women widowed, and children orphaned in a world not disposed to be particularly hospitable toward them. A postwar economic depression spread a less immediate kind of harm, but did so more uniformly. Many reflected on the relatively peaceful colonial times in which they grew up, even if they did not wish to return to them. What must have been particularly striking to the founding generation was how unforeseen and devastating

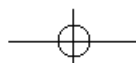
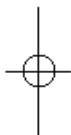


their protracted, internecine war with the British had been. The strident language of the ratification debate gave them pause to wonder if there was to be another eruption of violence.

Antifederalists were forced to ponder this possibility as much as Federalists. They had become a recognizable opposition and were faced with a choice as the much-questioned Constitution limped toward ratification: to endure a highly flawed system of government that threatened to rob Americans of their liberties or to persist in fervent opposition that might precipitate civil strife. The Antifederalists' fear of anarchy and war — informed by their uncertainty that the rule of law rather than chaos would prevail — caused Antifederalist leaders to assent to the Constitution. In turn, they instructed their constituencies to do the same, granting the Constitution at least a trial.

This was acquiescence, however, not a full embrace, encompassing feelings of resignation and a tentativeness that could not by itself be a prescription for sustained legitimacy. As former Antifederalists worked within this suboptimal political order, aiming to prevent the troubling results they had envisioned, they were aided by a remarkable set of circumstances hardly of their own making. To gain ratification Federalists espoused the idea that the Constitution granted the national government only limited and expressed powers, a philosophy that would be adopted by the Antifederalists in their quest to limit federal power. Egregious conditions in Congress served to limit the quality of individuals elected and their tenure served, retarding institutional strength and development. Even the Federalists' overwhelming victory in the earliest federal elections proved to be a boon to the opposition in that aggressive Federalists did not worry about keeping their fracturing ratification coalition together. Antifederalists thus did have a degree of success in the new regime. Moreover, the nature of their postratification argument, emphasizing the inviolability of the Constitution, yielded a strong embrace of the new fundamental law by those whose allegiance had been most uncertain. With both Federalists and Antifederalists championing the young Constitution (albeit in their different ways), an already century-old American belief in written fundamental law as the bedrock of political orders was reinforced and the Constitution became sacrosanct.

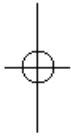
In the last twenty years the Antifederalists' thinking has been saved from obscurity, but there is still much to be learned about their contribution to the character of the American regime.² A near-exclusive focus on the ratification debates has yielded a portrait of these figures not so much inaccurate as it is single-faceted. Beginning in September 1787 the Antifederalists reacted to a specific political scenario that they believed necessitated a certain kind of response. That scenario lasted all of nine



months. Upon ratification they were faced with a new scenario to which they reacted differently. Changed circumstances privileged different aspects of their political beliefs and ideologies than those most prominent in 1787. Federalist policies presented still further challenges, again altering Antifederalist stances. Secretary of the Treasury Alexander Hamilton's fiscal plans in particular created a new set of circumstances, effecting a striking change in coalitional politics and an embrace of partisanship at the national level.

In *The Politics Presidents Make* Stephen Skowronek introduces the concept of “political time” to describe the varied contexts facing American presidents. Some, like Andrew Jackson or Franklin Roosevelt, inaugurate broad partisan coalitions. In succeeding years others administer those coalitions in their maturity. Still other presidents are in the unenviable position of holding aged, fracturing coalitions together, long after what animated their alliance in the first place faded from the political scene. These recurrent “regime cycles” place presidents in a particular context vis-à-vis their party. In turn their particular context helps determine appropriate political strategies and behaviors.³ In the course of just a few years, the American regime sped through a variety of constitutional contexts. In the mid-1780s, American politicians reacted to an obviously faulty constitution. That context was followed by a time when the Constitution was proposed but not legally sanctioned—the time we often use to define the Antifederalists and the Federalists. That milieu was replaced by one in which the Constitution was ratified, made legal, but not yet implemented, which was superseded by the scenario when the ratified Constitution was initially implemented. A complete view of the constitutional thought of those involved in ratification requires knowledge of how the progression of “constitutional time” triggered different parts of their ideologies and made different behaviors appropriate.

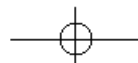
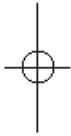
Politics during the founding era, much like any other, was a kaleidoscope of shifting conditions, positions, and alliances. Breathing life into the portrait of Antifederalist thinking requires moving beyond the familiar exposition of the arguments they staked out during the ratification debate to the other scenarios where these same figures applied and adjusted their political knowledge.⁴ The same holds true for the Federalists. We can gain a much more well-rounded view of their political thought by devoting greater attention to how they reacted to varied constitutional contexts. The progression of constitutional time revealed a rift among the Federalists, present but submerged in their fight for ratification. That rift appeared most notably in the thinking of James Madison and Alexander Hamilton, the two primary authors of *The Federalist* and the leaders of fracturing wings of their one-time coalition. Much more



than a change of heart by either of these individuals or their followers, the progression of constitutional time prefigured their falling out. Madison's group allied with the Antifederalists to become the Republican Party. The complex interaction of these three groups, the remaining Federalists, the Madisonians, and the Antifederalists, more than the Federalists' ideas by themselves, defined the constitutional character of the new regime.

Chapter 1 sets the stage for viewing these groups after ratification. The workability of constitutions depends on fostering a near-consensus that the process they define for formulating statute law is legitimate. In the American context, it seems that that was accomplished very early in the life of the Constitution, but there has never been a definitive picture of how that legitimation occurred. I discuss other scholarly views of the document's legitimation, which have been partial. A fuller picture is needed to round out our knowledge of the political thought of the Federalists and their opponents, as well as to understand how major characteristics of American constitutional practice came to be. The chapter then turns to the Antifederalists. Near-exclusive attention to their arguments during the ratification debate has obscured a substratum of agreement with the Federalists on two items: the need to alter the confederation and the primacy of the rule of law. A variety of scholars perceive that the character of the American regime was planned and successfully executed by the proponents of the Constitution. In reality, the Federalist coalition was much more fractured than most commentators have realized. The Federalist coalition was narrowly focused on ratification — as soon as broader and more detailed projects creep into the picture, members of the coalition break ranks.

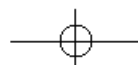
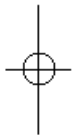
The second and third chapters focus on the Antifederalists after ratification. They show that despite the diversity of the Antifederalists they acquiesced to the Constitution quickly and uniformly, even though other options were available to them. Their acquiescence was due to a predisposition to respect the rule of law, something that did not apply to the Constitution when it was a mere proposal, and the fear of potential lawlessness. Despite holding a variety of views, the few Antifederalists elected to the First Congress pledged to abide by the Constitution and work for change from within its bounds. Their numerical weakness dictated that they would lose policy battles; constitutional critiques of the Federalists, by contrast, were of the first order. Even when outvoted, the former Antifederalists could claim that their objections to Federalist policies still held and that such policies were unconstitutional. Unwittingly, the Federalists had provided them with much ammunition to make such constitutional arguments, as the best known of their ratification debate defenses made the point that the national government possessed ex-



pressed powers only. The Antifederalists' arguments in the First Congress were scattershot, but they began lines of constitutional argument that the opposition Republicans would hone into a full-blown interpretive philosophy, still espoused by some.

Chapters 4 and 5 deal with the Federalists and the fracturing of their coalition. The fourth chapter outlines the differences in the thinking of Hamilton and Madison. Before and during the ratification debate, they had very different ideas about how to deal with faulty constitutions, how to remedy the problems of the confederation, and how to implement a new national constitution. Madison understood the use of broad discretionary powers as a last resort, violative of a constitution's letter, and only warranted when the fate of the nation was at stake. Although the Confederation Congress was warranted in employing such discretionary power, Madison held the federal Constitution to a much higher standard. In part because he thought the national government possessed sufficient power to be successful and in part because of his respect for the specific understandings sanctioned by ratification, Madison viewed the new Constitution's division of powers between the nation and states as definitive and static. The postratification context triggered a very different impulse for Hamilton. He felt that faulty constitutions could be administered into sovereign existence through the exercise of broad discretionary powers. That had worked in times of crisis under the confederation and it might be made to work again under the Constitution, which unfortunately divided sovereignty, as did the Articles of Confederation, and was thus prone to the same centrifugal tendency. These were disagreements that inevitably became apparent as constitutional time moved forward. As long as each retained influence in the new regime, these differences in their constitutional theories would have important repercussions in the political world. Further, in the months following implementation of the Constitution, Madison would find fault in assumptions that led him to ally with Hamilton. Stripped of certain ideas he held at the time of ratification, Madison's constitutional thinking much more closely resembled many of the Antifederalists' than Hamilton's.

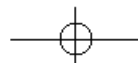
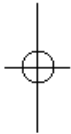
I also focus on what happened to Madison's constitutional thinking in the immediate postratification climate. What changed in Madison's mind was not so much a vision of how to properly interpret a constitution, as most scholars seem to believe, but rather a loss of faith in the benefits of the extended republic, most prominently outlined in Federalist #10. During the second session of the First Congress, Madison became aware that a majority faction was effecting legislation at the national level, precisely what he thought improbable during the ratification debate. The third session of the First Congress confirmed to Madison and his follow-



ers that not even constitutional boundaries would stop this self-serving faction from pursuing its desires. This breakdown in what had been such an important part of his recent thinking dictated an embrace of new tactics directed toward the same ends. Events from the First Congress showed that a rights-respecting republic could not be maintained primarily by constructing better institutional arrangements. Such a republic would have to be actively fought for in the realm of public opinion and through a party apparatus in the national legislature. Accordingly, Madison cultivated ties with the former Antifederalists both within and outside of the new government, and the Jeffersonian Republican Party was born. Their alliance was no fluke. In addition to possessing constitutional philosophies that were remarkably similar once Madison was stripped of his unorthodox views about the extended republic, the backgrounds and interests of the Madisonians were more similar to the Antifederalists than the Federalists as well.

The next two chapters treat political alliances and structures in the early Congress. Chapter 6 demonstrates the durability of the Antifederalist-Madisonian coalition and that this coalition remained focused on the proper extent of governmental power. Scholars of political parties have thought the new partisan cleavage indicated that the issue of governmental power receded to a secondary matter in the years after ratification. Their contention is that a new issue cleavage precipitated a coalitional change except on a few votes that explicitly related to governmental power, which reunited the old coalition. But the matter of national power was very much in contention throughout the Federalist era on a whole range of issues. I analyze roll-call votes of each coalition and the issues that were being decided to see whether their assertions are supported. Even when accepting these authors' categorization of votes, the issue-cleavage concept is not validated. Much closer to the mark is John Aldrich, who writes of the "multi-dimensionality" of votes, meaning that they simultaneously activated a whole range of personal, state, and regional preferences, including preferences about the extent of national power. And yet Aldrich's claim that the first impetus for parties came from the Federalists as a means of overcoming a collective action problem seems faulty. In my estimation, the Republicans were the first to organize their partisan apparatus as an electioneering device.

Tenures in Congress were almost uniformly short during the early years of its existence. Despite losing on the term limits issue during the ratification debate, it seems as though the Antifederalists' hope for rotation out of office was satisfied by something like a natural term limit. Conditions in Congress were sufficiently taxing to prevent institutional development and the growth of national power. Federalists and Republicans also agreed, in



the main, on the processes and structures to be used in the new Congress. Both groups eschewed the use of standing committees to determine policy matters. At the same time, they used numerous select committees, which allowed them to specialize according to their preferences. Agreement on the legitimacy of the policy process and the slow development of the institution of Congress forestalled any search for radical, extraconstitutional solutions to governmental problems by the opposition party. A final chapter summarizes the events, timing, and causality in the early regime, discusses the enduring contribution of the Antifederalists, and comments on the usefulness of the precedents set in the first years of the republic.

Two great ironies of the American founding take center stage here. The first is that the Antifederalists were as responsible for the legitimization of the Constitution as the Federalists. The second is that the fragility of the times as perceived by its political leaders was the most crucial ingredient in establishing a stable constitutional order. Fear induced stability. Neither of these observations should come as a surprise. Yet what makes these developments ironic from our perspective are our own deeply ingrained assumptions about the founding. Federalists, our assumptions tell us, out-thought and out-maneuvered the Antifederalists with a brilliantly conceived plan for change. So confident are we that the Federalists triumphed that there seems to be little need to consider Antifederalists after ratification, little need to consider that June 21, 1788, provided anything but closure. Yet in this sureness we lose the essence of what animated politics as the new government was coming into being: massive uncertainty. A more realistic grasp of the politics of the era (I am tempted to say of politics itself) can only be attained if the uncertainty and even fear that motivated politicians and citizens on all sides are readily acknowledged. Undoubtedly John Locke and the English Whig opposition inspired the text of the founding; but Thomas Hobbes provided an unacknowledged subtext. The founding was a political process, not a foreordained plan of demigods. That process was full of unexpected turns, reversals, and surprising results, making the founding more fascinating, if less redemptive, than if it were a gift from on high. The regime that evolved from this process did not easily correspond to any particular vision of politics or timetable for it. An accurate description of the founding therefore requires recognizing a kind of Burkean organicism layered on top of the rationalist strivings of three discernible groups: the Federalists, the Madisonians, and the Antifederalists.

