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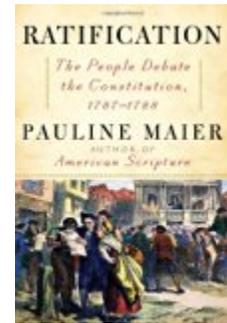
in the Humanities & Social Sciences

Pauline Maier. *Ratification: The People Debate the Constitution, 1787-1788*. New York: Simon & Schuster, 2010. xvi + 589 pp. + 16 pp. of plates. \$30.00 (cloth), ISBN 978-0-684-86854-7.

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“People ... of Great Intelligence in Public Business”

On February 6, 1788, in a major speech during the concluding session of the Massachusetts ratifying convention, Governor John Hancock noted that “[t]he people of this Commonwealth” are a people “of great intelligence in public business” (p. 206). Hancock’s shrewd compliment applies not only to the people of Massachusetts but to the people of the United States during the great national discussion whether they should adopt or reject the proposed Constitution of the United States. The ratification controversy, both its formal institutions and processes and its informal process of debate and disputation, continues to show the American people at their political and principled best (and, occasionally, at their factional worst). Oddly, despite its intrinsic interest and its remarkable drama and excitement, never until now has the ratification of the Constitution received the comprehensive historical treatment that it deserves. The book under review—large, entertaining, rigorously argued, and formidably researched—does just that. Ten years in the making, it was worth the wait.

With *Ratification*, Pauline Maier, the William Rand Kenan Jr. Professor of History at MIT, continues her valuable series of elegantly crafted studies of how the origins of the United States involved not just the elite founding fathers but also the “great body of the people.” In *From Resistance to Revolution: Colonial Radicals and the Development of American Opposition to Britain, 1765-1776* (1972), she examined the origins of the American revolutionary movement against British colonial policy. She supplemented that work with a set of biographical case

studies in *The Old Revolutionaries: Political Lives in the Age of Samuel Adams* (1980). *American Scripture: Making the Declaration of Independence* (1997), the best book on the origins of the Declaration of Independence, explored the complicated relationship between the Second Continental Congress and the American people, tracing how that Congress sought to keep pace with while not outrunning the evolving sentiments of the people about maintaining or breaking the tie connecting them to the mother country and its king.[1]

As in Maier’s previous books, *Ratification* brings in the people—though without ousting the conventional leading players in the story of the adoption of the Constitution, just as her earlier books did not exclude founding fathers such as Samuel Adams and Thomas Jefferson. Of all the many ways that *Ratification* illuminates our understanding of its subject, perhaps the most important is its demonstration that adopting the Constitution spanned all levels of what the historian Henry Adams called the “political population” of the United States (and in some cases beyond), giving force to the phrase “We the People of the United States” with which the Constitution begins. By the standards of politics in the Atlantic civilization of the late eighteenth century, the making of the Constitution of the United States was a truly unprecedented exercise of popular sovereignty, the people wielding the constituent power—the power to constitute a government.[2]

Maier begins with a prologue recounting the events leading up to the convening of the federal Convention as

seen by George Washington. She then jumps to the emergence of the proposed Constitution from the convention (wisely forgoing any pocket-handkerchief summary of the convention's doings), tracing the process by which the Confederation Congress considered and then sent the Constitution to the states; the calling by the states (except for Rhode Island) of elections for ratifying conventions; and the conventions themselves, affording equal attention to the formal debates within each state's convention and the politicking surrounding each convention's sessions. Throughout, she makes sure to highlight not just the "usual suspects" of ratification history, but also many lesser players, showing that the argument over the Constitution burst the bounds of the category of first-rank founding fathers to include a wide array of ordinary Americans who, though sometimes expressing their sense of being daunted by the importance of the occasion and the great names dominating the process, more than held their own. My favorite example of many unexpected gems of political wisdom to be found in Maier's pages is the reproof given by Thomas Bourne, a Massachusetts man who had been chosen as a delegate to the state's ratifying convention by his fellow townsmen in Sandwich, but who resigned when they sought to bind their delegates by instructions to vote against the Constitution: "To place myself in a situation where conviction could be followed only by bigotted persistence in error would be extremely disagreeable to me. Under the restrictions with which your delegates are fettered, the greatest idiot might answer your purpose as well, as the greatest man" (pp. 146 and 513, n. 64).

As previously noted, each of the four pivotal ratifying conventions—those of Pennsylvania (chapter 4), Massachusetts (chapters 6 and 7), Virginia (chapters 9 and 10), and New York (chapters 12 and 13)—get extended treatment, as merited by the richness of the documentation and their vital roles in the process. Bridging chapters (chapters 5, 8, and 11) examine the fate of the Constitution in Connecticut, New Hampshire, Maryland, and South and North Carolina. Chapter 3 recounts the opening maneuvers of the "paper war" over the Constitution, a theme picked up in passages of later chapters (for example, pp. 333-340). Maier's epilogue reconstructs the process by which the heaps of recommended amendments, under the guiding hand of James Madison (who was working under a stack of high-pressure correspondence from Thomas Jefferson), eventually reduced to the twelve proposed by Congress in the fall of 1789 and ultimately won ratification as the Bill of Rights. In chapter 14 and the epilogue, she also describes the reluctant

ratifications by the recalcitrant states of North Carolina and Rhode Island. A moving postscript calls the roll of deaths of key figures in the ratification controversy who have dropped out of historical memory, eclipsed by the leading founding fathers.

It is not hyperbole but fact that Maier's book is the first truly comprehensive history of the Constitution's ratification ever attempted. Previous studies focused either on chronicling key state battles or on examining the Constitution's opponents.^[3] Mostly, this void in American historiography is the result of research difficulties. The documentation concerning ratification is scattered through hundreds of federal, state, and local archives, university and public libraries, historical societies, and private collections. Until the present era, it was not possible for one scholar to canvass all the sources required to form a reliable, comprehensive picture of ratification.

Compounding these research difficulties are certain important features of the ratification process. Not only did it take place within the political systems of all thirteen states—with each state authorizing the election of a ratifying convention, conducting the election, and then convening the convention—but these formal political processes also were enveloped by a larger, informal process of debate and discussion unfolding within each state. Even more important, yet even harder to capture, was that these informal debates and discussions overflowed state boundaries, merging into what one contemporary called "the great national discussion."^[4] For the first time in American history, the people of all the states were arguing about, deliberating, and deciding on the same vital political choice—whether to adopt or reject the proposed Constitution. Not only did this shared national discussion help to draw citizens of the states together as Americans facing a common choice and defining a common political identity—it also was the origin of American constitutional discourse, that shared conversation about the Constitution, its origins, meaning, and goals that has persisted from that day to the present.

One key lesson of the American founding is that we are a nation because we chose to be. On this understanding, the history of the American founding is a series of smaller choices making up that larger process of choice, and the ratification controversy of 1787-88 (with its epilogue ratifications by North Carolina and Rhode Island in 1789 and 1790, respectively) may have been the vital stage of that process. To Maier's great credit, she has cast her net wide and integrated all these seemingly distinct political, constitutional, and intellectual stories into the

large, complex, and pivotal story that we have needed to understand for so long.

The foundation of Maier's book is a project that has been laboring for nearly half a century at the University of Wisconsin, *The Documentary History of the Ratification of the Constitution and the Bill of Rights, 1787-1791* (abbreviated DHRC).[5] Planned and launched by the eminent historian Merrill M. Jensen, the DHRC now spans twenty-one of a projected thirty-one volumes. Its devoted editors—John P. Kaminski, Gaspare J. Saladino, Richard Leffler, and Charles Schoenleber—have drawn together (with the aid of such researchers as the legendary Leonard Rapport and with their colleagues at such other projects as *The Documentary History of the First Federal Elections, 1788-1790* and *The Documentary History of the First Federal Congress*)[6] a mass of primary sources astonishing in its diversity and richness, and the editorial team at the DHRC has produced a series of volumes notable for their scholarly rigor and their comprehensiveness. Maier has drawn on all of the DHRC's volumes, particularly those covering the key states of Pennsylvania, Massachusetts, Virginia, and New York, which form the focal points of the story she tells. Five states await their volumes—New Hampshire, South Carolina, Maryland, North Carolina, and Rhode Island (p. xiii)—but Maier has done a great deal with the relatively sparse documentation available for those states. The DHRC also has issued a series of six volumes within the larger series, *Commentaries on the Constitution: Public and Private* (volumes 13-18), collecting all polemical and analytical treatments of the Constitution from the ratification controversy, from angry broadsides up to sophisticated and occasionally profound essay series such as *The Federalist*, the letters of "Brutus" and "Centinel," and the two pamphlets by the pseudonymous "Federal Farmer." Maier generously acknowledges her profound indebtedness to the DHRC and the fine scholars who have made it one of the great collaborative scholarly projects in history (pp. xii-xv and 488-489); the quality of the book that she has written based on their work testifies also to the enduring value of documentary editing as a fount of historical scholarship. (Perhaps also Maier's achievement, and its indebtedness to the DHRC, will persuade scholars once and for all to abandon the erratic and unreliable *Debates in the Several State Conventions on the Adoption of the Constitution* edited by Jonathan Elliot.)[7]

Both because it is the first book of its kind and because it is such a remarkable scholarly achievement, *Ratification* joins the DHRC as one of the two starting-points for future historians of the adoption of the Constitution.

Maier's landmark volume will shape all subsequent study of the ratification process. As she concedes in her book's opening pages, there is further work to do, and although future scholars will build on *Ratification* as well as on the DHRC, they may refine and develop our picture of the ratification process in various ways; the balance of this review sketches some possible further lines of inquiry and analysis.

First is a point that Maier mentions at various stages of her book, but one that a future historian might make more explicitly—that ratification is at once a single, intricate, multilayered story and a collection of fourteen (not merely thirteen) separate stories. In particular, it might be a good idea to integrate more fully that fourteenth story, of how the informal argument about the Constitution developing in the nation's newspapers and magazines helped to create an American national "public sphere" (a concept first proposed in 1963 by the eminent German political and legal philosopher Jurgen Habermas)—a realm of shared ideas, arguments, and controversy that drew within it the existing arenas of political and constitutional discourse that had developed within each state.[8] American national identity was itself a byproduct not only of the framing and adoption of the Constitution but, perhaps even more important, of the argument over the Constitution.[9] And yet, as Maier implies, the "war of words" over the proposed Constitution may not have been as central to the ratification process as some historians have assumed. In particular, Maier confirms that *The Federalist* was something of an orphan in the ratification controversy, far less influential than later litigators, jurists, and legal scholars have thought it to be, and having far greater influence on constitutional interpretation only after the end of the ratification process.

Second, a future historian might recast the history of ratification as developing in intellectual and political stages, with the first focusing on the legitimacy of the proposed Constitution, the second on the substance of the proposed Constitution (and of the recommended amendments proposed by state conventions as part of the price of ratification), and the last, following the adoption of the Constitution by the ninth state (as required by Article VIII), focusing on the transformed choice before the remaining states as not just whether to ratify the Constitution but also whether to join the Union under the Constitution. Concededly, this scheme of interpretation may be an artifact of hindsight, but Maier's account suggests how politicians on all sides of the ratification controversy might have seen the process evolving in this way.

Third, a future historian might develop more fully the relationship between the controversy over ratification of the Constitution and the succeeding set of controversies about how politics was to be conducted under the Constitution—in particular, how ratification figured into later arguments over how to apply the Constitution to such urgent problems affecting the nation as the issue of the public credit of the United States, the assumption of state debts, the location of the national capital, the establishment of the Bank of the United States, and the series of national security crises that broke upon the constitutional system in the 1790s.

Fourth, a future historian might highlight the central role in the ratification controversy of the Constitution's Article V (codifying the amending process) and of the shift from conditional or previous amendments to recommended amendments. In this view, Article V, rendering the task of amending a constitution more feasible than it was under Article 13 of the Articles of Confederation (which required all thirteen states' consent to any proposed amendment, by comparison with a two-thirds super-majority in both houses of Congress and three-fourths of the states), may have been crucial to the proposed Constitution's success.[10]

Maier's rich, dense text touches on all of these matters, while leaving room for future historians of ratification to explore them to deepen our understanding. However that scholarship might unfold, all historians, political scientists, legal scholars, and general readers concerned with the Constitution and its origins will find *Ratification* indispensable. Further, in the current political climate roiled by the emergence of the controversial Tea Party movement, both Tea Partiers and their opponents ought to study *Ratification* to understand a vital chapter of the history about which they're squabbling. They all will find reason for comfort, reason for disquiet, and ample reason for enlightenment in the pages of this extraordinary book.

Notes

[1]. See also R. B. Bernstein, review of Pauline Maier, *American Scripture: Making the Declaration of Independence*, H-Law, H-Net Reviews, September, 1997, <http://www.h-net.org/reviews/showrev.php?id=1324>.

[2]. Charles W. Roll, Jr., "We, Some of the People: Apportionment in the Thirteen State Conventions Ratifying the Constitution," *Journal of American History* 56, no. 1 (June 1969): 21-40. When we juxtapose Roll's findings with modern rates of voter participation, we may

feel less smug and more abashed than previous generations of readers and scholars may have felt.

[3]. Linda Grant DePauw, *The Eleventh Pillar: New York State and the Federal Constitution* (Ithaca, NY: Cornell University Press, 1966); Saul Cornell, *The Other Founders: Anti-Federalism and the Dissenting Tradition in America, 1788-1828* (Chapel Hill: University of North Carolina Press for the Omohundro Institute of Early American History and Culture, 1999); Herbert J. Storing, *What the Anti-Federalists Were For* (Chicago: University of Chicago Press, 1981); Robert A. Rutland, *Ordeal of the Constitution: The Antifederalists and the Ratification Struggle, 1787-1788* (Norman: University of Oklahoma Press, 1966; reprint, Boston: Northeastern University Press, 1983); and Jackson Turner Main, *The Antifederalists: Critics of the Constitution, 1787-1788* (Chapel Hill: University of North Carolina Press for Institute of Early American History and Culture, 1961; reprint, 2008).

[4]. The phrase is Alexander Hamilton's, from *The Federalist No. 1*. See Isaac Kramnick, "The Great National Discussion: The Discourse of Politics in 1787," *William and Mary Quarterly*, 3rd series, 45, no. 1 (January 1988): 3-32.

[5]. Merrill M. Jensen, John P. Kaminski, Gaspare J. Saladino, Richard Leffler, and Charles Schoenleber, eds., *The Documentary History of the Ratification of the Constitution and the Bill of Rights, 1787-1791*, 21 volumes of 31 projected (Madison: State Historical Society of Wisconsin, 1976-).

[6]. 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, 1976-1990); Linda Grant DePauw, Charlene Bangs Bickford, Kenneth Russell Bowling, Helen E. Veit, and William C. DiGiacomantonio, eds., *The Documentary History of the First Federal Congress*, 17 vols. of 22 projected (Baltimore: Johns Hopkins University Press, 1972-).

[7]. Jonathan Elliot, ed., *Debates in the Several State Conventions on the Adoption of the Federal Constitution*, 2nd ed. in 5 vols. (Philadelphia: J. B. Lippincott and Co., 1861). The first edition was published between 1827 and 1830; it was augmented by adding an edition of James Madison's *Notes of Debates in the Federal Convention of 1787*.

[8]. Jurgen Habermas, *The Structural Transformation of the Public Sphere: An Inquiry into a Category of*

Bourgeois Society, trans. Thomas Burger with the assistance of Frederick Lawrence (Cambridge, MA: MIT Press, 1989 [original German edition published in 1963]). See also Craig Calhoun, ed., *Habermas and the Public Sphere* (Cambridge, MA: MIT Press, 1992). For an application of Habermas's arguments to the late eighteenth-century American world, see Michael Warner, *The Letters of the Republic: Publication and the Public Sphere in Eighteenth-Century America* (Cambridge, MA: Harvard University Press, 1992). For a vigorous critique of the assumption that print culture and the public sphere were important nationalizing forces in the era of the early American republic, see Trish Loughran, *The Republic in Print: Print*

Culture in the Age of U.S. Nation-Building, 1770-1870 (New York: Columbia University Press, 2007).

[9]. On this point, see Richard B. Bernstein with Kym S. Rice, *Are We to Be a Nation? The Making of the Constitution* (Cambridge, MA: Harvard University Press, 1987); and Louis Fisher, *Constitutional Dialogues: Interpretation as Political Process* (Princeton, NJ: Princeton University Press, 1988).

[10]. On this point, see Richard B. Bernstein, *Amending America: If We Love the Constitution So Much, Why Do We Keep Trying to Change It?* (New York: Times Books/Random House, 1993), 14-30.

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