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HEADLINE: THE LAWYER'S BOOKSHELF  
Peace Pact: The Lost World of the American Founding

BYLINE: Reviewed by Eric M. Freedman; Eric M. Freedman, who teaches constitutional law and legal history at Hofstra Law School, is the author of several articles on the Articles of Confederation.

BODY:  
By David C. Hendrickson. University Press of Kansas, Lawrence, Kan. 416 pages, \$29.95.

In a recent report on the European Union's progress towards drafting a constitution, The New York Times commented, "Philadelphia it ain't." The article continued:

The founding fathers came together ... to forge a document that created a national identity and institutionalized the American people in one nation-state. ... [T]he Convention on the Future of Europe [aims at] codifying common ground among long-established states that will give their union more of a logical structure -- and perhaps more power -- as they expand eastward.

-- Elaine Sciolino, "Seeking Unity, Europe Drafts A Constitution," N.Y. Times, June 15, 2003, at A1.

David C. Hendrickson, chair of the political science department at Colorado College and a specialist in foreign affairs, would disagree with this antithesis.

The premise of his, "Peace Pact: The Lost World of the American Founding," a retelling of the story of the American founding is that it was, most importantly, just that -- "a peace pact ... that occurred in the anticipated prelude to rather than the bloody aftermath of a war. ... [A] self-conscious 'security community,' [it was] the most innovative attempt yet to overcome the serious obstacles that states had traditionally faced in securing effective cooperation with one another."

The conventional historical emphasis, he insists, has been misplaced. "Representative government, the rule of law, bicameral legislatures, independent judiciaries, and the role of government as a vindicator of individual rights were already embedded in the tradition of English constitutionalism, and on this score American thought had a fairly straightforward task of adaptation." To see what was unique and important about the founders' work, we should focus on "the making of the union and the Constitution [as] an experiment in international cooperation, albeit one that produced, in some senses, a nation."

When Professor Hendrickson views the history of the founding period through this lens the results are both disorienting and educational. The experience is rather like walking down a familiar block wearing a pair of spectacles that makes every shade of green appear three times as bright as usual. While taking the stroll, one says "My goodness, I never noticed how much green there was all around me," and one returns to one's usual eyeware with a heightened sensitivity to the greens in the neighborhood. The consciousness-raising is valuable regardless of whether one decides to switch permanently to the new glasses.

Professor Hendrickson contends, for example:

§ The crisis of the Confederation, conventionally viewed "as an issue between congress and the states [was] as much and perhaps more importantly an issue between the sections." He argues forcefully that the most urgent need before the delegates in Philadelphia was not to accomplish a redistribution of power between the state and federal governments in the interests of commercial efficiency, but rather to forestall the formation of two or three independent countries on this continent -- countries that would inevitably seek the assistance of foreign powers and replicate here the unending strife of the Old World.

§ Accordingly, the arguments during ratification centered on whether the Constitution supplied the structure needed to avoid repeating the European experience, which had been characterized either by relatively equal states engaging in interminable struggles or a despotic empire suppressing internecine warfare and personal liberty at once. "Rather than the conflict between aristocracy and democracy, it is the contrast between universal empire and international anarchy [usually rendered as the conflict between centralization and decentralization] that lay at the heart of the ratification debates."

§ In historical memory, the founding fathers appear united in their wisdom and venerable in their concordance. Closer to the truth is the observation that, in one brief shining moment, they achieved a meeting of the minds that was deceptive, and were brought round to a concordance that was delusive." Like the Treaty of Vienna, which curbed the European powers from 1815 until World War I,

the Constitution was an interstate agreement that placed a lid on a simmering cauldron of internal tensions that erupted in the Civil War. [The author plans to describe the period between 1789 and 1861 in a second volume significantly entitled, "The Long Peace."].

In its more conventional sections, the book also provides useful accounts of the historical analogies that informed the founders' work, British views on American independence, the political dynamics of the First Continental Congress and the significance of the terms of the peace treaty with Britain.

Professor Hendrickson builds his case solidly on the well-known corpus of primary sources. When he turns to scholarly works, his citations are to the historical literature, which he has mastered admirably, and to the literature of international affairs, in which he is entirely at home. Indeed, it is from his own extensive documentation that one learns that he has made but few arguments that have not been anticipated to some degree by others.

In light of this laborious research effort, it might seem unreasonable to complain of his failure to explore the voluminous historical writings by legal academicians that have been published both in law reviews and as books. Still, a consideration of this material -- for example, the work of Professor John Phillip Reid of New York University Law School on contemporaries' understandings of the British constitution -- would significantly have enriched Professor Hendrickson's scholarship.

But the concerns of specialists should not deter the general reader. This lucidly written volume is a refreshing demonstration of what academic history does best: view the past anew and thereby expand our intellectual horizons in the present. Whatever the ultimate conclusions, its readers will bring new insights to bear on a post-Sept. 11 world, in which we too must decide, "whether the specter of international anarchy or universal empire is most repellent."

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