

Are We There Yet?

By Martha Gadberry



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James and John just wanted to go home. Thomas and especially George wanted to go home. Their wives had managed their businesses and households, fled from the British armies, and raised their children for more than eight years.

But they couldn't go home. They weren't *there* yet. After years of fighting to birth this new country for individual liberty, they had, as Robert Frost would put it many years later, miles to go before they could sleep.

Now they had to write, argue, and win new battles to create a government the likes of which the world had never seen. This task had brought them all, in the summer of 1787, to the Constitutional Convention in Philadelphia.

Since 1781, this new country had been operating as a loose federation under the Articles of Confederation. But within a few years, it seemed to many that the new entity was no longer a confederacy of individual states with their own interests, biases, and financial considerations. It demanded new documents: a constitution, which would create new institutions to make and execute laws for the collective whole, and a bill of rights.

James Madison was the leading scholar and legislative strategist for this endeavor. In preparation for his responsibility to shape the new government, Madison wrote to his writing partner and good friend Thomas Jefferson, who was in France, to send him books that were not available in the new country. Jefferson sent hundreds of volumes Madison in his five years abroad. Madison requested "Treatises of the ancient or modern Federal Republics, the law of Nations, and the history, natural and political, of the new World," treatises on morality, histories of European countries, the history of political theory and all thirty-seven volumes of the *Encyclopédie méthodique* (Koch 18-19). He already had at hand George Mason's Virginia Declaration of Rights (1776), the English Bill of Rights (1689), and the Magna Carta (1212).

Madison was well suited to this task. Educated at Princeton in the North, but a Southerner by birth, he understood both perspectives—the manufacturing side and the agrarian side. He had served in the Virginia House and in the Continental Congress. His writing was persuasive, and his ability to provide written documents at pivotal times of debate proved to be important leverage toward his point of view.

In a rich description of the pair's partnership and friendship in *Jefferson and Madison: The Great Collaboration*, Adrienne Koch indicates that Madison and Jefferson led the argument that the new nation could trust in the wisdom of those who had fought for their freedom in the revolution. They wanted to honor that wisdom with all the liberties possible in the new structure, policies and governance.

Others, like Alexander Hamilton and Patrick Henry, believed there was no greater country model than England and desired that an aristocracy be set up to provide primary leadership to a plebeian population. They did not entirely trust those who were not educated. But the revolution, as Jefferson and Madison saw it, had not been won by a supreme leader who could define and rule, nor by a small, compact elite. It had been won by a people, inspired by an intense desire for individual freedom from tyranny. In the case of the thirteen former British colonies of North America, the victor had been every man and woman who fought with devotion and made sacrifices. Therefore, Madison, as well as Jefferson, sought that the whole people would be empowered to weigh in on how they were to be governed. Accordingly, they argued that there should be no aristocracy in America, such as those in European nations, nor should there be a single, all-powerful church.

Thomas Jefferson conceived a "democratic society to be fundamentally different from a society based on force or fraud,"

and his writing was based on his "unshakable faith in the intelligence, popular consent and the moral object of democratic society" (Koch ix).

Of the popular electorate, Jefferson wrote, "Do not be too severe upon their errors, but reclaim them by enlightening them. If once they become inattentive to the public affairs, you and I, and Congress and Assemblies, judges and governors shall all become wolves" (Koch 45).

People would be empowered to weigh in on how they were to be governed.

The destiny of republican government, Madison believed, is "staked on the vigilance of the American people to tend 'the sacred fire of liberty'" (Shaheen).

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A basic problem that confronted the framers of the Constitution was how to supersede a system that had been founded on the principle of a confederation of "Sovereign States." Instead of a federal government that was solely in relationship to the states, such as the Articles of Confederation had created, the founders wanted a federal government that also was in its own relationship to individual

citizens (Koch 37)

"No government of human device and human administration can be perfect," Madison affirmed, concluding that "that which is the least imperfect is therefore the best government" (Koch 289-90). The goal of the Constitutional Convention would be to find the least imperfect way to achieve what Madison identified as "four great objects":

1. Unite a proper energy in the Executive, and a proper stability in the Legislative departments with the essential character of a Republican Government
2. To draw a line of demarcation [sic] which would give to the General Government every power requisite for general purposes, and leave to the States every power which might be most beneficially administered by them.
3. To provide for the different interests of different parts of the Union
4. To adjust the clashing pretensions of the large and small states. (quoted in Koch 37)

Madison said, in an understatement, "each of these is pregnant with difficulties" (Koch 37).

Madison believed, along with many of his contemporaries, that the great danger to popular government is faction, such as the differences between "the rich and poor, agrarian and manufacturing

interests, the debtors and the creditors...” (Shaheen). Dedication to the principles of freedom also meant a common commitment to the idea of responsibility and the practice of self-government. This was the cornerstone of Madison's vision of the “new and more noble course” of free government in the modern world (Shaheen).

Three-quarters of a century later, Abraham Lincoln would echo Madison's republican convictions. On the brink of civil war, Lincoln reminded the American people that “a majority, held in restraint by constitutional checks, and limitations, and always changing easily with deliberate changes of popular opinions and sentiments, is the only true sovereign of a free people” (quoted in Shaheen).

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The Constitution. The three branches of government. The separation of the responsibilities of the states from those of the federal government. The representative form of government. The individual liberties recognized in the Bill of Rights. These are products of the extensive thinking that went into developing our way of government. Heavy lifting, indeed.

After two hundred and forty-two years of implementation, they have been well tested.

Having served three governors (of different parties and perspectives) and one mayor, I have some observations about this base that James Madison and others provide us. I believe in the

American people and their wisdom, despite votes that I don't like.

There is no one “correct” way to do government. Conservatives and Republicans are still advocating for a small federal government, as some founders did. Some Democrats and liberals think it should be as big as we need it to be. The discussion now is how small is too small and how big is too big?

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Living in a global society, where does it make sense to provide rules on a national level, and where on the state level?

It is essential that we draw on the wisdom of Thomas Jefferson and James Madison that democracy will be imperfect, and will require compromise.

Nowhere is that need more evident than in discussing the individual liberties articulated in the Bill of Rights. Freedom of religion, speech, press, assembly, and petition are all guaranteed by the First Amendment. The Second affirms the right to keep and bear arms in order to maintain a well-regulated militia. The right to due

process of law, freedom from self-incrimination, and protection from double jeopardy are recognized in the Fifth, while the Sixth recognizes the rights of accused persons, e.g., right to a speedy and public trial. They are so familiar that we take them for granted, cannot imagine our civic life without them, but some founders argued that if basic rights are not protected in the Constitution, individual states would be free to violate them. Women's rights, LGBTQ rights, minority rights and the rights of immigrants of various sorts are contemporary examples of areas in which there is risk of violation by the states, and therefore a need for federal oversight.

In Colleen Shaheen's profile of Madison on the Heritage Foundation website, we find that Madison believed that the government, if it was just, would protect these rights. “A person's ‘opinions and the free communication of them’ is a no less sacred form of property, from which freedom of speech, assembly and press are derived. ‘Government is instituted to protect property of every sort [...]’”.

The First Amendment's guarantee of religious freedom, both in providing for its free exercise by the individual citizen and in blocking the establishment of a state religion, was particularly important to Madison. In 1785, he had strongly objected to Patrick Henry's proposal for a tax to support “Teachers of the Christian Religion.” History amply showed, he argued, that the merging of church and state had been unhealthy for both institutions. Christianity's greatest era had been prior to its

becoming the official religion of an empire:

During almost fifteen centuries has the legal establishment of Christianity been on trial. What have been its fruits? More or less in all places, pride and indolence in the Clergy, ignorance and servility in the laity, in both, superstition, bigotry and persecution. Enquire of the Teachers of Christianity for the ages in which it appeared in its greatest lustre; those of every sect, point to the ages prior to its incorporation with Civil policy. (Madison)

Shaheen comments:

Madison argued that the religion of every person must be left to his own conscience and cannot rightly be forced by the dictates of other human beings. In promoting the doctrine of religious freedom, his intent was not to privilege the secular over the religious or in any way to diminish the realm of the latter, but rather to protect men's religious convictions against the intrusion of the state.

She goes on, "not even a majority in society has the legitimate right to interfere with a man's allegiance to divine authority," indicating an issue with we continue to wrestle. We run into trouble when freedom of conscience, based on religion, slams into freedom to be a subject of God. Recall the 2018 Supreme

Court case over the rights of the Colorado baker to refuse to bake a cake in celebration of a marriage of two men. Whose conscience should be protected here?

The right to bear arms named in the Second Amendment is likewise full of possible grounds for debate. Does this right include whatever gun you want to use, wherever, whenever? In the nineteenth century, Americans did not believe in peacetime armies. Now we do. We no longer depend on militias. The right to keep and bear arms in order to maintain a well-regulated militia is no longer useful to us. How then do we interpret this amendment?

People on both sides of the slavery laws were fiercely loyal to their position. I have long looked askance at Thomas Jefferson for having slaves. However, I found that in the first draft of the new Virginia Constitution, he advocated freeing the slaves. In Virginia, of course, it didn't go anywhere. In the new country's constitution, he, once again, repeated a request to free them by a certain year, stop the increase in numbers, and prohibit slavery in the new territories. But not enough people agreed to put these provisions into the new Constitution.

At terrible cost, slavery was finally ended, but in the Reconstruction era, freed slaves were given tenant farming, receiving their wages through credit from the owner's store; this could turn into slavery by a different name. Nowadays, people who are black are consistently given lower

wages and worse jobs than white people. Racial equity seems as far off as ever. Many Americans are still under the illusion that this is a white nation.

Then there is the ever-contentious topic of taxation. According to Colleen Shaheen, Madison would not have approved of any redistributive policies:

When government interferes with the freedom to derive the fruits of one's talents and labors, it violates the principle of human equality by subjecting some to peculiar burdens and others to particular exemptions. When government dictates arbitrary taxation or the taking of property from one class of citizens to benefit another, freedom is assailed. This is because the right of property is simply the natural and necessary extension of the free use of one's faculties. (Shaheen)

Does this mean we should not tax the rich to assist the poor? Should Nebraska farmers not take Colorado's water from Kansas? Once again, in Madison's own phrase, the subject is "pregnant with difficulties."

Madison wrote that the relationship between the states and the federal government is "to modify the sovereignty as that it may be sufficiently neutral between different parts of the society to control one part from invading the rights of another, and at the same time sufficiently controlled itself

from setting up an interest adverse to that of the entire society” (quoted in Koch 39). As mentioned above, Madison and Jefferson believed the great threat to our country at that time was the rule by faction. They argued that the larger the society, the easier it would be to remain neutral, compared to a small society, which would be dominated by the factions. The broader federal government, they hoped, would be less prey to faction than would the government of the states. Therefore, the liberty, devotion, good faith effort of every citizen was to be considered in laying down the shape of governance.

The destiny of republican government, Madison believed, is staked on the vigilance of the American people to tend what George Washington, in his First Inaugural Address, called “the sacred fire of liberty” (Shaheen). The country was changing rapidly and the culture along with it. The pace of change would require continuously updating the governing function.

Not everyone agreed about how to design representation in the new Congress. Madison believed that the job of the representative was not to test the air for which way the wind is blowing, but rather to promote consensus grounded in justice and the common good. He believed that consensus required discussion in the legislature and also communication with constituents. When the populace is “stimulated by some irregular passion or some illicit advantage, the good representative will place duty above ambition” (Shaheen).

I have yet to be informed of issues from any of my representatives. I once heard a State Senator at a County Fair not only defend his vote, but also provide a reasonable explanation of what would happen if he didn’t. He is a rarity.

The undercurrent of continuous compromise in the first Congress supports the notion that the purpose of representation is to “refine and enlarge the public views, by passing them through the medium of a chosen body of citizens, whose wisdom may best discern the true interest of their country, and whose patriotism and love of justice, will be least likely to sacrifice it to temporary or partial considerations” (Shaheen).

In former President Barack Obama’s recent letter to me on behalf of Organizing for Change, he writes, “Friend, those who believe in democracy and civil rights and a common humanity will always have the upper hand. That’s not just something I want to believe; I believe it because *history has proven it true*. If we want a more representative, more just, more inclusive democracy, we need to keep fighting for it.”

Tending the sacred fires of liberty, protecting individual freedoms, and governing with the entire country in mind provided the bedrock of our governing system as envisioned by James Madison, Thomas Jefferson, George Washington and others. What they created has endured remarkably. But they themselves understood that the best they could attain

was what was “least imperfect,” that it would always be a work in progress.

Can we go home now? Are we there yet? I don’t think so. We are still engaged in the task of creating a less imperfect union.

George and Martha Washington, Thomas and Martha Jefferson and Sally Hemmings, James and Dolley Madison, and John and Abigail Adams have gone home now. I am in awe of the sacrifice and gifts they have given. I promise to tend the sacred fires of liberty.

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