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Our poor, broken nation, and the ways it's been broken before

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By Charles R. Church

In 1630, John Winthrop spoke to his fellow Puritans sailing to the New World on the “Arabella,” likening their proposed settlement to “a City upon a Hill, [with] the eyes of all people upon us,” while providing a stirring ideal. It did not take long, however, for Puritans to conduct the infamous Salem witch trials, where as the result of superstition, distrust and hysteria, dozens — including young girls — were put to death cruelly and unnecessarily.

Aspirations are fine, but do we really have the right to think we've drawn remotely near to their realization? Let's begin by looking to the U.S. Constitution, the rock on which our nation rests. Probably most of us recall that black slaves (called merely “other Persons” to disguise the hard truth) were counted as three-fifths of a person when determining the number of representatives a state would enjoy in the federal House. But two other, equally infamous, provisions may not be so well remembered, probably because our schools disliked teaching us about them.

The first, which still exists, allowed the “Migration or Importation of such Persons” (note the evasion, once again, of the actual term) as then-existing states “shall think proper to admit” until 1808. The next, now mercifully removed, held that “No Person held to Service” (the founders had to reach pretty far for this euphemism, which makes slavery sound like “Downton Abbey”) in a state, then escaping into another shall “in consequence of any Law” in the latter “be discharged from such Service” but shall be “delivered up on Claim of the Party to whom such Service ... may be due.”

That's a founding document to be proud of? No doubt many will reply that including these nauseating provisions was the price of creating the union in the first place. But one might be pardoned for asking whether this devil's bargain was worth it. We move then to the odious “Dred Scott v. Sandford,” in which the bigot Chief Justice Roger Taney in 1857 ruled for a Supreme Court majority that Scott's suit to establish his freedom and that of his family based on their being moved to the Louisiana Territory, where slavery was not recognized, must be dismissed. Blacks

could not be citizens, after all, so no such suit would be entertained. Not content with administering this blow, Taney gratuitously proceeded to judge blacks “an inferior class of beings,” “bought and sold, and treated as an ordinary article of merchandise and traffic, whenever a profit could be made by it.”

As the result of the blood-soaked Civil War, the nation adopted the 13th, 14th and 15th Amendments to the Constitution, granting freedom from slavery; forbidding any state to deprive any person of life, liberty or property without due process of law, nor deny to such person the equal protection of the laws; and proscribing the denial to any citizen of the right to vote “on account of race, color, or previous condition of servitude.”

These were huge strides, no? Not so fast, as the saying goes. Sure, slavery was dead and gone, but could black people look forward to a full array of human rights? Under the 14th Amendment, they became citizens, but according to Professor Lewis H. Larue, the Supreme Court in “The Slaughterhouse Cases” gutted this status of any meaning by stripping citizenship of any important legal consequence.

That is, security against violation by the states of citizens’ fundamental rights would not be forbidden. My mind may have been destroyed by law school, but you probably have escaped that fate, so I will spare you the details of the case, except to say that it involved restrictions on butchers, an image which keeps cropping up where black people are concerned.

Lest you conclude that black people were not affected by that case, let us move ahead to 1875 to “U.S. v. Cruikshank,” which arose from the Colfax Massacre in which hundreds of innocent blacks were slaughtered. Chief Justice Waite (mercifully, Taney had died years before) found that the First Amendment’s freedom of assembly protected only against incursions by the federal government, not by the states or by private persons. People must look to the states for protection of their First Amendment Rights. This, of course, offered cold comfort to blacks living in the South.

Do you feel relieved that these decisions lie so far in our past? Well, “Plessy v. Ferguson” invented the fictitious “separate but equal” doctrine a quarter century later, almost within the 20th century. The hideous “Korematsu v. United States” decision, which banished even Japanese U.S. citizens to internment camps, was decided in 1944. Are you thinking that’s all behind us? After all, we’ve elected a black man to be president, and for two terms at that; we’ve cleansed ourselves.

Stop right there. Bill Bradley declared in 1995 that “politics is broken,” but he had no glimmering of what was to come. My point is this. Yes, the radical right has sprung up, but does anyone seriously believe that the pernicious obstruction visited upon President Obama has had nothing to do with his race? Justice Potter Stewart, while declining any further attempt to define obscenity, famously added: “But I know it when I see it.” Well, I know racism when I see it, and I’d bet you do too.

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