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We must deal with Constitution's blemishes

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Your Turn

Alan Garfield
Guest columnist

It's the first day of my constitutional law class. What message should I convey to my students?

The students, in preparing for class, will have done what few Americans do: read the complete texts of the Declaration of Independence and the Constitution.

It is a jarring exercise. The same Declaration of Independence that proclaims "all men are created equal" complains about "merciless Indian Savages." And any hope that the framers would adopt the Declaration's pronouncement on human equality evaporates when one discovers that the Constitution actively protected slavery by prohibiting Congress from immediately ending the slave trade, requiring the return of escaped slaves to their owners, and counting slaves as three-fifths of a person when allocating seats in the House of Representatives.

There is no hiding these blemishes in our nation's sacred text. They are still present in the document, even if the Thirteenth Amendment's banishment of slavery rendered them null and void.

One can try to excuse these provisions, as if that were possible, as an awful compromise made by well-intentioned men determined to preserve the union. The problem is that too many members of this "assembly of demigods," as Thomas Jefferson called the

Framers, were themselves slaveholders.

But now we are one hour into my class and the students have already learned that the Constitution is an imperfect document written by imperfect men. Where do we go from here? The answer lies in the remaining thousand pages of our densely packed textbook. I wish I could say that this material tells an inspiring story of our nation's unwavering march toward a just society. The truth is far more complicated. It is a story of fits and starts, of forward and backward steps, as our nation engaged in, and continues to engage in, a debate over its core values.

So, in one class we might celebrate the Thirteenth Amendment's abolition of slavery, but only after slogging through the Supreme Court's Dred Scott decision, which described African-Americans as "beings of an inferior order" who could be "treated as an ordinary article of merchandise."

In another class, we will learn of how the Fifteenth Amendment in 1870 forbade denying the right to vote based on race, only to then learn that the Amendment went largely unenforced for the next hundred years. It took the civil rights movement, including the spilling of John Lewis' blood on the Edmund Pettus Bridge, to finally shame Congress into passing the Voting Rights Act of 1965, which put teeth into the Fifteenth Amendment.

Then, in 2013, in an opinion more concerned with states' rights than voters' rights, the Supreme Court in a 5-to-4 decision rendered the Voting Rights Act largely toothless. After the Court's decision issued, conservative states rushed to pass laws aimed at disenfranchising minority voters.

Where does this leave us? The framers were not demigods. The document they created was not flawless. And the justices interpreting this document have done so for both good and ill.

Yet it is undeniable that the framers divided power and created checks and balances that protect our liberty to this day. And, in the promptly adopted Bill of Rights amendments, the framers provided us with many of our most precious civil liberties. The framers also lit the path forward even if they could not take the path themselves. In the Constitution's majestic Preamble, the framers charged "We the People" with the responsibility of continuing to make our union ever more perfect. And they gave us the road map for getting there: "establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity."

That's why almost two centuries after the framers, Martin Luther King Jr. could accurately say that "When the architects of our republic wrote the magnificent words of the Constitution and the Declaration of Independence, they were signing a promissory note to which every American was to fall heir." King was right, even if too many Americans are still waiting for their checks to clear.

In an ideal world, the arc of history bends toward justice. In the real world, the path is rocky and the trailblazers flawed. All I can tell my students is that, in constitutional law, the most important question is not where we've been but where we're going.

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