

## THE GREAT CONSTITUTIONAL DREAM BOOK

In his 1952 novel, *Invisible Man*, Ralph Ellison (1914–1994) depicts the eviction of an elderly black couple from their apartment in Harlem. The couple's meager possessions are strewn on the sidewalk; there are fragments of life stretching back to the era of slavery—emancipation papers, a picture of Abraham Lincoln, a commemorative plate from the St. Louis World's Fair in 1904, a newspaper account of the black leader Marcus Garvey, letters from their grandchildren, cheap furniture. As the couple is being evicted, *Invisible Man's* refrain is, "[W]e're a law abiding people." Police officers had demanded the eviction, it is true. But Ellison was asking how their eviction could be consistent with law. Just because something was commanded by a



American author Ralph Ellison at home in New York City, 1963. In his novel *Invisible Man*, Ellison describes the U.S. Constitution as a "Great Constitutional Dream Book," contrasting the way rights are idealized in the Constitution against the way these rights were denied to African Americans in the 1950s via government-sanctioned segregation laws. BEN MARTIN/TIME AND LIFE PICTURES/GETTY IMAGES

"law"—in this case, a law-enforcement officer—did not make it just.

Ellison drew a distinction between law and justice, and in keeping with generations of Americans stretching back to the American Revolution, he thought that something unjust could not be "law." Moreover, the couple in his novel had almost nothing from which they could be evicted. All they had was the "Great Constitutional Dream Book," and even that they could not read (Ellison 1995, p. 280).

No book had been published, however, with that title. Ellison was alluding to "dream books," which in the late nineteenth and early twentieth centuries were popular in African-American culture for dream interpretation. The "Great Constitutional Dream Book"—for Ellison, and for African Americans during the years between the end of Reconstruction in 1877 and the beginning of the civil rights movement, around the time of the Supreme Court decision in *Brown v. Board of Education* (1954)—was an image, an idea. It alluded to the dreams of what the Constitution might be and the life that might exist under it. At its center was the critique that not everything that is "law" is justice.

Ellison elaborates this idea in his posthumously published novel, *Juneteenth*. In notes at the end of the volume, Ellison discusses the distinction between truth and law. Law put African Americans in subordinate positions, but the truth was different:

[W]hile it looks like we are what the law says we are, don't ever forget that we've been put in this position by force, by power of numbers, and the readiness of those numbers to use brutality to keep us within the law. Ah, but the truth is something else. We are not what the law, yes and custom, says we are and to protect our truth we have to protect ourselves from the definitions of the law." (Ellison 1999, p. 354)

A constellation of ideas then in circulation in the black press, on how the legal world ought to be construed, constituted that dream book. Ellison was referring to the dreams of African-American intellectuals generally—about equality, the campaign to stop lynching, equal funding for separate schools, an end to discrimination in housing, the right to vote, and segregation in public transportation. Those dreams became a movement to place the idea of equality at the center of U.S. constitutional law. As a 1923 editorial from the *Oklahoma City Black Dispatch* put it, "All the Negro wants is to CATCH THE VISION" ("The Hooker Trust Company," 1923). Moreover, there was a way to a richer principle of equal treatment:

While chaos and confusion reigns, the black man can stand and point the unerring way to justice.

First, ACCEPT THE NEGRO AS A MAN and [in] doing this tear from the statute books all of the hypocritical laws that lower his status in citizenship, acknowledge to the truth that there is no class legislation, that in its intent or purpose or in its administration that gives equality of opportunity. If the higher classes of the white South continue in their attitude of LYNCHING THE NEGRO OF HIS RIGHTS, they have no just cause to complain when the lower classes of their own people LYNCH THE BLACK MAN OF HIS LIFE! There is no halfway ground and the road to justice is plain. ("The Murder Record," 1923)

The idea of equality, driven by the clear inequalities of American society, gained much strength in the black community in the 1920s and 1930s. Langston Hughes (1906–1967) captured those sentiments in his writing, including his 1938 poem, "Let America Be America Again," on the divergence between the dream of America and its grim reality. In language reminiscent of Ralph Ellison and others who sought a new order, Hughes asked for equality.

What is particularly surprising, given the multiple ways that law abandoned African Americans (through absurdly biased criminal prosecutions, lack of protection from violence, laws that disenfranchised voters, school and housing segregation ordinances, and reinterpretation of the Reconstruction amendments in ways that dramatically limited their effectiveness) is the resilience of African Americans' faith in law. Cases from the Jim Crow era, such as *Plessy v. Ferguson* (1896), *Cumming v. Richmond County Board of Election* (1899), *Berea College v. Kentucky* (1906), and *Gong Lum v. Rice* (1927), illustrate the difficulties racial minorities faced in obtaining even minimal justice. Other cases in which the U.S. Supreme Court struck down unequal treatment (such as grandfather voting clauses, in *Guinn v. United States*; racial zoning legislation, in *Buchanan v. Warley*; and peonage, in *Bailey v. Alabama*), or overturned convictions obtained in the wake of race hatred (*Moore v. Dempsey*) and police brutality (*Hollins v. Oklahoma*), further illustrate the legal system's gross unfairness to African Americans.

Many African Americans, of course, had little faith in the legal system. Young Ralph Ellison was one of them. He told of a quip an Oklahoma judge made from the bench, that "a Model T Ford full of Negroes ranging at large on the streets of the city was a more devastating piece of bad luck than having one's path crossed by thirteen howling jet-black cats" (Brophy 2002, p. 14). Given such statements, the law as established by whites could have little legitimacy in the black community. As a result, it was jazz musicians, those

representatives of counter-society, whom the young Ralph Ellison idolized.

Among some in the white community the law had little respect as well, which John Steinbeck (1902–1968) depicted in *The Grapes of Wrath*, his 1939 novel about the Joad family. When Grandpa Joad dies on the way to California, his family worries that the law would not permit them to bury him. If they could not, perhaps they should become lawbreakers:

"Sometimes the law can't be foller'd no way," said Pa. "Not in decency, anyways. They's a lots a times you can't. . . . Sometimes a fella got to sift the law. I'm sayin' now I got the right to bury my own pa. . . ."

The preacher rose high on his elbow. "Law changes," he said, "but 'got to's' go on. You got the right to do what you got to do." (Steinbeck 1996, p. 357)

Still, some had faith in law, and it is those people who created the great constitutional dream book. How could they have had such faith? In part, their experiences during Reconstruction, when for a brief period a different conception of the world appeared, sustained them through the dark years of Jim Crow. In part, perhaps, there was no place else besides the law where people could look for hope.

One often-overlooked aspect of African Americans' religious beliefs in the late nineteenth century was the view that the promised land would yet come. That optimism among people such as Roscoe Dunjee, the editor of the *Oklahoma City Black Dispatch* and a father figure to Ellison in his youth, appeared in the pages of his newspaper and in his demand that the world be ordered differently. Even though members of the Oklahoma black community impugned Dunjee's masculinity, for his suggestion that the rule of law might offer some hope, Dunjee made constant appeals to law, through both his newspaper and his community service. In the 1930s he served on the board of the National Association for the Advancement of Colored People (NAACP), and in the 1940s he pushed Ada Lois Sipuel to file a lawsuit to integrate the University of Oklahoma's law school (*Sipuel v. Board of Regents*).

Earlier in the century, the dreams of African-American intellectuals had influenced the development of political action and litigation strategies. What must have been particularly sweet for Roscoe Dunjee was that even though his idea of faith in the Constitution was ridiculed, he lived long enough to see the 1954 *Brown* decision. In the aftermath of such criminal breakdowns of the rule of law as the 1921 Tulsa riot, Ellison noted in "Going to the Territory," a 1979 lecture he gave at Brown

University, that *Brown* would have been “unthinkable—even as a comic, practical jok[e].” Later, as a professor of literature at New York University (1970–1979), Ellison praised the virtues of Dunjee’s faith in the principles of equality in the Constitution. That faith in the Constitution was repaid.

What remains ambiguous, however, is whether faith in the Constitution is what led to the civil rights movement. One can identify the content of the dream book, but there is still the important question of what was the relationship between the dream book and the civil rights movement, and cases such as *Brown*.

In some very basic ways, there are connections between the authors of (and the ideas in) the dream book and the civil rights movement. For instance, the NAACP was responsible for instigating litigation that led to the movement, from the case striking down the grandfather clause (*Guinn*) and the racial zoning ordinance (*Buchanan*). Particularly under Charles Hamilton Houston’s leadership, the NAACP’s litigation drove the cases establishing that separate treatment had to be equal (ranging from *Missouri ex rel. Gaines* and *McLaurin v. Oklahoma State Regents* to *Sweatt v. Painter*, and even parallel cases on employment, such as *Steele v. Louisville & Nashville Railroad*, and on voting rights, such as *Nixon v. Herndon*), which led directly to *Brown* and, of course, *Brown* itself. What is harder to establish, because it deals with showing causality in an area in which causation is so difficult to show and where many different factors combine in the outcome, is the role of the dream book in establishing equality as a central constitutional value.

There is no question that the meaning of equal treatment changed over time. For instance, Justice Oliver Wendell Holmes’s dismissive statement in 1927, on equal protection as “the usual last resort of constitutional arguments” (*Buck v. Bell*, 274 U.S. at 209), stands in contrast to Chief Justice Earl Warren’s 1954 statement in *Brown* about the importance of equal protection. Warren looked to the context of public education—its “present place in American life”—to conclude that “[s]eparate educational facilities are inherently unequal” (*Brown v. Board Education*, 374 U.S., p. 492).

Many factors contributed to the remaking of the matrix of constitutional arguments from the 1920s to 1954. During World War II, there was the rhetorical attack on Nazism, when it became difficult to maintain segregation in the United States amid complaints about Nazi racial purification. There was the Cold War campaign against communism, when the United States sought to win the hearts and minds of people of color across the globe, and the country could ill afford to be seen to giving unequal treatment to some of its citizens. For the scholar Derrick Bell, there was an “interest

convergence” between African Americans’ desire for equal treatment and the majority’s need to appear equal (Bell 1980, pp. 524–527).

Although it is undoubtedly helpful to have the political interests of the majority on one’s side in a constitutional argument, the move to expand the Supreme Court’s equal protection jurisprudence antedated U.S. involvement in the Cold War and even World War II. Moreover, some Supreme Court decisions from the darkest days of the Jim Crow era, including *Guinn* and *Buchanan*, were inconsistent with a pure interest-convergence model. Thus, at least some of the progress on civil rights within the courts appears to have resulted from justices’ understanding of the Fourteenth and Fifteenth Amendments’ guarantees of constitutional rights.

To construct a multiple regression equation for significant factors in the Supreme Court’s civil rights doctrine, one must account for litigation strategy, court precedent, justices’ understanding of history, and considerations of economics, politics, and morality. Constant editorials in the black press pointing out unequal treatment also may have spurred the legal system to take claims of inequality more seriously, to acknowledge that the unequal treatment was, indeed, not justice, not “law,” and to take corrective action. The great constitutional dream book existed in the minds of many. How many white judges read it and then acted on it is something being debated still.

SEE ALSO *Jim Crow and Voting Rights; Jim Crow in the Early Twentieth Century; Peonage*

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Alfred L. Brophy

## GREENBERG, JACK

1924-

Jack Greenberg was at the forefront of most of the important civil rights cases of the second half of the twentieth century. He led the National Association for the Advancement of Colored People's Legal Defense Fund (LDF) during the height of the civil rights movement.

Greenberg was born in 1924 in New York City. He received an undergraduate degree from Columbia University in 1945, served as an officer in the U.S. Navy during World War II (1939-1945), and graduated from Columbia University School of Law in 1948. Thurgood Marshall, the LDF's director-counsel, hired Greenberg as a staff attorney in 1949. One of Greenberg's first assignments was serving as co-counsel with Louis L. Redding (1901-1998), a Delaware-based civil rights lawyer, in two school desegregation cases, *Bulah v. Gebhardt* and *Belton v. Gebhardt*, 91 A.2d 137 (1952). Similar cases had been filed in other jurisdictions: *Brown v. Board of Education*, 98 F. Supp. 529 (1951), was

initiated in Kansas; *Briggs v. Elliott*, 98 F. Supp. 529 (1951), arose in South Carolina; *Davis v. Prince Edwards County School Board*, 103 F. Supp. 337 (1952), was filed in Virginia; and *Bolling v. Sharpe*, 347 U.S. 497 (1954), was a District of Columbia case. The appeals in all of the cases were consolidated in the U.S. Supreme Court and are collectively remembered as *Brown v. Board of Education*, 347 U.S. 483 (1954), the landmark decision that struck down segregation in public education. At that time, Greenberg was the youngest of several lawyers who argued the *Brown* cases.

*Brown* held that segregation was unconstitutional, but in a separate decision issued a year later, the Court declined to establish a firm timetable, stating that desegregation should proceed with "all deliberate speed." Southern states exploited this ambiguity with a policy of "massive resistance" in which tactics ranged from protracted delays and foot-dragging to open defiance. Thurgood Marshall was appointed to serve as a federal appellate judge in 1961 and was later elevated to the U.S. Supreme Court. Greenberg succeeded him as the LDF's director-counsel, where he led the effort to implement *Brown*'s mandate. The LDF expanded under Greenberg's leadership. He personally argued forty cases in the Supreme Court. During his tenure, Greenberg and other LDF lawyers handled many groundbreaking civil rights cases involving discrimination in education, employment, voting, housing, public accommodations, and criminal justice.

In 1950 Greenberg married Sema Ann Tanzer. The couple had four children. In 1970 Greenberg divorced his first wife and married Deborah Mann Cole. Greenberg left the LDF in 1984 for a career in academia after joining Columbia University School of Law as a professor and vice dean. He served as dean of Columbia College from 1989 to 1993. Greenberg has been the recipient of numerous awards and prizes that recognized his many contributions to civil rights and social justice. Though some vestiges remain, legally sanctioned segregation is now a thing of the past. Greenberg was a prominent leader in the battle that ended that sad chapter in American life.

SEE ALSO *Brown v. Board of Education, Road to; NAACP Legal Defense Fund*

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