

27. Jackson, 227.
28. David W. Southern, *Gunnar Myrdal and Black-White Relations: The Use and Abuse of An American Dilemma, 1944–1969* (Baton Rouge: Louisiana State University Press, 1987), 54.
29. Walter A. Jackson, *Gunnar Myrdal and America's Conscience: Social Engineering and Liberalism, 1938–1987* (Chapel Hill: University of North Carolina Press, 1990), 240.
30. Southern, 71.
31. Southern, 72.
32. Ralph Ellison, "An American Dilemma: A Review" (1964), in *The Collected Essays of Ralph Ellison*, ed. John Callahan (New York: Modern Library, 1995), 339.
33. Jackson, 450.
34. Michel Fabre argues that with *Invisible Man*, Ellison was "aiming to rebut Gunnar Myrdal's sociology and to show that in Negro culture there was much of value for America as a whole." "From *Native Son* to *Invisible Man*: Some Notes on Ralph Ellison's Evolution in the 1950s," in *Speaking for You: The Vision of Ralph Ellison*, ed. Kimberly Benston (Washington: Howard University Press, 1987), 214.
35. For a discussion of *Invisible Man*'s epiphany about the spiritual, see Robert G. O'Meally, *The Craft of Ralph Ellison* (Cambridge: Harvard University Press, 1980), 96–97.
36. "Such was the short bitter life of Brother Tod Clifton. Now he's in this box with the bolts tightened down. He's in the box and we're in there with him, and when I've told you this you can go. It's dark in this box and it's crowded. It has a cracked ceiling and a clogged-up toilet in the hall. It has rats and roaches, and it's far, far too expensive a dwelling." *Invisible Man*, 458.
37. Southern, 56.
38. Ellison, "An American Dilemma: A Review," 340.
39. Ellison, "An American Dilemma: A Review," 339.

Invisible Man as Literary Analog to *Brown v. Board of Education*

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The year 2002 marked the fiftieth anniversary of the publication of *Invisible Man* as well as the one-hundred-fiftieth anniversary of another novel that remade Americans' understanding of race and law. For in 1852, one hundred years before Ralph Ellison's novel, *Uncle Tom's Cabin* appeared. Harriet Beecher Stowe responded—and helped shape the response of Americans—to the Fugitive Slave Act of 1850 and ultimately the institution of slavery itself. *Uncle Tom's Cabin* taught Americans to view blacks as humans and with humanity. Once we saw the Christ-like Uncle Tom, we could no longer abide slavery. With *Invisible Man* we again had a great, popular novel that signaled—and perhaps propelled—the changes that were coming in American law and culture. We could see the *Invisible Man*'s humanity—and would no longer abide courts' duplicitous treatment of blacks so common in pre-World War II America.

Invisible Man captured Americans' emerging ideas about racial equality. It and *Brown v. Board of Education* (1954) drew upon a common reservoir of thinking—given strength by America's participation in World War II—about the imperative for equal treatment of individuals and for the need to eliminate the racial categorization so prevalent in Germany (as well as the United States). Both crystallized for Americans the costs of discrimination, while humanizing those discriminated against. As the novel and the court case uncovered the connections between black and white societies, they taught us how much black society had contributed to American society. As we learned that dropping black dye into white paint makes the white paint even whiter, we learned that discrimination had many costs. Some of those costs were born by the people who ostensibly were doing the discriminating, for they lost valuable assets.

This essay describes those growing sentiments in American legal culture and then suggests some ways that they parallel *Invisible Man*. It begins with an

exploration of the baseline, the Supreme Court's 1896 decision in *Plessy v. Ferguson*, then explores the way that its "separate but equal" doctrine was modified over the next 58 years, until we reached *Brown*. After describing that legal doctrine, the essay contemplates the connections between *Invisible Man* and *Brown*, and suggests ways the Invisible Man authored *Brown*.

THE BASELINE: PLESSY v. FERGUSON AND THE ORIGINS OF SEPARATE BUT EQUAL

The central story is the doctrine announced in *Brown v. Board of Education* that black children must be treated indistinguishably from white children, and, ultimately, that race should be a factor in the government's decision making only in the most compelling of circumstances. But a baseline is needed to evaluate the development in legal doctrine and cultural understanding that makes that result possible. That baseline is the United States Supreme Court's 1896 decision in *Plessy v. Ferguson*. The Court addressed the constitutionality of a Louisiana statute that required railroads to provide separate accommodations for whites and blacks. Homer Plessy, a light-skinned black man, challenged the statute, arguing that it deprived him of the equal treatment of the law, because it segregated him from whites. The Court took Plessy's argument as resting on the belief that segregation stamped him as inferior. Yet, it rejected the possibility that segregation was unconstitutional because it stamped blacks as inferior. It concluded that how particular people felt is irrelevant in determining the constitutionality of an act:

We consider the underlying fallacy of the plaintiff's argument to consist in the assumption that the enforced separation of the two races stamps the colored race with a badge of inferiority. If this be so, it is not by reason of anything found in the act, but solely because the colored race chooses to put that construction upon it.¹

The Fourteenth Amendment protected political equality, so states could not draw distinctions based on race regarding political rights.² However, social relations received no such constitutional protection; they were subject to a low level of scrutiny.³ *Plessy* said that the state could legislate social relations, such as where people could ride in railroad cars, as long as it established that there was a reasonable basis for drawing distinctions based on race.⁴ With such a low burden to meet, it was easy for Louisiana to advance a rationale to support discriminatory legislation.

The opinion rests, as many have noted, upon nineteenth-century notions of the desirability of racial segregation, which taught the inferiority of blacks to whites and the need for accommodation between the races. "If the two races are to meet upon terms of social equality, it must be the result of natural

affinities, a mutual appreciation of each other's merits and a voluntary consent of individuals. . . . If one race be inferior to the other socially, the Constitution of the United States cannot put them upon the same plane." The Court's fear of social equality, and contempt for anything that might tend to put blacks and whites together, resonated well with American culture at the time. It is not surprising that *Plessy* was decided a few months after Booker T. Washington's 1895 Atlanta Exposition Address, where he received applause for stating, "The wisest among my race understand that the agitation of questions of social equality is the extremest folly, and that progress in the enjoyment of all the privileges that will come to us must be the result of severe and constant struggle rather than of artificial forcing."⁵ The Court's conclusion was based upon a view of the social inferiority of blacks and the belief that the law should take that difference in status into account.⁶

Justice Harlan's dissent reminds us that there existed at the time a strong opposition to *Plessy*'s wide discretion to the state to segregate based on race. He provided one of the most memorable phrases in all of American constitutional history by declaring that "our Constitution is color-blind."⁷ He told what was obvious to any fair-minded observer at the time: that segregation was itself an incident of slavery. As Southern whites struggled to regain political and social control in the days following Reconstruction, black codes established segregation, extinguished voting rights for blacks, and limited opportunities for economic advancement. Harlan struggled for a legal interpretation that might show that everyone was equal before the law.⁸ In language reminiscent of Mr. Norton (the white trustee whom Invisible Man chauffeurs around town), Harlan wrote about the common destiny of blacks and whites: that destiny "require[s] that the common government of all shall not permit the seeds of race hate to be planted under the sanction of law."⁹ Yet, *Plessy* nurtured those seeds; it was the legal analog to the violence and racial legislation sweeping the South.¹⁰

Yet, there were others who carried on that struggle outside of the courts. Their advocacy of an alternative vision of equal protection held out the possibility of a different world. Some of those people lived in Oklahoma during Ellison's youth.

THE OKLAHOMA ORIGINS OF BROWN: OF ROSCOE DUNJEE, McLaurin v. OKLAHOMA STATE REGENTS, AND . . . INVISIBLE MAN?

The Oklahoma of Ellison's youth was a place of struggle between competing visions of American race. Freed slaves and their descendants had come to the Oklahoma territory seeking a life less constrained by the norms of racial caste of more traditional Southern states. Yet white Southerners had also come to

the territory and sought to replicate the society and the hierarchy they had known. The segregationists seemed to be winning the struggle. We see that in the persistent attempts by the Oklahoma legislature to prevent blacks from voting, to maintain unequal, segregated schools,¹¹ in the Oklahoma courts' failure to abide by even rudimentary standards of due process (embodied in the Jess Hollins case), and in the lynching that took place while law enforcement officials looked the other way—when they were not supervising it.¹²

But some blacks living in Oklahoma, like Roscoe Dunjee, had confidence that the rule of law (not the rule of police officers known as “laws”) would someday prevail. As Ralph Ellison reminds us in “Perspective of Literature” and in “Roscoe Dunjee and the American Language,”¹³ the Constitution—particularly through its equal protection clause—contains the seeds of justice. The idea is that the Constitution’s covenant binds Americans to the dream that people should be treated equally. Dunjee expressed his confidence in the pages of his weekly paper, the *Oklahoma City Black Dispatch*. His editorials articulated an alternative worldview and an alternative view of the Fourteenth Amendment’s “equal protection” clause. He argues that there should be uniform rules applied to all regardless of race.¹⁴ Thus, there should be equal voting rights (and registration requirements); equal funding for schools, even if the schools were separate; equal (even if separate) treatment on railroads; and no laws requiring segregation in housing.¹⁵

The Growing Meanings of Equality: The Protection of Personal Rights

Roscoe Dunjee’s faith in the federal courts was sometimes fulfilled. Several important cases leading to *Brown* arose in Oklahoma. In the 1910s, the United States Supreme Court decided two cases from Oklahoma. The first, *McCabe v. Atchison, Topeka, and Santa Fe Railway* (1914), struck down Oklahoma’s railroad passenger segregation statute, which permitted railroads to provide luxury accommodations only to those groups who rode with sufficient frequency to make such accommodations economically feasible. In essence, the statute permitted railroads to provide luxury accommodations to whites only. The statute was challenged unsuccessfully in both the lower federal courts and the Oklahoma Supreme Court. But in the United States Supreme Court, Justice White rejected the proposition that economic considerations might dictate result. White looked to the effect of the statute on each person to whom it was applied, not to blacks as a group.

Whether or not particular facilities shall be provided may doubtless be conditioned upon there being a reasonable demand therefore, but, if facilities are provided, substantial equality of treatment of persons traveling under like conditions cannot be refused. It is the individual who is entitled

to the equal protection of the laws, and if he is denied by a common carrier, acting in the matter under the authority of a state law, a facility or convenience in the course of his journey which under substantially the same circumstances is furnished to another traveler, he may properly complain that his constitutional privilege has been invaded.¹⁶

McCabe was part of the Supreme Court’s slow movement towards an understanding that the equal protection clause protected individual, not collective rights.¹⁷ It became an important precedent, and was built upon in the education cases, which came to the court at the end of the 1930s. Those cases evaluated the equal protection clause as guaranteeing personal rights.

The second case to arise from Oklahoma in the 1910s was *Guinn v. United States*. It struck down Oklahoma’s voter registration statute in 1915, which subjected registrants to a strict reading test. But those whose ancestors had been eligible to vote in January 1866—just before the Fifteenth Amendment (which guaranteed voting rights regardless of race) was ratified in 1870—were automatically eligible to vote. In essence, whites were eligible to vote because their grandfathers had been eligible; blacks were excluded. Chief Justice White again wrote the unanimous opinion for the court. Although the statute was neutral on its face—it did not establish a different standard for blacks and for whites—the court looked to the effect of the statute and concluded that the statute operated “in direct and positive disregard of the Fifteenth Amendment.”¹⁸ Where an NAACP official concluded that “[L]aw and order methods absolutely insure ‘white superiority’ in every way in which that superiority is real,” the Supreme Court was beginning to understand that equal protection of the law required that the court look to the effect of legislation.¹⁹ The Supreme Court began taking a realistic, rather than a formalist, view of racial legislation. In the wake of *Guinn*, the Oklahoma legislature passed another stringent registration law, which gave blacks only a few weeks to register. Otherwise, they were perpetually barred from registering. That law, too, was struck down—in 1939!²⁰

Oklahoma continued to provide cases for the Supreme Court to explore the meaning of the equal protection clause. In 1935, the Supreme Court overturned a death sentence against Jess Hollins for rape on the grounds that blacks had been systematically excluded from the jury rolls.²¹ Each of those cases was part of the emergence of principles that aspired to (1) treat race realistically and (2) move in the direction of an understanding of the equal protection clause that guaranteed equal treatment to each individual. The question was, what constituted equal treatment?

Those Oklahoma cases inspired and were expanded by other cases, arising from other jurisdictions. In 1917, shortly after *McCabe*, the Supreme Court struck down racial zoning in *Buchanan v. Warley*. It addressed Louisville’s zoning ordinance, which prohibited blacks from buying property on majority-white blocks and vice versa. Though the case arose from Louisville, it could just as

easily have arisen from Oklahoma, for both Tulsa and Oklahoma City had similar ordinances and blacks in both places were making efforts to challenge the ordinances. *Buchanan*, relying upon *McCabe*, focused on the personal rights of homebuyers. *Buchanan* recognized the racial conflict underlying the zoning ordinance, but refused to allow those considerations to outweigh the constitutional rights of individual blacks. Despite the "feelings of race hostility which the law is powerless to control," the Court concluded that "its solution cannot be promoted by depriving citizens of their constitutional rights and privileges."²²

Missouri ex rel. Gaines v. Canada, decided in 1938, shows the importance of *McCabe*'s focus on personal rights. It is an important transition between *Plessy* and *Brown*. *Gaines* struck down a Missouri statute that segregated the University of Missouri Law School. Because there was no separate law school in Missouri, the state paid for blacks who wanted to attend law school to go to a neighboring state's school. *Gaines* struck down the statute on the grounds that the education provided was unequal:

The white resident is afforded legal education within the State; the Negro resident having the same qualifications is refused it there and must go outside the State to obtain it. That is a denial of the equality of legal right to the enjoyment of the privilege which the State has set up, and the provision for the payment of tuition fees in another State does not remove the discrimination.²³

Gaines's reasoning contained the destruction of the separate-but-equal principle, for once the Court found that geography could determine equality—that a law school located beyond the state's border was unequal—then there was little reason why separate facilities within a state should be equal, either. There was a strange formalism about the majority's opinion, for it drew a distinction based on the location of the alternate law school outside the state's borders. Thus, though it was attacking segregation, the *Gaines* majority clung to a formalist reasoning style, reminiscent more of the majority opinion in *Plessy* than Harlan's realistic dissent. And it was Justice McReynold's dissent, joined by Justice Butler, who emphasized a more practical look at what was actually happening: "The state should not be unduly hampered through theorization inadequately restrained by experience."²⁴ McReynolds saw two possibilities, each bad: Missouri may "abandon her law school and thereby disadvantage her white citizens without improving petitioner's opportunities for legal instruction; or she may break down the settled practice concerning separate schools and thereby, as indicated by experience, damnify both races."²⁵

Meanwhile, back in Oklahoma, Roscoe Dunjee, by then on the national board of the NAACP, was still talking about filing lawsuits to demand equal treatment in the schools. After World War II, as in the 1910s, Oklahoma generated two important Supreme Court decisions. One of the most important cases leading into *Brown* arose from the University of Oklahoma's refusal to

admit 68-year-old George McLaurin, a black teacher, to their Ph.D. program in education. Following a lower federal court's decision that the statute was unconstitutional, the Oklahoma legislature altered its statute regarding segregated education, allowing McLaurin to register, but requiring him to maintain strict separation from whites. Mr. McLaurin "was required to sit apart at a designated desk in an anteroom adjoining the classroom; to sit at a designated desk on the mezzanine floor of the library, but not to use the desks in the regular reading room; and to sit at a designated table and to eat at a different time from the other students in the school cafeteria."²⁶

The Supreme Court recognized in *McLaurin*, as it had in cases since *McCabe*, that the University of Oklahoma's discrimination implicated Mr. McLaurin's personal rights. The restrictions "impair and inhibit his ability to study, to engage in discussions and exchange views with other students, and in general, to learn his profession."²⁷ But even worse was the effect that the restrictions would have on McLaurin's students:

Our society grows increasingly complex, and our need for trained leaders increases correspondingly. [McLaurin's] case represents, perhaps, the epitome of that need, for he is attempting to obtain an advanced degree in education, to become, by definition, a leader and trainer of others. Those who will come under his guidance and influence must be directly affected by the education he receives. Their own education and development will necessarily suffer to the extent that his training is unequal to that of his classmates. State-imposed restrictions which produce such inequalities cannot be sustained.²⁸

McLaurin recognized both the harms to individuals of discrimination based on race and the harm to people other than those most directly discriminated against.²⁹ *McLaurin* stood for the proposition that discrimination harmed the entire society—not just those who received the brunt of the discrimination. It recognized that discrimination has many costs. Most are borne by the people who are denied an adequate education, but society pays the cost for that discrimination, as well.

This convergence of legal doctrine, hence, began as a series of cases in the 1910s, gathering real force leading into the 1940s, and culminated in the understanding that treatment of blacks by the state in ways that made them unequal are prohibited unless done with compelling rationale. And though Roscoe Dunjee's faith in the courts was laughable to much of his community in the 1910s,³⁰ within his lifetime that faith in law was vindicated. To achieve such vindication, judges would look to the practical effect of legislation, and not just to the ambiguous statute, written in dissembling language. It would be only a small step, then, to the conclusion that segregation stamped one as inferior.

Running parallel to the evolution of legal doctrine was a host of cultural factors that pointed towards the breakdown of legally mandated segregation.

There was Americans' willingness to follow the equal protection principles and treat people equally, which owed much to the black press's demonstration of the hypocrisy of fighting wars for Democracy abroad and keeping segregation at home. There was also rising black political power and an increasingly integrated, mobile economy and society. World War II altered black aspirations and increased political and economic opportunity. The Cold War further changed the politics of race, as it exposed the hypocrisy of the United States' treatment of blacks.³¹

THE MEANINGS OF *BROWN*

So, the issues were aligned in May 1954 for a decision regarding the constitutionality of *Brown* that addressed several issues. On the lowest frequency, Chief Justice Warren's opinion explores what equal protection means: May the state separate people on the basis of race and then send the black children to different (and in most cases inferior) schools? Or, as Warren phrased the question, "Does segregation of children in public schools solely on the basis of race, even though the physical facilities and other 'tangible' factors may be equal, deprive the children of the minority group of equal educational opportunities?"³² It is about treating American citizens as individuals, each deserving equal opportunity for education (and ultimately the right to participate in democracy) and the treatment of individuals fairly, without distinctions based on race.

Brown represents an important culmination of trends. First, and from a legal perspective, most important, are two trends in pre-World War II jurisprudence: a realist approach to racial legislation, looking to the actual effect of legislation on blacks, and a growth in the equal protection principle. Those changes have analogs in popular culture.³³ Warren exposes the lies of white southern existence and points to their actual effects. To get beyond the doctrine of "separate but equal," Warren asks how things appear in the "light" of public education's "full development and its present place in American life throughout the Nation."³⁴ He will look beyond mere questions of whether funding is equal (though in many instances it obviously was not). "Our decision . . . cannot turn on merely a comparison of these tangible factors in the Negro and white schools involved in each of these cases." We must look instead to "the effect of segregation itself on public education."³⁵ He acknowledges the centrality of education to life—much as the voting rights cases acknowledged the centrality of voting rights to achievement of other rights, really to democracy itself.³⁶ With such a realist approach to the effects of segregation, it is then an easy step to the conclusion that segregated education is "inherently unequal."³⁷

Warren looks to the two cases in 1950 that involved segregation in higher education: *Sweat v. Painter* and *McLaurin*. Both struck down segregation statutes because the education facilities were unequal. *McLaurin* may be particularly

helpful here, since Warren points out the detrimental effects of separate education (though he does not mention the harm to the community identified in *McLaurin*). He surmises that separating children from others "of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone."³⁸

The second trend that *Brown* represents in pre-World War II jurisprudence is the development of the equal protection principle (and the corollary that the equal protection clause protects personal rights). Those cases were discussed in the previous section, mostly as outgrowths of the 1914 *McCabe* case arising from Oklahoma. The precedents multiplied in the years leading into *Brown*.³⁹

Warren's elegant opinion avoided the moral evasions of previous judges; as the justices' conference notes illuminate, he understood the realities of segregation. It was part of the stamp of inferiority. As Warren said (quoting the Delaware trial court that had found segregation unconstitutional), "The policy of separating the races is usually interpreted as denoting the inferiority of the negro group."⁴⁰

Brown represents, then, both a culmination of trends developing for decades before—many of whose doctrines were first articulated in Oklahoma cases—as well as reasoning based on *Plessy*. *Brown* held that separate facilities are unequal because they stamp blacks as inferior and whites as superior. Thus, *Brown* is in line with the separate-but-equal standard established by *Plessy*.⁴¹ *Brown* is also forward-looking. It establishes what will, from then on, be the standard for judging invidious racial classification: that distinctions based on race are subject to close scrutiny and there must be compelling (not just reasonable) justifications for doing so. *Brown* represents the evolution of legal doctrine. Those doctrines emerged in conjunction with cultural changes that made segregation, at least at the national level, impractical and politically and socially unacceptable. Now let's turn to one of the cultural analogs to *Brown* and hear what the Invisible Man has to say about *Brown*. There are six ways that *Brown* and *Invisible Man* function as analogs.

HEARING THE INVISIBLE MAN'S MESSAGE: ANOTHER OKLAHOMA ROOT OF *BROWN*?

The excitement at the decision was such that as soon as he heard about it, Ellison wrote to his friend, M. D. Sprague, the librarian at the Tuskegee Institute:

Well so now the Court has found in our favor and recognized our human psychological complexity and citizenship and another battle of the Civil War has been won. The rest is up to us and I'm very glad. The decision came while I was reading *A Stillness at Appomattox*, and a study of the

Negro Freedman and it made a heightening of emotion and a telescoping of perspective, yes and a sense of the problems that lie ahead that left me wet-eyed. I could see the whole road stretched out and it got all mixed up with this book I'm trying to write and it left me twisted with joy and a sense of inadequacy. . . . Well, so now the judges have found and Negroes must be individuals and that is hopeful and good. What a wonderful world of possibilities are unfolded for the children!⁴²

Those elegant sentences, which thanks to John Callahan's scholarship can be found seemingly everywhere, capture key elements of Ellison's optimism and vision.⁴³ There is the optimism that Ellison tells us about the triumph of the rule of law—not the rule of “laws” (or law enforcement officers).

That paragraph can serve as a starting point for linking Ellison, *Invisible Man*, and *Brown*. The specific elements of the Supreme Court's decision that capture Ellison's attention are the court's recognition of citizenship and recognition of blacks as individuals. Those points are central to both *Invisible Man* and *Brown*.

The analogy between *Invisible Man* and *Brown* begins at the point of *recognition of individualism and humanity of individuals*. Some of the scenes in *Invisible Man* are transparent in their depiction of group identity and the failure of whites to care about or even recognize the humanity of individuals: the Battle Royal scene, the statement to Invisible Man afterwards that “we mean to do right by you, but you've got to know your place at all times,”⁴⁴ and the accompanying realization that whites maintain a caste system that “keeps this Nigger boy running, but in the same old place.” Other scenes explore in more complex ways the denial of humanity. The law, through the eviction of the elderly couple (who had themselves once been slaves), denied their humanity. While we could see the substance of their lives on the street, we could also see that the “laws”—the law enforcement officers as well as the New York landlord-tenant code—cared not at all about their life, or that they had freedom papers, expired life insurance policies, or pictures of Abraham Lincoln and Frederick Douglass. We learn that Tod Clifton, who met his death by “resisting reality in the form of a .38 caliber revolver in the hands of the arresting officer” (458), meant little to the police officer who shot him. Tod was there for the amusement of white people, and when he tried to act outside of “history” or to deny his place—when he acted outside of the expected modes of action—he was killed (457–58). “Our task,” as *Invisible Man* discovers, “is that of making ourselves individuals” (354).⁴⁵ Through the novel, he accomplishes that task. The scenes correlate with *Brown's* rejection of the American caste system. At the most base level, both are about the centrality of treating people as individuals, rather than groups. They both request that we look to individual characteristics and allow people to advance based on those characteristics.

For Ellison, the recognition of humanity, and the legal recognition that blacks shall no longer be subject to state-imposed discriminatory treatment,

means that the rest of his message can be heard. As he wrote in his essay “Perspective of Literature,” in language reminiscent of his first reaction to *Brown*, “The law ensures the conditions, the stage upon which we act; the rest of it is up to the individual.”⁴⁶ Now we can telescope outward, looking at ways that *Invisible Man* relates in more distant ways to *Brown*.

At a close level, though not necessarily one that Ellison recognized in his letter to Sprague, *both the novel and the decision stem from a similar moral vision and both reject moral evasions*. Both are about looking at race through clear lenses and seeing what is actually happening, especially the actual effects of discrimination. Or, as the veteran at the Golden Day said, “for God's sake, learn to look beneath the surface. . . . Come out of the fog young man” (153). Part of the success of *Invisible Man* is that it makes us all look out from our veil of ignorance and see life as *Invisible Man* sees it. We are able to recognize moral evasions.⁴⁷ What else, after all, was the *Invisible Man* doing, but trying to teach us “what was really happening as [we] looked through?” (581).

During the eviction of the elderly couple from their Harlem apartment, we learn that there was a “Great Constitutional Dream Book” (280). But law had obscured it, making it difficult to read.⁴⁸ We see the difference between grand constitutional ideas and “law”: namely, the law that enforced the landlord's rights and the law enforcement officers who carried out the eviction. Law represented a particular corruption of moral thought for Ellison. Though the elderly couple (and blacks more generally) was a “law abiding people,” by which he meant they played on the unfair terms established by white society, they still were left without protection. Law had pushed out even religiously inspired ideas of fair treatment.⁴⁹

That conflict between religion and law appears again in *Juneteenth*, when the jazz musician Alonzo Hickman, whose brother has been lynched following the false accusation that he raped a white woman, takes in the accuser. Hickman wanted to kill her, but he cannot. Instead, he delivers her child (whom he names Bliss), and then raises him with black ideals and morality in hopes that Bliss might eventually speak the truth to white America. The burden thus placed upon both Hickman, who becomes a minister, and Bliss is enormous. Too great, it seems, for Bliss is enticed away by visions of a white movie actress. Later in life he emerges as a Northern politician, the race-baiting Senator Adam Sunraider. During part of his last speech on the floor of Congress, Sunraider seems to speak from behind his mask of racism. Yet, Sunraider cannot quite break free; his speech returns to its typical racist imagery, and then he is shot by a black spectator.

The murder of Hickman's brother is yet another example of the breakdown of justice at the hands of “laws.” As Hickman tried to make something more meaningful out of the surface violence, he turned from a career as a jazz musician (an occupation Ellison found admirable) to the ministry. *Juneteenth* depicted the conflict between law and religion: between Oklahoma “the city,

with police power and big buildings and factories and the courts and the National Guard; and newspapers and telephones and telegraphs and all those folks who act like they've never heard of your Word" (137) and Hickman's religious teachings. Yet, Ellison sought to infuse moral values into the legal arena, for Hickman asks, "How the hell do you get love into politics or compassion into history?" (264)

Similarly, *Brown* recognizes that the mere equal facilities (if there were such a thing) cannot be equal.⁵⁰ That is part of remaking the equal protection clause; it is also part of the postwar realism of American courts. They cast aside their formal, analogical reasoning and asked what was really happening.⁵¹ That rejection of dissembling cost the Supreme Court, just as it cost *Invisible Man*, for as he recalled at the end of the novel, "I was never more hated than when I was honest" (572). The same was true for the Supreme Court.⁵²

Invisible Man and *Brown* look to the costs to the entire society: *The costs of discrimination fall upon both whites and blacks.*⁵³ Among the many examples in *Invisible Man*, one might look at the Liberty Paint scene, where workers were pitted against one another and where race played a part in both formation of union identity and in breaking unions. There is black on black discrimination, too. For example, Dr. Bledsoe threatens to lynch all blacks who challenge his power.⁵⁴ During the riot, *Invisible Man* recognizes the ways that Brotherhood fostered violence for their own means. The riot served many purposes, for whites and certain blacks, though not for the people of Harlem.⁵⁵

McLaurin, which is one of the two key pillars of *Brown*, focuses explicitly on the cost of discrimination to the entire society. *Brown* focuses most of its attention on the costs of discrimination to blacks, addressing more obliquely the costs to society generally. *Brown* recognizes the centrality of education to American society and highlights the democratic costs to us all of the failure of proper education.

Brown looks primarily to the costs of discrimination to blacks, and part of its evidence (though a much smaller part than people believed at the time) comes from social science research. On those points, Ellison departs from *Brown*. Gunnar Myrdal's *American Dilemma: The Negro Problem and Modern Democracy* (1944), which was cited in a footnote in *Brown*, comes under particularly harsh attack by Ellison in a 1944 review written for *The Antioch Review*, but not published until 1964.⁵⁶ Ellison saw modern social science as a way of rationalizing and justifying the methods of economic and social control of the South.⁵⁷ Myrdal's social science left little room for blacks to be seen as anything other than objects, never more than the sum of their oppression. He found that both troubling and offensive. He observed, "Men have made a way of life in caves and upon cliffs; why cannot Negroes have made a life upon the horns of the white man's dilemma?"⁵⁸ Ellison thought that the "solution of the problem of the American Negro and democracy" rested only in part on white action. The solution required also "the creation

of a democracy in which the Negro will be free to define himself for what he is and, within the larger framework of that democracy, for what he desires to be."⁵⁹ So, there may be some tension between *Brown's* citation of Myrdal and Ellison's rejection of parts of his work. Nevertheless, *Brown* derives from an understanding that blacks demand participation in the political and educational system.⁶⁰

All of which brings one to a rationale that *Brown* uses to justify itself: *the cost to democracy of the failure to provide an education.*⁶¹ Here *Brown* taps an important theme of Cold War America: the preservation of democracy. There was much work to be done after *Brown* to ensure voting rights for blacks, including the Voting Rights Act of 1965, which eliminated discriminatory voter registration requirements. In *Juneteenth*, Ellison offers a replacement for the invisibility trope, which more accurately captures the legal system's treatment of blacks: they are people "among the counted but not among the heard" (4). Thus, blacks are not completely invisible, but for the most important purposes are still ignored.

Invisible Man also makes us wonder about the possibilities of democracy. *Invisible Man* is skeptical of the motives of many who appear as leaders and even of those who follow them. Why did thousands appear to mourn Tod Clifton's death? To seek a thrill? (454). Were they his friends or were they using his death as a focal point? If so, was it "to stand touching and sweating and breathing and looking in a common direction?" (452). That leads to the question, "And could politics ever be an expression of love?" Later, *Invisible Man* is saddened that there were no politicians who saw blacks as anything more than "convenient tools for shaping their own desires!" (511). There were great potentialities, but the barriers to achievement were great. Blacks seeking to use the political process had little money, friends in government, unions, or business, and limited ability to communicate "except through unsympathetic newspapers" or Pullman porters. Yet, Ellison still has an optimism about the potential of democracy to reform, and of people to ultimately remake their world. Both the novel and the decision draw on an ideology of reform rather than maintenance of a racial caste system.

Moving toward further generality, *Invisible Man* and *Brown* both address *the malleability of history and its contribution to dissembling.* *Invisible Man* recognizes the power of history and Ellison presents two versions of its operation in the novel—the real versus the mythic, or the true way of seeing versus the self-delusional way. The legal framework contends against how people behave within it. These two versions of history, like the two versions of law (justice and dictates of the "laws"), clash in the novel just as they do in American society.

Invisible Man presents a montage of scenes from black history. *Invisible Man's* grandfather lived through much of that history—from Reconstruction, when blacks had some freedom (enough, at least, to purchase guns and to vote), through the dark ages afterwards, when the grandfather gave up his

weapon, lived with his head in the lion, and agreed the white man to death. Similarly, the eviction scene presents vignettes from the complex history of black Americans from the pre-Civil War period through the 1930s in objects like the manumission papers and the newspaper clipping about Marcus Garvey. That history, of people laboring under terribly harsh conditions and still abiding by the law, exists alongside another history: the formalized, artificial version of history told by whites. Both of those histories, the myth and the reality, coexist and each exerts influence over the present.

This disjunction between myth and fact also appears in Tod Clifton's execution. When he tried to live outside of history, outside of the role that he was expected to play by the police officer and white society more generally, Clifton was killed. The way that Clifton's death was remembered in Harlem also conditioned how people there reacted. So the riot began because of what they understood about Clifton's execution.⁶² And the way Clifton's death would be remembered by whites was defined by the white police officer.

While we might think that history is neutral, that it records "the patterns of men's lives" and that "all things of importance are recorded," the reality was quite different. As *Invisible Man* observed, "For actually it is only the known, the seen, the heard and only those events that the recorder regards as important that are put down, those lies his keepers keep their power by" (439). For Clifton, the police officer was judge, witness, and historian. To provide an alternative explanation, there was only the Invisible Man. He was left wondering, as happened so often in events involving race in American history, "Where were the historians today? And how would they put it down?" He also wondered, what would become of people who had no historians and who wrote no novels?

Those myths of history—of how blacks are expected to behave—condition the behavior "laws" (law enforcement officers, prosecutors, and judges) expect. When Brother Tarp tried to resist a white man who was taking advantage of him, Tarp paid with a life prison sentence. Tarp would likely never have gotten out, except that he took advantage of the fact that his jailors lost track of his identity and just lumped him together with others who had drowned during a flood. On this occasion, group identity had some benefits!

That is what *Brown* is about at the level of jurisprudence: a true history that looks through to events as they actually are. *Brown* also understands that segregation sprang up well after the Civil War ended—the history of which C. Vann Woodward called *The Strange Career of Jim Crow* (1955). Moreover, *Brown* recognizes that history works a magic of changing the conditions, the assumptions, and the understandings of the Constitution.⁶³ When *Plessy* offered fictitious histories of precedent and of the necessity of segregation, the Supreme Court could not break down the barriers of segregation. But when a new understanding of history and social reality came forth,

bequeathed to us in works like W.E.B. Du Bois's *Black Reconstruction* (1935), then a more comprehensive history helped us understand that segregation was neither natural nor desirable.

Brown also represented a conception that the Constitution might change. We know from the Justices' conference notes that they believed that the Constitution's meaning might evolve. Here, there is a strange divergence between Ellison and the *Brown* Court, for Ellison drew a distinction between law as it was—or as it appeared—and what it ought to be.⁶⁴ Justice Black had the ability to see through the obfuscation. "I am compelled to say for myself that I can't escape the view that the reason for segregation is the belief that Negroes are inferior. I do not need a book to say that."⁶⁵ Or, as Chief Justice Warren said in conference, "The more I read and hear and think, the more I come to conclude that the basis of the principle of segregation and separate but equal rests upon the basic premise that the Negro race is inferior."⁶⁶

Both the novel and the decision understand the fluid nature of history and what it means for us. Ellison sees *Brown* as another battle of the Civil War—and so do the justices. Ellison also sees the guarantee of equality as an original idea of the Constitution. His conception is not that the Constitution changes, but that we can return to that original covenant. Here, of course, he may be engaging in his own creation myth!

At the highest level of generality, there is yet another way that *Brown* connects to *Invisible Man*. It is the issue of *Dream vs. Reality: the dream of integration and of equal protection versus the reality of segregation*. This reality produced laws that compelled people to labor with little hope of advancement. The elderly couple evicted from their apartment were a law-abiding people, a theme that is repeated in *Juneteenth*. Yet, they are not given the benefit of justice. They had worked their whole lives and were left with virtually nothing. In fact, they had so little that the Invisible Man asked, How could they be evicted? From what would they be dispossessed? Their story was of the Constitutional Dream Book, which in 1952 held out so much hope—but had fulfilled it in such small ways. There are two stories in *Brown*, as well: the dream of the justices and the hard reality of entrenched segregation.

Ellison's mentor, Roscoe Dunjee, saw the possibility of the Constitution. Ellison did not at first see that possibility; he and his friends viewed Dunjee's confidence as a joke. They looked up to jazz musicians rather than hypocritical politicians and judges. But within a generation, Dunjee's ideas triumphed in the Supreme Court. That optimism, that world of possibility, appears in *Invisible Man* and makes it effective as a social novel. Much like *Uncle Tom's Cabin*, there is a prescription at the end. Where Stowe invites her readers to feel right and pray,⁶⁷ Ellison also had a personal prescription: to see others' humanity. Like Stowe, within a short time after it is published, *Invisible Man's* agenda is realized in law, at least, if not in reality.