

FACULTY RESEARCH FUND

Award Date: Spring 2016

Proposal Title: Popular Constitutionalism and All That Jazz The Constitutional Vision of Louis
Armstrong

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Proposal Narrative

a. Scope, Significance, and Objectives

Political scientists and legal scholars debate the sources of constitutional authority, and the benefits of popular constitutional interpretation. The debate centers on a fundamental concept in American jurisprudence, judicial supremacy. Those who support the concept of popular constitutionalism dispute the idea that courts (rather than citizens) should have “normative priority in the conversation”¹ and the interpretation of constitutional texts. Instead, they argue that the People can and should play a meaningful role in constitutional interpretation. Those who argue (as Chief Justice John Marshall did) that “[i]t is, emphatically, the province and duty of the judicial department, to say what the law is”² envision a much more limited role for the People in constitutional interpretation. (Bickel 1986; Graber 1993)

Our work falls squarely within this dispute. (Ordeshook 1992) We hope to uncover dimensions of popular constitutionalism in which the People exercise influence on constitutional dialogue in meaningful ways and a certain times of heightened conflict over the goals and values of a constitutional culture. Thus, while courts do, and must exercise direct and often authoritative power to say what the Constitution means, the People are part of the constitutional order, exercising collective influence at critical times on particular actors.

One such critical time is the integration of Little Rock Central High School. We enter a crowded field of scholars who have documented this event in our State’s history. Yet, they have made little effort to link the outcome to a popular constitutional backlash against racism in the provision of public education, focusing instead on a governor who took a hardline against integration and those members of the public who supported him. We examine what led Louis

¹ Mark Tushnet, Popular Constitutionalism as Political Law, 81 CHI.-KENT L. REV. 991, 999 (2006)

² *Marbury v. Madison*

Armstrong to enter the debate over integration after a life-time spent avoiding issues of race almost altogether. After gaining popularity among the African-American community, Armstrong's spent his career performing for largely white audiences, and establishing his international reputation. A new generation of jazz artists criticized him for his unwillingness to use his popularity among white audiences to argue for civil rights. Armstrong's comments on the Little Rock Central High School incident constitute a departure from this pattern. We hope to uncover what motivated him to take a stand on civil rights at that moment, and how he exerted influence on the broader debate over rights and equality.

It is important for universities in Arkansas to study the history of this state. This project will broaden the scholarly understanding of how the Little Rock High School crisis affected the progress of the civil rights movement. This historical episode also has modern relevance. Sixty years after the integration of Little Rock High School, the United States is still dealing with racial tension, and celebrities continue to play a major role in shaping political attitudes.

b. Review of Related Work, and Theoretical Framework

Legal theorists have debated the wisdom of granting citizens a greater role in making constitutional decisions, at the expense of Supreme Court power. (Kramer, 2005; Levinson, 2008) The most common argument against this perspective, known as popular constitutionalism, is that ordinary people lack the knowledge needed to render wise constitutional judgments. (Whittington 2005) We suggest Armstrong's rhetoric reveals how citizens, regardless of their educational background, possess a meaningful vision of the Constitution.

Aside from a couple of pages in a Louis Armstrong biography by Terry Teachout, scholars know very little about Armstrong's views on civil rights and the Constitution. There is good reason to believe that Teachout has not told the whole story. Armstrong's Little Rock comments

generated national news. He also put his career at risk by canceling a State Department goodwill concert tour of the Soviet Union. Armstrong remarked, “The people over there [will] ask me what’s wrong with my country. What am I supposed to say?” (Teachout, 2010)

c. Methodology/Plan of Work

Our work on Armstrong and the integration of Little Rock Central High School is part of a broader study of popular constitutionalism in which we identify heroes of popular constitutionalism. We also plan to include similar case studies of ordinary people making public statements that contain popular constitutional messages. For example, the person at the heart of *Schenck v. United States*, 249 U.S. 47 (1919), issued a challenge to the United States involvement in World War I based on a constitutional argument. Charles Schenck, general secretary of the Socialist Party of Philadelphia, targeted all draft-eligible men and urged them not to enlist because the 13th Amendment banned involuntary servitude. This was more than simply a rhetorical device. The argument lay at the heart of the Socialist Party’s critique of government and the diffusion of power and resources within the United States.

We plan to continue identifying “heroes” of popular constitutionalism and employ qualitative case study analysis informed by available data to produce (ultimately) a book-length project that redirects the debate over popular constitutionalism away from scholarly reaction to public unrest, and toward popular and constitutional culture. The Louis Armstrong project is the first step toward that end.

d. Time-line of Activities

The funds from this award would be used to travel to the Louis Armstrong House Museum in New York during the Fall Semester, 2016. The Museum hosts an archive of Armstrong’s papers and correspondence, which my co-author and I intend to examine in detail. After exploring these

primary source materials, we will be able to develop a fuller understanding of Armstrong's political views and influence.

After examining these records, we plan to write a series of articles on popular constitutionalism, producing the first during the spring semester, 2017, proposing it for presentation at a political science association annual meeting, and ultimately submitting it to a refereed journal for publication by Fall Semester, 2017. While developing this particular piece of the larger project, we will continue working on other components, eventually assembling them into a book we hope to propose to a publisher within two years.

e. Dissemination Plan

The findings of this project would make a potentially useful presentation in a future celebration of Black History Month at Arkansas State. After data collection, we plan to present our initial findings at the 2017 Annual Meeting of the Midwest Political Science Association. Once we revise our paper in light of the discussant's comments, we intend to submit our paper to a law and society journal for publication.

f. Impact on Future Plans

All future funding depends on the ability to examine the Armstrong documents. We are currently developing a plan to apply for additional funding for travel to the Library of Congress and regional repositories.