

2011

The Ethics of Melancholy Citizenship

Robert L. Tsai

American University Washington College of Law, rtsai@wcl.american.edu

Follow this and additional works at: http://digitalcommons.wcl.american.edu/facsch_lawrev



Part of the [Law Commons](#)

Recommended Citation

Tsai, Robert L., "The Ethics of Melancholy Citizenship" (2011). *Articles in Law Reviews & Other Academic Journals*. Paper 80.
http://digitalcommons.wcl.american.edu/facsch_lawrev/80

This Article is brought to you for free and open access by the Scholarship & Research at Digital Commons @ American University Washington College of Law. It has been accepted for inclusion in Articles in Law Reviews & Other Academic Journals by an authorized administrator of Digital Commons @ American University Washington College of Law. For more information, please contact fbrown@wcl.american.edu.

ROBERT L. TSAI*

The Ethics of Melancholy Citizenship

I.	Poetry as an Ethics for Democratic Engagement	558
II.	From Democratic Disappointment to Popular Action	566
III.	Poetry as War Constitutionalism.....	570

As a body of work, the poetry of Langston Hughes presents a vision of how members of a political community should comport themselves, particularly when politics yield few tangible solutions to their problems. Confronted with human degradation and bitter disappointment, the best course of action may be to abide by the ethics of a melancholy citizenship. A mournful disposition is associated with four democratic virtues: candor, pensiveness, fortitude, and self-abnegation. Together, these four characteristics lead us away from democratic heartbreak and toward political renewal. Hughes's war-themed poems offer a richly layered example of melancholy citizenry in action. They reveal how the fight for liberty can be leveraged for the ends of equality. When we analyze the artist's reworking of Franklin Roosevelt's orations in the pursuit of racial justice, we learn that writing poetry can be an exercise in popular constitutionalism.

* Professor of Law, American University, Washington College of Law. Copyright © 2010 by Robert L. Tsai. All rights reserved. This Article was originally presented at a conference on democracy and membership titled, "Contested Citizenships," sponsored by the Wayne Morse Center on Law & Politics and organized by Michelle McKinley. Along with the participants of the forum, my interlocutors included Susan Burgess, Mary Fan, Darren Hutchinson, and Jeff Powell. My thanks to all.

Life is for the living.
 Death is for the dead.
 Let life be like music.
 And death a note unsaid.¹

– Langston Hughes, *Note in Music*, 1937

I

POETRY AS AN ETHICS FOR DEMOCRATIC ENGAGEMENT

It may be unwise to search poetry for ideas about the law, much less a theory of democratic citizenship. When it comes to Langston Hughes, however, any reservations can be safely pushed to one side because his poems contain coherent—at times, compelling—motifs of a political character. These themes delineate an individual's relationship with the polity and the mutual obligations that are formed, tested, overcome, and in extreme moments, undone. His body of work not only paints these relationships, beliefs, and moods, but also tantalizingly implies a normative order. Admittedly, this order is mostly latent in Hughes's work, but it is there nonetheless, blurring the line between art and advocacy.

Some of his poems, bursting with revolutionary themes, appeared in venues associated with the American Left. It is apparent that the man's encounters with socialism informed his art, particularly in its critique of the state of politics. That said, Hughes repeatedly denied trying to destroy the country's institutions and instead described himself as "vitally concerned about [the nation's] *mores*, its democracy, and its well-being."² His poetry, grounded in African

¹ Langston Hughes, *Note in Music*, OPPORTUNITY: JOURNAL OF NEGRO LIFE, Apr. 1937, at 104, reprinted in THE COLLECTED POEMS OF LANGSTON HUGHES 200, 200 (Arnold Rampersad & David Roessel eds., 1995) [hereinafter COLLECTED POEMS].

² Langston Hughes, *My America*, quoted in JONATHAN SCOTT, SOCIALIST JOY IN THE WRITING OF LANGSTON HUGHES 80 (2006). Appearing at a conference of the American Education Fellowship in 1947, Hughes read from his poetry and spoke at length on four themes in his poetry that had broader political salience: democratic human relationships, the formation of an anti-caste society, internationalism, and a guarded optimism. George Eckel, *Democracy Here Is Held Flexible*, N.Y. TIMES, Nov. 28, 1947, http://www.nytimes.com/books/01/04/22/specials/hughes-democracy.html?_r=1. In 1953, Hughes was called before the House Un-American Activities Committee, where he denied ever being a member of the Communist Party and voiced regret for employing "leftist terminology" in his earlier writings, which "could hardly serve to present a contemporary picture of American ideals or of my personal ones." Langston Hughes, *Langston Hughes Speaks*, CRISIS, May 1953, at 279–80, reprinted in 10 THE COLLECTED WORKS OF LANGSTON

American struggles and folkways, nevertheless aspired to say something more about an authentic experience recognizable to all Americans.³

Pieced together, these fragments reveal what could be called an ethics of melancholy citizenship. By *ethics*, I mean that Hughes's poetry presents ideas about how virtuous human beings ought to behave in a self-governing order. These democratic ethics inform how citizens should carry on with their lives even when the most basic obligations of the state have not been met. Indeed, it might be said that ethical bonds are most crucial when the law or public morality deviates from one's expectations. In the pages that follow, I will strive to flesh out their contours. Out of necessity, this search for common themes minimizes the obvious historical development in the artist's work, his own journeys between racial and class consciousness to universal ideals, and the revolutionary and the ordinary.

The American brought to life by Hughes's writings is not a person born in a particular place or recognized by law as such,⁴ but rather an individual who overcomes the challenges of democratic existence. The artist's conception of political membership is broadly inclusive, with special emphasis on the neglected:

I am the poor white, fooled and pushed apart,
 I am the Negro bearing slavery's scars.
 I am the red man driven from the land,
 I am the immigrant clutching the hope I seek—

 I am the farmer, bondsman to the soil.
 I am the worker sold to the machine.
 I am the Negro, servant to you all.

HUGHES: *FIGHT FOR FREEDOM* AND OTHER WRITINGS ON CIVIL RIGHTS 245 (Christopher C. De Santis ed., 2001).

³ For accounts of American membership, see HIROSHI MOTOMURA, *AMERICANS IN WAITING: THE LOST STORY OF IMMIGRATION AND CITIZENSHIP IN THE UNITED STATES* (2006); MAE M. NGAI, *IMPOSSIBLE SUBJECTS: ILLEGAL ALIENS AND THE MAKING OF MODERN AMERICA* (2004).

⁴ For a taste of contemporary debates over legal and territorial citizenship, see LINDA BOSNIAK, *THE CITIZEN AND THE ALIEN: DILEMMAS OF CONTEMPORARY MEMBERSHIP* (2006); KEVIN R. JOHNSON, *OPENING THE FLOODGATES: WHY AMERICA NEEDS TO RETHINK ITS BORDERS AND IMMIGRATION LAWS* (2007); PETER H. SCHUCK & ROGERS M. SMITH, *CITIZENSHIP WITHOUT CONSENT: ILLEGAL ALIENS IN THE AMERICAN POLITY* (1985); Leti Volpp, *The Citizen and the Terrorist*, in *SEPTEMBER 11 IN HISTORY: A WATERSHED MOMENT?* 147 (Mary L. Dudziak ed., 2003); Sarah Song, *What Does It Mean to Be an American?*, *DÆDALUS*, Spring 2009, at 31.

I am the people, humble, hungry, mean—
Hungry yet today despite the dream.⁵

Those relegated to the margins of society are “the people.” And they are full of contradiction: “humble, hungry, mean . . . despite the dream.”

Turning the inquiry from one of formal status to that of common experience, his work portrays the citizen as someone trapped in a politics that has yielded few tangible solutions. To be a good citizen is to act in ways that befit the burdens and privileges that are entailed. This conception of citizenship is thicker than some formulations, such as those based on birthright or territory. It is thinner than others, such as those requiring acculturation in a rigorous value system.

As an organizing theme, sorrow offers a profitable entry point into an ethical politics as it is ideally practiced. To Hughes, a mournful disposition appears to be associated with four democratic virtues: candor, pensiveness, fortitude, and self-abnegation.

The first dimension of a melancholy ethics holds that each citizen must hone a capacity to see the nation's imperfections as much as he believes in its perfectability. Hughes spoke of trying to “look at [American democracy] with clear, unprejudiced eyes.”⁶ An unhappy mood fosters clarity of observation. Of Justice, he notes ruefully that the concept is represented as a blind goddess whose “bandage hides two festering sores / That once perhaps were eyes.”⁷

Frequently, the protagonists in his work are the demoralized and downtrodden, whose contributions are unsung. They are the “desperate / Who do not care . . . The tearless / Who cannot / Weep.”⁸ His poems address the discontented and by extension any sympathizers. His art provides succor, offering them reasons to go on, urging them not to abandon the democratic experiment. The unmistakable message is that the sacrifice of innocents, while a tragedy, will eventually be redeemed. To “the kids who die,” Hughes says somberly:

⁵ Langston Hughes, *Let America Be America Again*, ESQUIRE, July 1936, at 92, reprinted in COLLECTED POEMS, *supra* note 1, at 189, 189–90.

⁶ Langston Hughes, *My America*, 16 J. EDUC. SOC. 334, 334 (1943).

⁷ Langston Hughes, *Justice*, AMSTERDAM NEWS, Apr. 25, 1923, at 12, reprinted in COLLECTED POEMS, *supra* note 1, at 31, 31.

⁸ Langston Hughes, *Vagabonds*, OPPORTUNITY: JOURNAL OF NEGRO LIFE, Dec. 1941, at 367, reprinted in COLLECTED POEMS, *supra* note 1, at 239, 239.

Maybe your bodies'll be lost in a swamp,
 Or a prison grave, or the potter's field,
 Or the rivers where you're drowned like Liebknecht,
 But the day will come—
 You are sure yourselves it is coming—
 When the marching feet of the masses
 Will raise for you a living monument of love,

 The song of the new life triumphant
 Through the kids who die.

A truly authentic membership, then, demands a visceral confrontation of inequity, degradation, and hypocrisy—evidence of democratic deficits. Sorrow fosters pensiveness, an essential (and second) attribute of citizenship. *Call to Creation* emphasizes this theme of shared pain as a basis for political community: “Give up beauty for a moment. / Look at harshness, look at pain, / Look at life again.”¹⁰ The astonishing command—to “give up beauty” for an instant—catches the reader by the throat, turning her head toward a “past . . . mint[ed] / Of blood and sorrow”¹¹ despite more civilized instincts to look away in embarrassment. To look away is to treat as private anguish circumstances that must instead be identified as public injustice. Only in a tour of others’ grief can one “Look at life again.” In another place, Hughes teaches: “Open wide your arms to life, / Whirl in the wind of pain and strife.”¹²

Ironically, suffering inures one to the squalor of democratic disappointments in a manner that is ultimately productive. It enables critique of the social order without the disabling effects of fear—yet a third dimension of citizenship. That fortitude, essential to meaningful participation, is discernible in a distasteful, casual encounter: “Sure, call me any ugly name you choose— / The steel of freedom does not stain.”¹³ The poet’s conviction is that those who labor on behalf of worthy ideals such as liberty must be “steel[ed]” against the “stain[ing]” influences of ridicule, oppression, and doubt.

⁹ Langston Hughes, *Kids Who Die*, in *A NEW SONG* (1938), reprinted in *COLLECTED POEMS*, *supra* note 1, at 210, 211.

¹⁰ Langston Hughes, *Call to Creation*, *NEW MASSES*, Feb. 1931, at 4, reprinted in *COLLECTED POEMS*, *supra* note 1, at 135, 135.

¹¹ Langston Hughes, *History*, *OPPORTUNITY: JOURNAL OF NEGRO LIFE*, Nov. 1934, at 339, reprinted in *COLLECTED POEMS*, *supra* note 1, at 179, 179.

¹² Langston Hughes, *Song*, *SURVEY GRAPHIC*, Mar. 1, 1925, at 90, reprinted in *COLLECTED POEMS*, *supra* note 1, at 45, 45.

¹³ Hughes, *supra* note 5, in *COLLECTED POEMS*, *supra* note 1, at 191.

Once the citizen has learned to cope with democratic heartbreak, injustice within the political order can then be confronted without apology:

But I laugh,
And eat well,
And grow strong.
Tomorrow,
I'll be at the table
When company comes.
Nobody'll dare
Say to me,
"Eat in the kitchen,"
Then.¹⁴

A propensity to endure pain and recognize suffering in others makes possible the subordination of the self in the cause of enlightened goals—the fourth virtue of melancholy politics. On this point, Christian influences on the poet's ideology are most visible. Hughes posits causal links between selflessness, affection, and liberation to craft his brand of redemptive politics. "Serve—and hate will die unborn," he asserts. "Love—and chains are broken."¹⁵ He never relinquishes the thought that freedom is a collective enterprise rather than simply a plea to be let alone. To say it aloud is to remind oneself: "Alone, I know, no one is free."¹⁶

Throughout, the African American experience is transfigured into a lesson for all. If those who were asked to give up so much—"Just a herd of Negroes / Driven to the field"¹⁷—somehow kept the faith by "[s]inging sorrow songs,"¹⁸ then surely other people's sacrifices for

¹⁴ Langston Hughes, *I, Too*, SURVEY GRAPHIC, Mar. 1, 1925, at 683, *reprinted in* COLLECTED POEMS, *supra* note 1, at 46, 46. Well before Martin Luther King Jr. popularized it in his speeches, the Christian theme of table fellowship served the poet's vision of equality. Christians are instructed to treat strangers like members of their own family by breaking bread with them. Hughes plays on this message by showing how blacks are treated worse in their own home than strangers, relegated to the kitchen "[w]hen company comes."

¹⁵ Langston Hughes, *Alabama Earth: At Booker Washington's Grave*, TUSKEGEE MESSENGER, June 1928, at 93, *reprinted in* COLLECTED POEMS, *supra* note 1, at 126, 126.

¹⁶ Langston Hughes, *To Captain Mulzac*, JIM CROW'S LAST STAND (1943), *reprinted in* COLLECTED POEMS, *supra* note 1, at 293, 293.

¹⁷ Langston Hughes, *Share-Croppers*, PROLETARIAN LITERATURE 167 (1935), *reprinted in* COLLECTED POEMS, *supra* note 1, at 185, 185.

¹⁸ Langston Hughes, *Aunt Sue's Stories*, CRISIS, July 1921, at 121, *reprinted in* COLLECTED POEMS, *supra* note 1, at 23, 23.

Black slaves
Working in the hot sun,

the sake of democratic justice will be modest by comparison. At all events, the poet's words are for all who may listen, as "Black people don't remember / any better than white."¹⁹

Hughes is a democrat to the core, pushing against a republican order originally designed to keep those like him on the outside looking in. Yet the artist is not so much concerned with improving people's use of the franchise or perfecting the workings of certain institutions as he is worried about the integrity of the nation's leaders, the condition of the American psyche, and the survival of democratic ideals within each citizen. Wallowing in the depths to which humanity can sink, however briefly, brings the emotional intensity necessary for political reengagement.

Once exposed to misery, want, and treachery, it is easier to muster the will to employ the force required to remake the world, "To smash the old dead dogmas of the past— / To kill the lies of color / That keep the rich enthroned."²⁰ Again and again, his poetry emphasizes the distinction found in the political canon between public officials as temporary caretakers and "the people" in whom sovereignty ultimately rests:

From those who live like leeches on the people's lives,
We must take back our land again,
America!

.....

Out of the rack and ruin of our gangster death,
The rape and rot of graft, and stealth, and lies,
We, the people, must redeem
The land, the mines, the plants, the rivers.
The mountains and the endless plain—

And black slaves
Walking in the dewy night,
And black slaves
Singing sorrow songs on the banks of the mighty river
Mingle themselves softly
In the flow of old Aunt Sue's voice,
Mingle themselves softly
In the dark shadows that cross and recross
Aunt Sue's stories.

Id.

¹⁹ Langston Hughes, *Shame on You*, PHYLON, 1st Quarter 1950, at 15, reprinted in COLLECTED POEMS, *supra* note 1, at 415, 415.

²⁰ Langston Hughes, *Open Letter to the South*, NEW MASSES, June 1932, at 10, reprinted in COLLECTED POEMS, *supra* note 1, at 160, 160.

All, all the stretch of these great green states—
And make America again!²¹

These multiple facets of an ethical life could be seen in developmental terms, but it would be an error to view them as little more than stages in a one-way progression to a final enlightened state. Instead, members of the polity find themselves in a “lazy sway” between states of vulnerability and callousness, terror and outrage, isolation and fellowship. A recurring trope in Hughes’s work is “the blues,” both in terms of the psychological condition and the genre of music.²² Blending these themes, he employs a fatalistic humor to instruct us to look for reasons to go on. In the bleakest hour, any reason will do:

I got those sad old weary blues.
I don’t know where to turn.
I don’t know where to go.
Nobody cares about you
When you sink so low.
....
But I ain’t got
Neither bullet nor gun—
And I’m too blue²³
To look for one.

For all of his fascination with “the swirl of the bitter river,”²⁴ Hughes insists that resignation cannot be tolerated as a permanent

²¹ Hughes, *supra* note 5, in COLLECTED POEMS, *supra* note 1, at 191.

²² As a commentator has noted: “Action in Hughes’ blues, as in the popular blues, is characteristically undramatic, understated, laced with irony and humor.” ONWUCHEKWA JEMIE, LANGSTON HUGHES: AN INTRODUCTION TO POETRY 52 (John Unterecker ed., 1976). Jemie considers Hughes’s ability “to capture and transmit this ethos so completely in his work . . . among his greatest achievements.” *Id.* at 53. James Baldwin was less impressed, finding that Hughes sometimes “copies, rather than exploits, the cadence of the blues.” James Baldwin, *Sermon and Blues*, N.Y. TIMES, Mar. 29, 1959, <http://www.nytimes.com/books/98/03/29/specials/baldwin-hughes.html>.

²³ Langston Hughes, *Too Blue*, CONTEMPORARY POETRY, Autumn 1943, at 5, *reprinted* in COLLECTED POEMS, *supra* note 1, at 280, 280.

²⁴ Langston Hughes, *The Bitter River*, NEGRO QUARTERLY: A REVIEW OF LIFE AND CULTURE, Fall 1942, at 249–51, *reprinted* in COLLECTED POEMS, *supra* note 1, at 242, 243. It begins:

There is a bitter river
Flowing through the South.
Too long has the taste of its water
Been in my mouth.
There is a bitter river
Dark with filth and mud.

state. It is, rather, one moment in “a drowsy syncopated tune” full of contradictions.²⁵ With the right effort anyone should be able to hear “a deep song voice with a melancholy tone.”²⁶ That song goes something like this:

“Ain’t got nobody at all in this world,
Ain’t got nobody but ma self.
I’s gwine to quit ma frownin’
And put my troubles on the shelf.”

....
“I got the Weary Blues
And I can’t be satisfied.”²⁷

A musician’s performance will end, but the “sad raggy tune” lingers: “The singer stopped playing and went to bed / While the Weary Blues echoed through his head. / He slept like a rock or a man that’s dead.”²⁸ The citizen’s orientation toward democratic politics is not unlike that of the artist to his music. One way or another, the project must go on.

Too long has its evil poison
Poisoned my blood.

Id. at 242–43.

²⁵ Langston Hughes, *The Weary Blues*, OPPORTUNITY: JOURNAL OF NEGRO LIFE, May 1925, at 143, reprinted in COLLECTED POEMS, *supra* note 1, at 50, 50.

²⁶ *Id.*

²⁷ *Id.* *The Weary Blues* is often considered one of Hughes’s “most powerful” poems. ARNOLD RAMPERSAD, *THE LIFE OF LANGSTON HUGHES, VOL. I: 1902–1941, I, TOO, SING AMERICA*, at 65 (1986). Rampersad observes: “The technical virtuosity of the opening lines is seen only when one measures them against the cadences of urban black speech, derived from the South, with its glissandos, arpeggios, and sudden, unconventional stops.”

Id. *The Weary Blues* begins:

Droning a drowsy syncopated tune,
Rocking back and forth to a mellow croon,
I heard a Negro play.
Down on Lenox Avenue the other night
By the pale dull pallor of an old gas light
He did a lazy sway. . . .
He did a lazy sway. . . .

Hughes, *supra* note 25. On the role of music in Hughes’s work, see PAT E. BONNER, *SASSY JAZZ AND SLO’ DRAGGIN’ BLUES: MUSIC IN THE POETRY OF LANGSTON HUGHES* (1996); Steven C. Tracy, *To the Tune of Those Weary Blues: The Influence of the Blues Tradition in Langston Hughes’s Blues Poems*, 8 SOC’Y FOR THE STUDY OF THE MULTI-ETHNIC LITERATURE OF THE U.S. (MELUS) 73 (1981).

²⁸ Hughes, *supra* note 25.

II

FROM DEMOCRATIC DISAPPOINTMENT TO POPULAR ACTION

Hughes's work reveals that poetry can serve as a text-based strategy for weaving a democratic culture, one that at times reinforces and at other times undermines official messages and programs. Through Americans' interactions with poems, long-forgotten commitments can be remembered, critical faculties engaged, totems smashed, and violations exposed. Like official texts, such as the Constitution, but unlike more fleeting events, such as street protest, poetry can be codified, cataloged, shelved, handed off, re-packaged, and criticized. These fragments enjoy political salience in a society that privileges the written word. Preserved and circulated along with other texts, its forms and meanings are scrutinized by the strong and weak alike.

At the same time, subversive political messages contained in poetry are partially obscured, protected from the casual, hostile eye, yet rewarding the close reader. Those who pay attention may discover a roadmap for democratic action. Poetry enjoys other advantages over legal tomes. It trips authoritatively from the instructor's lips to the acolyte's ear, blows from the hipster's jeans pocket into the murmuring crowd, glides between lovers and confidants:

As Whitman did before him, Hughes gazed out at the great landscape of America and witnessed an abundance of peoples and experiences. Unlike his predecessor, Hughes's vision of hopefulness is tinged with a profound sadness. Riffing off Whitman's epic vision, *I Hear America Singing*, Hughes states matter-of-factly:

I, too, sing America.
I am the darker brother.
They send me to eat in the kitchen
When company comes,
I, too, am America.²⁹

Elsewhere, he notices the "One handful of dream-dust / Not for sale"³⁰ and contemplates the "Lonely people / In the lonely day /

²⁹ Hughes, *supra* note 14.

³⁰ Langston Hughes, *Dream Dust*, FIELDS OF WONDER (1947), reprinted in COLLECTED POEMS, *supra* note 1, at 336, 336.

Work[ing] to salt / Their dream away.”³¹ To live the American Dream is to struggle—not always with one’s dignity intact.

America—
 Hoping, praying
 Fighting, dreaming.
 Knowing
 There are stains
 On the beauty of my democracy,
 I want to be clean.
 I want to grovel
 No longer in the mire.³²

Inevitably, a person’s mood brightens long enough so it is possible to envision once again the potential for renewal and change. Out of misery emerges an awareness that is a precondition to recommitment: “Suddenly the earth was there, / And flowers, / Trees, / And air, / And like a wave the floor— / That had no dignity before!”³³

Hughes does not valorize those who would choose to affect an ironic pose, detached from humankind. In this refusal, his writings move between description and prescription, observation and action. But how is this shift in orientation effectuated? One begins with the revelation that society is a human creation: the recovery of the dream of self-governance. The poem, *Gods*, points out that the dominant ideas that govern, the things taken to be unchanged and unchanging, are entirely of ordinary people’s own making:

The ivory gods,
 And the ebony gods,
 And the gods of diamond and jade,
 Sit silently on their temple shelves
 While the people
 Are afraid.
 Yet the ivory gods,
 And the ebony gods,
 And the gods of diamond-jade,
 Are only silly puppet gods

³¹ Langston Hughes, *Little Song*, OPPORTUNITY: JOURNAL OF NEGRO LIFE, July 1948, at 104, reprinted in COLLECTED POEMS, *supra* note 1, at 336, 336.

³² Langston Hughes, *America*, OPPORTUNITY: JOURNAL OF NEGRO LIFE, June 1925, at 175, reprinted in COLLECTED POEMS, *supra* note 1, at 52, 53.

³³ Langston Hughes, *Harlem Dance Hall*, in FIELDS OF WONDER 94 (1947), reprinted in COLLECTED POEMS, *supra* note 1, at 339, 339.

That the people themselves
Have made.³⁴

This simple arrangement operates at once as a searing indictment of "the people themselves" for giving too much power to "silly" human creations to cause misery and as a liberating revelation of their artificiality—"puppet[s] . . . made" and placed "on their temple shelves." Using precious jewels to signify different peoples and their belief systems, he universalizes his truth-message even as he acknowledges the integrity of those who worship the gods of "ivory," "ebony," "diamond," and "jade."

Once the veil is lifted, democratic renewal can commence. The citizen must continue to labor on America's behalf even if his conception of the good life has not been fully realized:

I take my dreams
And make of them a bronze vase,
And a wide round fountain
With a beautiful statue in its center,
And a song with a broken heart,
And I ask you:
Do you understand my dreams?
Sometimes you say you do
And sometimes you say you don't
Either way
It doesn't matter.³⁵
I continue to dream.

While the theme of alienation figures prominently in the poet's work, he stops short of romanticizing a dislocated sense of being. Isolation of the self and the disintegration of bonds cannot be a serious option. "Weary, / Weary, / Trouble, pain. / Sun's gonna shine / Somewhere / Again."³⁶ His protagonists are visibly tired yet often sleepless. The "[a]ching emptiness" they feel can be traced to a root cause: "Desiring, / Needing someone, / Something."³⁷

³⁴ Langston Hughes, *Gods*, MESSENGER, Mar. 1924, at 75, reprinted in COLLECTED POEMS, *supra* note 1, at 37, 37.

³⁵ Langston Hughes, *Dreamer*, in EBONY AND TOPAZ: A COLLECTANEA 36 (C.S. Johnson ed., 1927), reprinted in COLLECTED POEMS, *supra* note 1, at 111, 111.

³⁶ Langston Hughes, *Blues Fantasy*, in THE WEARY BLUES (1967), reprinted in COLLECTED POEMS, *supra* note 1, at 91, 91.

³⁷ Langston Hughes, *Summer Night*, CRISIS, Dec. 1925, at 66, reprinted in COLLECTED POEMS, *supra* note 1, at 59, 59.

My soul
Empty as the silence,
Empty with a vague,

At another point, Hughes wonders aloud:

Why is it that an empty house,
Untouched by human strife,
Can hold more woe
Than the wide world holds,
More pain than a cutting knife?³⁸

In this respect, Hughes resembles Keats, whose *Ode on Melancholy* begins:

No, no, go not to Lethe, neither twist
Wolf's-bane, tight-rooted, for its poisonous wine;
Nor suffer thy pale forehead to be kiss'd
By nightshade, ruby grape of Proserpine³⁹

Although Hughes does not credit the Romantic poet and is more overtly political in his reworking of the virtues of mournfulness than Keats, their works nevertheless share a common structure. Sadness is a temporary, exquisite state ("But when the melancholy fit shall fall / . . . / That fosters the droop-headed flowers all, / And hides the green hill on an April shroud"⁴⁰). Seizing the moment fully may yield nutrients for the soul ("Then glut thy sorrow on a morning rose."⁴¹). Indeed, Keats, like Hughes, contends that beauty and pain are inseparable: "She dwells with Beauty—Beauty that must die."⁴² Only those who accept this insight can hope to enter

[T]he very temple of Delight
Veil'd Melancholy has her sovran shrine,
Though seen of none save him whose strenuous tongue
Can burst Joy's grape against his palate fine;
His soul shall taste the sadness of her might,⁴³
And be among her cloudy trophies hung.

Aching emptiness,
Desiring,
Needing someone,
Something.

Id.

³⁸ Langston Hughes, *Empty House*, BUCCANEER, May 1925, at 20, reprinted in COLLECTED POEMS, *supra* note 1, at 51, 51.

³⁹ JOHN KEATS, *Ode on Melancholy*, in JOHN KEATS 368, 370 (Susan J. Wolfson ed. 2007).

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.* at 370–71.

Hughes goes further than Keats. Soulful transformation must be followed by tangible changes. The person who discovers wisdom in a people's anguish can no longer sit on the sidelines but must take corrective action. She has become newly sensitized to the plight of others and grateful for small miracles, though hardened in the ways of the world. Only then is such an individual capable of improvisation and group action. Calling his audience forth as newly inspired citizens, Hughes describes them already in various states of democratic action: "Hoping, praying / Fighting, dreaming."⁴⁴

Therein lies the promise of a more fulfilling democratic existence. But a basic ambivalence will always remain at the core of political membership, captured in these few lines:

O, yes,
I say it plain,
America never was America to me,
And yet I swear this oath—
America will be!⁴⁵

An imperfect attachment to the nation may lead a victim of democratic injustice nevertheless to affirm allegiance. With some luck, against long odds, it could also generate the conviction to do yeoman's work on behalf of what "America will be."

III

POETRY AS WAR CONSTITUTIONALISM

The ethics of melancholy citizenship became refined during the Second World War and in its aftermath, a period in which official notions of the nation-state became aggressively (and at times, violently) reformulated. As American elites sought international recognition and influence, escalating opportunities arose for others to

⁴⁴ Hughes, *supra* note 32. He exhorts his brethren onward in *Freedom's Plow*:

America!
Land created in common,
Dream nourished in common,
Keep your hand on the plow! Hold on!
If the house is not yet finished,
Don't be discouraged, builder!
If the fight is not yet won,
Don't be weary, soldier!

Langston Hughes, *Freedom's Plow*, OPPORTUNITY: JOURNAL OF NEGRO LIFE, Apr. 1943, at 66-69, reprinted in COLLECTED POEMS, *supra* note 1, at 263, 267.

⁴⁵ Hughes, *supra* note 5, in COLLECTED POEMS, *supra* note 1, at 191.

leverage nationalistic ambitions for other ends.⁴⁶ Thus, it may be illuminating to lay Hughes's rendering of the political order alongside the official construction of liberal democracy to identify the places of mutual reinforcement, critique, or repudiation.

When this is done, we discover that authoring poetry can be a profound act of popular constitutionalism.⁴⁷ As I have argued elsewhere,⁴⁸ the battle over the direction of constitutional law necessarily entails a fight over the very language employed to make sense of substantive values. This is a process that goes on not only inside courtrooms and during elections, but also within the domain of popular culture. Langston Hughes's work endorses the basic goals of democratic constitutionalism, issues powerful substantive challenges to official renderings of the principles of equality and liberty, and implicitly rejects the idea that judges alone are responsible for safeguarding the Constitution. Unlike those who might prefer a thin conception of constitutional law, he advocates a robust form of constitutionalism in which democratic justice enjoys pride of place among its objectives. And just as politicians and judges shaped constitutional understandings by drawing on notions of wartime patriotism and sacrifice, Hughes repeatedly played on identical themes to urge extension of the principle of equal protection of law to African Americans.

⁴⁶ Mary Dudziak cautions us not to see wartime and peacetime in such sharp relief. Mary L. Dudziak, *Law, War, and the History of Time* (Univ. of S. Cal. Legal Studies Working Paper Series No. 27, 2009), available at <http://law.bepress.com/cgi/viewcontent.cgi?article=1101&context=usclwps>; cf. Mark E. Brandon, *War and the American Constitutional Order*, in *THE CONSTITUTION IN WARTIME: BEYOND ALARMISM AND COMPLACENCY* 11, 11 (Mark Tushnet ed., 2005) (arguing that America has been at war during eighty percent of its existence).

⁴⁷ I use the term "popular constitutionalism" in the same spirit as the many who are mining this vein, though I generously include acts of popular culture and alternative self-organization beyond legislation, executive action, and street activity. See 1 BRUCE ACKERMAN, *WE THE PEOPLE: FOUNDATIONS* (1991); 2 BRUCE ACKERMAN, *WE THE PEOPLE: TRANSFORMATIONS* (1998); LARRY D. KRAMER, *THE PEOPLE THEMSELVES: POPULAR CONSTITUTIONALISM AND JUDICIAL REVIEW* (2004); MARK TUSHNET, *TAKING THE CONSTITUTION AWAY FROM THE COURTS* (1999); JEREMY WALDRON, *LAW AND DISAGREEMENT* (1999); KEITH E. WHITTINGTON, *POLITICAL FOUNDATIONS OF JUDICIAL SUPREMACY: THE PRESIDENCY, THE SUPREME COURT, AND CONSTITUTIONAL LEADERSHIP IN U.S. HISTORY* (2007); Barry Friedman, *Mediated Popular Constitutionalism*, 101 MICH. L. REV. 2596 (2003); Reva B. Siegel, *She, the People: The Nineteenth Amendment, Sex Equality, Federalism, and the Family*, 115 HARV. L. REV. 947 (2002).

⁴⁸ ROBERT L. TSAI, *ELOQUENCE AND REASON: CREATING A FIRST AMENDMENT CULTURE* 6–15, 52–68, 78–111 (2008).

For the poet, war is an inescapable brutality accompanied by "soft lies," but it is one that can nevertheless be turned toward the ends of justice. As he ventures into the contentious questions of segregation and civil rights, Langston Hughes urges his readers to gird themselves for the dangers and disappointments ahead in the rough-and-tumble of politics.

In the lyrical *Poem to a Dead Soldier*,⁴⁹ Hughes faces the brutality of war head-on, as well as the unpleasant fact that the sacrifices of those who died inexorably become the subject of political discourse:

Now we spread roses
Over your tomb—
We who sent you
To your doom.
Now we make soft speeches
And sob soft cries
And throw soft flowers
And utter soft lies.

We would mould you in metal
And carve you in stone,
Not daring to make statue
Of your dead flesh and bone,
Not daring to mention
The bitter breath
Nor the ice-cold passion
Of your love-night with Death.⁵⁰

Utilizing the collective "we" and addressing the youthful dead as "you," the speaker establishes a hushed intimacy. Through this technique, the author instantly takes ownership of war's demands and its abuses. Gentle repetition of two-word phrases starting with the same word ("soft speeches," "soft cries," "soft flowers," "soft lies") offers a soothing overlay of remembrance to the artist's critique of war. For Hughes, war does not end. Rather, conflict rages on over a war's legacy. The difficult task for each society is figuring out how to recall the "bitter" realities of "dead flesh and bone" even as the nation busily constructs its memorials.⁵¹

⁴⁹ Langston Hughes, *Poem to a Dead Soldier*, WORKERS MONTHLY, Apr. 1925, at 261, reprinted in COLLECTED POEMS, *supra* note 1, at 48, 48–49.

⁵⁰ *Id.*

⁵¹ In *World War*, Hughes pricks our memory by creating a jarring competition between a jolly post-war reconstruction and the fading facts of death:

What a grand time was the war!
Oh, my, my!
What a grand time was the war!

If war—as an extended variation on suffering—is ineradicable, the question naturally becomes what to make of it. The poet's answer: it is best to turn the horrors of war toward enlightened ends. America's reputation had to be harnessed for real-world gains, or else the professed commitments to equality and liberty would be revealed, once and for all, as empty sloganeering. Lawyers and politicians, concerned with America's growing status as a moral leader on the world stage, made greater strides at mid-century to address racial inequality.⁵² Working in another domain and with different materials, Hughes's writings are nevertheless deeply engaged in that same reconstructive project, pushing and prodding those in positions of authority to make good on their promises. It is an example of what I call "war constitutionalism" practiced by an artist and critic. A person engages in war constitutionalism by drawing on the fact of war or the legacy of a particular conflict as a reason for adopting a particular interpretation of the Constitution.

For Hughes, segregation must be treated as a denial of equal protection of the law in part because the effectiveness of an integrated military has undercut the logic of racial separation. Even more important, segregation at home is at odds with the President's freedom agenda abroad. Shame proves to be an attractive instrument for progressive legal change. In his hands, pride and its opposite are to be mobilized for the ends of democratic justice. The poet declares: "They'll see how beautiful I am / And be ashamed—."⁵³

The President is an effective foil in this endeavor, given his frequent appeals to political freedom. But the technique also rests on an astute insight: over the years, the occupant of the Oval Office has come to embody the country's fervent hopes and desires. Americans' faith in a strong, morally upright President and pride in themselves as

My, my, my!
 In wartime we had fun,
 Sorry that old war is done!
 What a grand time was the war,
 My, my!
 Echo:
 Did
 Somebody
 Die?

Langston Hughes, *World War*, HARLEM Q., Winter 1949–50, at 9, reprinted in *COLLECTED POEMS*, *supra* note 1, at 415, 415.

⁵² See MARY L. DUDZIAK, *COLD WAR CIVIL RIGHTS: RACE AND THE IMAGE OF AMERICAN DEMOCRACY* (2000).

⁵³ Hughes, *supra* note 14.

fair-dealing folks have become vehicles for constitutional transformation. “We need a delegation to / Go see the President,” Hughes urges, “And tell him from the shoulder / Just why we are sent: / Tell him we’ve heard his speeches / About Democracy— / But to enjoy what he’s talking about / *What* color must you be?”⁵⁴ Citizens are told to discuss racial equality with the President “from the shoulder,” honestly and directly, without relying on mediating institutions such as political parties or advocacy groups.

In *Will V-Day Be Me-Day Too?*,⁵⁵ a letter writer who describes himself as “a Tan-skinned Yank” juxtaposes the equal sacrifices made by black Americans in the war effort with degrading inequality on the home front. History matters, but the calculation is that recent history matters more than ancient history in persuading others to fulfill the promise of equality. The first several stanzas work to establish the speaker’s credibility as a function of his ferocity and success in battle:

Over There,
World War II.
Dear Fellow Americans,
I write this letter
Hoping times will be better
When this war
Is through.
....
I wear a U.S. uniform.
I’ve done the enemy much harm,
I’ve driven back
The Germans and the Japs,
From Burma to the Rhine.
On every battle line,
I’ve dropped defeat
Into the Fascists’ laps.⁵⁶

On a variety of levels—reason, emotion, law, morality—the poet strives mightily to leverage a nation’s struggle for liberty to do the work of equality.⁵⁷ Black Americans’ fight for freedom entitles them to be treated with dignity and respect.

⁵⁴ Langston Hughes, *NAACP*, *CRISIS*, June 1941, at 201, reprinted in *COLLECTED POEMS*, *supra* note 1, at 230, 230.

⁵⁵ Langston Hughes, *Will V-Day Be Me-Day Too?*, *CHI. DEFENDER*, Dec. 30, 1944, at 9, reprinted in *COLLECTED POEMS*, *supra* note 1, at 303, 303.

⁵⁶ *Id.*

⁵⁷ For a definition and common types of leveraging American constitutional ideas, see Nelson Tebbe & Robert L. Tsai, *Constitutional Borrowing*, 108 *MICH. L. REV.* 459 (2010).

The specter of past and future violence haunts his next words:

When I take off my uniform,
Will I be safe from harm—
Or will you do me
As the Germans did the Jews?
When I've helped this world to save,
Shall I still be color's slave?
Or will Victory change
Your antiquated views?

.....
When this war comes to an end,
Will you herd me in a Jim Crow car
Like cattle?⁵⁸

Frequently, the portrait of race relations and the state's inability to do right by the average American is raw, painful to behold. In a single sentence, a heartbreaking possibility is posited: The individual who has "helped this world to save" may remain "color's slave." "[T]ak[ing] off my military uniform" signifies the act of peering beyond the nation-state's propaganda to the world, and it marks one's transition from obedient soldier to skeptical citizen. For Hughes, melancholia allows us to reflect soberly on the nature of things. The state of mind serves as an antidote to the dominant culture's relentlessly optimistic presentations of the American Creed.

In conveying his thoughts on race and politics in the vernacular,⁵⁹ Hughes simultaneously creates a popular audience for democratic ideas and stakes a claim of popular sovereignty on behalf of those whose fortunes hang in the balance, who may be crushed or saved by the law. Even as his poems facilitate the transmission of constitutional ideas and help make them salient, they also challenge caretakers' renditions of those communal values.

Throughout the 1940s, the Roosevelt administration systematically invoked constitutional principles as the rationales for making war, presenting ideological justifications well beyond national self-defense or retribution. FDR's 1941 "Four Freedoms" address served as a centerpiece of this propaganda initiative.⁶⁰ In official circles, that

⁵⁸ Hughes, *supra* note 55.

⁵⁹ Steven C. Tracy, *Langston Hughes and Afro-American Vernacular Music*, in *A HISTORICAL GUIDE TO LANGSTON HUGHES* 85 (Steven Tracey ed., 2004).

⁶⁰ My own work has focused on presidential efforts to harness popular rationales for war on behalf of other domestic priorities, such as the right of conscience. See TSAI, *supra* note 48, at 112–39; Robert L. Tsai, *Reconsidering Gobitis: An Exercise in Presidential Leadership*, 86 WASH. U. L. REV. 363 (2008).

acclaimed oration empowered litigants, who sprinkled their legal briefs with references to its lofty emphasis on constitutional rights. It also inspired jurists and opinion makers to endorse the President's wartime priorities.⁶¹

The administration's propaganda initiative gives Langston Hughes just the opening he needs:

The President's Four Freedoms
Appeal to me.
I would like to see those Freedoms
Come to be.
If you believe
In the Four Freedoms, too,
Then share 'em with me—
Don't keep 'em all for you.⁶²

In an exercise of a truly popular constitutionalism, the artist adopts the President's methods in order to subvert official aims. In responding to Roosevelt's call to arms, he turns the spotlight on social ills worthy of comparable attention.

Pivoting from the President to "you"—the American public—Hughes pleads with those who sincerely "believe" in the ideals of liberty to "share 'em" rather than "keep 'em all." In this way, he translates constitutional interpretation, often treated as an arcane practice, into the vernacular of common decency. Sharing is a childhood form of social interaction taught to everyone before prejudice can take hold.

A handful of Hughes's poems take the form of a letter to Roosevelt. As such, they resemble an informal petition, the ancient democratic vehicle for airing grievances and seeking redress. By engaging the President directly, the poems help to perpetuate presidential leadership as a model of governance. Rendered in such populist incarnation, one's grievances are uncomplicated by party affiliation, age, income, or influence.

These letters trade on the "mighty fine" orations of the American President.⁶³ They treat the presidential speeches as a series of rights-

⁶¹ See Tsai, *Reconsidering Gobitis*, *supra* note 60, at 411–12, 420–24; see also *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 637 (1943) (arguing, as Roosevelt had done, that "[t]o enforce those rights today is not to choose weak government over strong government"); *Thomas v. Collins*, 323 U.S. 516, 530 (1945) ("[T]he preferred place given in our scheme to the great, the indispensable democratic freedoms secured by the First Amendment.").

⁶² Langston Hughes, *How About It, Dixie*, NEW MASSES, Oct. 20, 1942, at 14, reprinted in *COLLECTED POEMS*, *supra* note 1, at 291, 291.

bearing promises that must now be kept, just as surely as the words of the Declaration of Independence or the Constitution created enforceable obligations.⁶⁴ Strictly speaking, FDR advocated greater enforcement of liberty principles (speech, religion, security, sustenance), not equality.⁶⁵ Because Roosevelt himself did not spend much time tackling racial equality, Hughes subverts the President's specific intentions by endorsing his invocations of political freedom in the abstract. Where FDR so often wished to go slow on matters of racial progress, Hughes instead urges prompt action on racial injustice by threatening to expose the country's leader as a hypocrite.

Dear Mr. President addresses Roosevelt as "our Commander in Chief."⁶⁶ "Respectfully," the correspondent "call[s] your attention / To these Jim Crow laws / Your speeches don't mention."⁶⁷ Black selflessness, as exhibited through individuals undergoing military training and assuming a risk of violent death, is juxtaposed with the crass indignity of having to live in a segregated society. The work concludes simply:

I train to fight,
Perhaps to die.
Urgently, sir,
I await your reply.⁶⁸

In *Message to the President*, another supplicant intones: "In your fireside chats on the radio / I hear you telling the world / What you want them to know."⁶⁹ From there, the letter moves briskly to the heart of the matter:

But there's one thing, Mr. President,
That worries my mind.
I hear you talking about freedom
For the Finn,
The Jew,

⁶³ Langston Hughes, *Message to the President*, in COLLECTED POEMS, *supra* note 1, at 590, 590.

⁶⁴ *Id.* at 590–92.

⁶⁵ Roosevelt described the Four Freedoms as "freedom of speech, "freedom of religion," "freedom from want," and "freedom from fear." Franklin D. Roosevelt, Annual Address to Congress: The "Four Freedoms" (Jan. 6, 1941), *available at* <http://docs.fdrlibrary.marist.edu/od4freed.html> (includes audio broadcast and text).

⁶⁶ Langston Hughes, *Dear Mr. President*, PEOPLE'S VOICE, July 3, 1943, at 23, *reprinted in* COLLECTED POEMS, *supra* note 1, at 271, 271.

⁶⁷ *Id.* at 272.

⁶⁸ *Id.*

⁶⁹ Hughes, *supra* note 63.

And the Czechoslovak—
 But you never seem to mention
 Us folks who're black!⁷⁰

This stanza dramatizes the incongruity of the state's treatment of outsiders (who are urged onward toward liberty by American leaders) and insiders (whose plight goes unmentioned), with the ultimate purpose of fostering equal dignity for the oppressed on the home front. It is followed by a standard prayer for relief:

I want the self-same rights
 Other Americans have today.
 I want to fly a plane
 Like any other man may.
 I don't like this Jim Crow army
 Or this Jim Crow navy,
 Or the lily-white marines
 Licking up the gravy.⁷¹

The poem concludes, as it began, with a modest request:⁷²

So the next time you sit down
 To that radio,
 Just like you lambast Hitler,
 Give Jim Crow a blow—⁷³

Like so many of his other democratic fragments, this one is executed with humor, humility, and doggedness, the same virtues Langston Hughes strove to inculcate in his fellow Americans. The organization of the poem approximates that of the earlier *Ballad of Roosevelt*,⁷⁴ which scrutinizes the New Deal. That poem adopts the perspective of a poor person whose family situation deteriorates. Family members, the quintessential "regular folks," become "Damn tired. o' waitin' on Roosevelt." The antepenultimate paragraph is most wry:

I can't git a job
 And I can't git no grub.
 Backbone and navel's

⁷⁰ *Id.* at 590–91.

⁷¹ *Id.* at 591.

⁷² The poem ends this way: "For all I'm asking, Mr. President, / Is to hear you say, / No more segregation in the U.S.A. / My friends, NO more / Segregation in the U.S.A." *Id.* at 592. Its modest ending matches its modest beginning: "Mr. President, kindly please, / May I have a word with you?" *Id.* at 590.

⁷³ *Id.* at 591–92.

⁷⁴ Langston Hughes, *Ballad of Roosevelt*, NEW REPUBLIC, Nov. 14, 1934, at 9, reprinted in COLLECTED POEMS, *supra* note 1, at 178, 178–79.

Doin' the belly-rub—
 A-waitin' on Roosevelt,
 Roosevelt, Roosevelt.⁷⁵

Soaring eloquence from elected officials poses its own risks, as “a lot o’ other folks . . . Done stopped believin’ / What they been told.”⁷⁶ Even in a time of increasing prospects for a number of Americans, democratic heartbreak lurks. Expectations raised may turn out to be hopes dashed. The prospect that popular enthusiasm may dissolve into widespread grousing is underscored by the muttering of the President’s name, “Roosevelt, Roosevelt, Roosevelt.”

The final lines of the poem exude a practical sensibility flavored by more than a hint of anxiousness. Hear the plaintive call:

And you can’t build a bungalow
 Out o’ air—
 Mr. Roosevelt, listen!
 What’s the matter here?⁷⁷

In this and other works, Hughes models the sort of strategy that remains within the reach of even the most disaffected of Americans. When all else fails, one must continue to hold public leaders’ feet to the fire when policies fall short of constitutional ideals.

But what if persistence yields no immediate response? What if, instead of generating democratic justice, abiding by a melancholy ethics merely leads to reprisals? Patience and determination must carry one through, whether one wishes to topple a regime or merely to experience a dignity long denied. The poet’s advice is as simple as it is haunting:

Face the wall with the dark closed gate
 Beat with bare, brown fists—
 And wait.⁷⁸

⁷⁵ *Id.* at 179.

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ Hughes, *supra* note 12.

