
Review

Public trials: Burke, Zola, Arendt, and the politics of lost causes

Lida Maxwell

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Beginning in the late 1770s and lasting until the early 1790s, Edmund Burke, the great Irish statesman and political thinker, agitated in speech and writings for the impeachment of Warren Hastings, the former Governor-General of Bengal – the ‘spider from hell’ who never dined ‘without creating a famine.’ A century later, Émile Zola, the French master of the naturalist novel, penned *J’Accuse!*, his galvanic defense of Alfred Dreyfus, the French-Jewish army captain falsely convicted of treason. Six decades later, Hannah Arendt, the brilliant German-Jewish political theorist, wrote *Eichmann in Jerusalem*, her famous critique of the trial of the logistical mastermind of the deportation of more than a million Jews to Nazi death camps.

These canonic critiques of three epochal legal proceedings are the focus of Lida Maxwell’s *Public Trials: Burke, Zola, Arendt, and the Politics of Lost Causes*. Although separated by large swaths of space and time, the critiques by Burke, Zola, and Arendt share, according to Maxwell, a commitment to laying bare the failure of ‘both law and the people to assure justice’ (p. 3). Maxwell calls such lapses ‘democratic failure,’ by which she means something distinct from the failure to render justice in a strictly legalistic sense. For Maxwell, moments of democratic failure ‘haunt us with the specter of people betraying their own ideals – sanctioning injustice, inequality, and oppression rather than seeking justice, equality and freedom’ (p. 3). It is a form of failure ‘enabled by broad public complicity in the national myths that made injustice (or incomplete justice) appear to be “justice”’ (p. 3).

All the same, Burke, Zola, and Arendt also share, Maxwell insists, a refusal to succumb to the kind of pessimism that infects the writings of Plato and Rousseau, thinkers who profoundly doubted the capacity of democratic polities to be entrusted with the task of doing justice. To the contrary, Maxwell argues that all three writers sought ‘to *rework* or *repurpose* this ugly picture of the public’s and law’s complicity in injustice (or incomplete justice) by showing this complicity to be



contingent’ – that is, by drawing attention to how things could have been, or might still be, very different. Maxwell calls this ‘repurposing’ of democratic failure on behalf of future democratic possibilities a ‘lost cause narrative.’ These ‘lost cause narratives’ seek, in turn, to constitute what Maxwell calls a ‘belated public,’ that is, a public ‘which, through attunement to past failure ... seeks justice for the past and the present’ (p. 14).

With this rather elaborate theoretical apparatus in place, Maxwell goes on to offer close readings of Burke, Zola, and Arendt, rounding off her volume with a discussion of Kathryn Bigelow’s *Zero Dark Thirty*. Curiously, however, we are offered no explanation for this specific choice of texts, and the discussion of *Zero Dark Thirty* has a tacked-on quality, bearing only a tangential connection to the arguments and concerns that otherwise animate Maxwell’s book. That said, Maxwell is an attentive and clever reader, at her most successful in her discussions of Burke and Zola. In the case of Burke, Maxwell does a fine job of showing how the statesman faced a dilemma in agitating against Hastings, as then-available law failed to ‘capture Hastings novel imperial crimes’ (p. 32). Maxwell locates in Burke’s indictment of Hastings an exemplary instance of ‘dynamic reflective judgment,’ a form of argumentation that avoided the pitfalls of anchoring legal critique in either universal moral sentiment or local legal norms (p. 38).

More distinctive still is Maxwell’s reading of Zola. As she insightfully demonstrates, in his crusade to lay bare the truth of the injustice committed against Dreyfus, Zola in fact engages in fresh exaggerations, creating a ‘mythical picture’ of the ‘struggle between justice and injustice’ (p. 95). In seeking to enlighten the public about the truth of the Dreyfus Affair, Zola elevates himself into the ‘expert for a mob that he believed incapable of identifying the truth on its own’ (p. 119). In so doing, he replays the very ‘problem he seeks to resolve,’ as only his elite tutelage can save the public from its ‘ongoing susceptibility to falsehood’ (p. 119).

Less successful is the book’s discussion of Arendt and the Eichmann trial. Maxwell reads Burke, Zola, and Arendt as together revealing how ‘purportedly just national identity’ can serve ‘as an ugly pretext for exclusion and scapegoating,’ and how ‘the imagined impartiality of the rule of law’ can serve ‘as an excuse for ignoring crimes and wrongdoing that do not fit within its parameters’ (p. 4).

Apt in the case of Burke and Zola, this description jars when applied to Arendt. Arendt never calls Eichmann a scapegoat; indeed, she never calls into the question the moral justification for executing the former SS man. Nor is it accurate to say that the Jerusalem court ignored ‘crimes and wrongdoing’ that did not ‘fit within its parameters.’ Maxwell is not inattentive to the dangers of using the same terms to describe Zola’s critique of French military justice and Arendt’s critique of the Jerusalem court. And so she shifts the terms of her analysis, arguing that, in contrast to Burke and Zola, Arendt is concerned less with injustice *per se* than with laying bare the Jerusalem court’s failure to do ‘full justice to the crimes they confronted’ (p. 3). While a more defensible claim, it raises fresh problems.



Maxwell never tells us what she means by ‘full justice’ or whether any legal institution can achieve such a lofty goal. Her discussion of the court’s failure to render ‘full justice’ also sits uncomfortably with her core concern, as it is far from clear that the legal shortcomings Arendt documents in *Eichmann in Jerusalem* constitute a *democratic* failure, that is, a misfiring of law, ‘in which democratic support was the enabling condition of injustice’ (p. 5).

To be sure, Arendt lambasts Eichmann prosecutor Gideon Hausner for using the trial as a tool to construct Israeli political solidarity, but this is not the heart of her critique. Instead, Arendt argues that in trying Eichmann for ‘crimes against the Jewish people’ before a domestic Israeli court, the proceeding missed a chance to shape the kind of international institutions capable of addressing unprecedented acts of state-sponsored mass atrocity. Also, the Jerusalem court failed to make sense of Eichmann as a distinctive and new type of criminal, who could organize acts of mass extermination not out of fanaticism or race hatred, but out of a sense of law abidingness – that is, with a complete absence of *mens rea*.

Maxwell certainly attends to these elements of Arendt’s critique, but her discussion is marred by small but consequential missteps. Maxwell accuses the court of ‘hiding the unprecedented nature of Eichmann’s crimes behind inadequate precedents’ (p. 123), but this mischaracterizes the problem. While Arendt finds fault with the Israeli charging statute, a statute is hardly a precedent. The problem, as Arendt describes it, has nothing to do with the inadequacy of precedents. To the contrary, she insists an adequate precedent *was* available, but the court failed to draw on it – namely, the decision of the International Military Tribunal at Nuremberg and its adumbration of the concept of ‘crimes against humanity.’

For Arendt, the deeper problem that vexed the court was less doctrinal than jurisprudential. It now seems clear that Arendt got Eichmann wrong: far from the dutiful bureaucrat, Eichmann was a highly motivated and committed anti-Semite. But regardless, Arendt’s point was that the court could not accept that Eichmann lacked *mens rea* without calling into question the entire concept of individual moral agency that subtends liberal jurisprudence. Thus, when Maxwell writes that the trial illuminated the ‘problem of addressing the unprecedentedness of Eichmann’s crimes in a rule-bound court’ (p. 124), she misstates the problem, which in Arendt’s treatment is far more radical than the conventional legal tension between rule and exception.

Also problematic is Maxwell’s discussion of the role played by the trial’s spectators. Maxwell writes that a courtroom audience may be ‘capable of ... shining light on the truth where the judge’s juridical approach obfuscates’ (p. 33). The author draws our attention to two such moments described by Arendt – the first, the silence that followed testimony about a Wehrmacht soldier who protected Jews; the second, the curses directed at Pinchas Freudiger, a former leader of the Jewish community of Budapest, who testified about efforts to negotiate directly with the SS to save Jews. Maxwell argues that these instances of ‘audience



spectatorship and theatricality' display 'truths about Eichmann's crimes that the Court's procedural strictness might otherwise have silenced' (p. 134).

But what are these truths? In the case of the audience's silence, it's hard to hear any rejection of the court's procedural strictness or any suppressed truth about Eichmann's crimes. The shouts directed at Freudiger, by contrast, can certainly be read as transgressive, but to what end? Maxwell hears in the audience's shouts a reminder that Eichmann's crimes were 'only possible in a situation of systematic complicity' (p. 141). And yet these charges of complicity were largely unjust. In arguing that the 'audience ... compelled the courtroom to attend to truth' (p. 140), Maxwell ironically fails to realize that the shouts directed at Freudiger sound the very notes of 'democratic failure' – of a democratic polity committing an injustice – that her book seeks to lay bare.

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