PUBLIC TRIALS

BURKE, ZOLA, ARENDT, AND THE POLITICS OF LOST CAUSES

LIDA MAXWELL

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OXFORD
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Oxford University Press is a department of the University of Oxford.
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Published in the United States of America by
Oxford University Press
198 Madison Avenue, New York, NY 10016

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Library of Congress Cataloging-in-Publication Data
Maxwell, Lida.
Public trials : Burke, Zola, Arendt, and the politics of lost causes / Lida Maxwell.
pages cm
Includes bibliographical references and index.
ISBN 978-0-19-938374-0 (hardback)
1. Democracy—Philosophy. 2. Justice, Administration of—Philosophy. 3. Hastings,
Warren, 1732–1818—Trials, litigation, etc. 4. Burke, Edmund, 1729-1797. 5. Dreyfus,
Alfred, 1859-1935—Trials, litigation, etc. 6. Zola, Emile, 1840–1902. 7. Eichmann, Adolf,
1906-1962—Trials, litigation, etc. 8. Arendt, Hannah, 1906–1975. I. Title.
JC423.M3786 2014
320.01'1—dc23
2014014575

135798642
Printed in the United States of America
on acid-free paper

FOR MY PARENTS,

Carol Maxwell and Phil Maxwell

Many Theresas have been born who found for themselves no epic life wherein there was a constant unfolding of far-resonant action; perhaps only a life of mistakes, the offspring of a certain spiritual grandeur ill-matched with the meanness of opportunity; perhaps a tragic failure which found no sacred poet and sank unwept into oblivion.. . . Here and there is born a Saint Theresa, foundress of nothing, whose loving heart-beats and sobs after an unattained goodness tremble off and are dispersed among hindrances, instead of centring in some long-recognizable deed.

—George Eliot, "Prelude" to *Middlemarch*

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ACKNOWLEDGMENTS

Hannah Arendt says that our supposedly solitary process of thought is deeply shaped and sparked by our conversations and interactions in the world. Happily, that is surely the case with this book. It is a pleasure to acknowledge here the individuals and institutions that have offered varied forms of support, advice, criticism, and thoughts during the conception and writing of this book.

I can say in all truthfulness that I never would have become a political theorist were it not for Roxanne Euben. In the last semester of my senior year at Wellesley College, while finishing up my Religion major, I took a seminar in "Feminist Political Theory" with Roxanne. I was so blown away by that class that I decided not to go to law school and to apply to graduate programs in political theory instead. Thanks to Roxanne for opening my eyes to what theory is and could be, and for her continuing enthusiasm for and support of my work.

This book has its origins in my doctoral dissertation at Northwestern University. At Northwestern, Bonnie Honig, Linda Zerilli, Sara Monoson, and Miguel Vatter were supportive and encouraging advisors, and they created a stimulating environment in which to study political theory. In particular, Linda Zerilli encouraged me to pursue my idiosyncratic thoughts from the outset and spent countless hours with me in her office, talking about Benjamin, Burke, Arendt, Montesquieu, Rousseau, and all the other thinkers I was enamored of. Linda's early support of me, and these long conversations, helped me to figure out how and why I love doing political theory. I am tremendously grateful for this, and for her continued support.

As my dissertation advisor and beyond, Bonnie Honig has given incredible support to me and my work—more than I could describe or

thank her for here. Looking through my files as I finish this project, I see the tangible remnants of this support—restaurant napkins with scribbled notes from lunch discussions, notes from long phone conversations, and her comments written on (countless) drafts of chapters and papers. As these artifacts attest, Bonnie has been incredibly generous with her time and thoughts—sharing her keen insight, pithy phrases, and intellectual imagination with me at every step of this way. The conversations that I have had with her about democratic agency, law, and Arendt form important threads running through this book. I am indebted to her for that, but I am also indebted to her for the intellectual example she provides. Her intellectual generosity, frankness, good humor, and relentless attention to the political stakes of arguments have provided me with a model that it is a pleasure to be guided by. I am also grateful to Bonnie for saying, "the book is done."

I developed many of the core ideas of this book while a Mellon Postdoctoral Fellow at Cornell, where Susan Buck-Morss, Burke Hendrix, Isaac Kramnick, Diane Rubenstein, Anna-Marie Smith, and, especially, Jason Frank made me feel a part of the Political Theory community. I am grateful for the insights I gained into my project in the Mellon Interdisciplinary Faculty Seminars in which I participated, and I thank the participants in 2006–2007 and 2007–2008 for what they have added to my thinking and to this project. I also benefited from conversations with Katherine Biers, Rebecca Givan, Cary Howie, Katherine Lieber, Alison McQueen, and Robert Travers. Ithaca and Cornell provided a wonderful first academic home after graduate school. My thinking was challenged, transformed, and clarified in all the best ways.

Ike Balbus, Steve Engelmann, and Norma Moruzzi were similarly supportive of me and my work at the University of Illinois, Chicago. Dick Simpson created a welcoming environment for me in the department. I also learned from conversations with the graduate students in my Democratic Theory course, especially Clifford Deaton, Abe Singer, and Alan Ward.

I have found a wonderful academic home at Trinity College. I couldn't ask for better, more supportive colleagues, both in and outside my department. In the Political Science Department, Sonia Cardenas, Stefanie Chambers, Diana Evans, Andy Flibbert, Isaac Kamola, Kevin McMahon, Tony Messina, Reo Matsuzaki, Gitte Schulz, and Abby

Fisher Williamson are terrific interlocutors. They are also just lovely, interesting, and intellectually engaging people to be around, which makes Trinity a pretty great place to go to work. All the members of my department at Trinity, as well as Zayde Antrim, Rob Corber, Christopher van Ginhoeven Rey, Chris Hager, Sara Kippur, and Vijay Prashad, workshopped and gave me great feedback on an early version of my chapter on Burke. I am especially grateful to Sara Kippur for her insight not only on the Burke chapter, but on the project as a whole (and for her help with French). My students at Trinity—especially students in my Political Trials classes—have productively challenged and aided my thinking about the book.

In the broader academic world, I am grateful to those who have read parts of the manuscript, or with whom I've had important conversations about it: Crina Archer, Lawrie Balfour, Katherine Biers, Japonica Brown-Saracino, Sonali Chakravarti, Roxanne Euben, Burke Hendrix, Adriene Hill, Bonnie Honig, Ayten Gundogdu, Demetra Kasimis, Isaac Kramnick, Sharon Krause, Lori Marso, Alison McQueen, Ella Myers, Andy Schaap, Rebekah Sterling, Elizabeth Wingrove, Linda Zerilli, and Karen Zivi. Jason Frank offered terrific feedback on the entire manuscript, as did an anonymous press reader. Laura Ephraim also read most of the manuscript and offered characteristically smart feedback and hard questions. Laura's thinking and ideas always refresh my own, and her friendship has sustained me, intellectually and personally. I am extremely grateful for it.

A version of Chapter 4 was previously published in *Contemporary Political Theory* as "Toward an Agonistic Understanding of Law: Law and Politics in Hannah Arendt's *Eichmann in Jerusalem*" (11[2012]: 88–108). I thank the reviewers of that article for their comments. Portions of this essay are reproduced here with the permission of Palgrave Macmillan. I also presented versions of Chapters 3 and 4 at the American Political Science Association Conference and a version of Chapter 4 at the Conference of the Association for the Study of Law, Culture, and the Humanities. While I was at Northwestern, the American Bar Foundation and the Alice Berline Kaplan Humanities Center provided supportive and intellectually vibrant atmospheres in which to write my dissertation. I am also grateful to Wellesley College for the support of a Vida Dutton Scudder Fellowship.

The extended Maxwell and Cunha families have been sources of support, laughter, and great discussions. I would like to especially acknowledge my grandmother, Ruth Cunha, and my late grandfather, Cliff Cunha. My grandfather, a master of the pun, showed me the value of jokes and laughter in creating community. My grandmother, an expert spinner of tales, continues to show me the value of storytelling and narration in making meaning out of life—a debt I don't know if I can ever repay. I also appreciate the support of Alex, Jami, and Walker Maxwell, who remind me to have fun, and I am thankful for the love and support of the larger Brown-Saracino clans—especially Pam Brown, Annie Garvey, Mike Saracino, Maggie Saracino, Jocelyn Brown-Saracino, Dave Nelson, and Brooke Brown-Saracino. I am grateful to Sara Kippur, Josh Lambert, Asher Lambert, and the Lambert-to-come for providing a home away from home in West Hartford—and excellent conversation and hugs from small children, to boot.

I owe more to Japonica Brown-Saracino than I can say—but I will try to say a little. I am tremendously grateful for the insight, honesty, and sheer intelligence that Japonica shares with me in discussions of my work and, really, of everything. Our conversations, debates—and, yes, arguments—about politics and theory and the world have deeply shaped the way I think, and have left significant traces throughout this manuscript. Japonica has also endured (mostly with good humor) my bouts of spaciness when I've been caught up in the book, made me laugh in moments of frustration, kicked me out the door to go running when I've hit a moment of writer's block, and—most important—convinced me to stop working from time to time and get out into the world with her. In what often feels like our whirlwind life together, Japonica has also helped give me the space and time to do the actual, practical writing of this book, which I am deeply grateful for. In sum, being with Japonica has made my life (and work) better, fuller, and more meaningful—and I am profoundly thankful for it.

Louisa Maxwell arrived as I was really getting serious about this book. Happily, she has ensured that I do not take myself *too* seriously, and that I keep a healthy balance between playing (especially playing Uno) and working. I also appreciate the boost to my self-esteem from Louisa's continued insistence that I am the biggest one in our house.

When I was in the fourth or fifth grade, my parents took me out to dinner and told me that from now on, they were not going to bother

me about my grades. I had to get at least C's, but the rest was in my court. I have dedicated this book to my parents, Carol Maxwell and Phil Maxwell, in part because, as this anecdote suggests, they were and are great parents. I've also dedicated it to them, though, because as this anecdote also suggests, they encouraged me not to be captured by conventional standards of success and failure, and to find meaning in experiences, desires, and ideas that do not fit within them. As an aspiring leftist, intellectual feminist growing up in a conservative and often anti-intellectual town, I was pretty lucky to have such parents. I was also lucky to have them when I decided to be a Religion major, and go on a Tibetan Studies abroad program, and to turn down law school so that I could study political theory. Thanks, Mom and Dad, for supporting me in everything. You will never know how much it has meant to me.

PUBLIC TRIALS

1

PUBLIC TRIALS AND LOST CAUSES

The Politics of Democratic Failure

On November 25, 1897, the popular French novelist Emile Zola published his first article defending the innocence of a Jewish army captain convicted of treason—Alfred Dreyfus. As the army and the government continued to insist on Dreyfus's guilt, Zola and other Dreyfusard intellectuals filled the press with their claims that Dreyfus's conviction had been based on fraudulent evidence, and that the public and official refusal to recognize the injustice done to Dreyfus was the work of anti-Semitism. Yet Zola also insisted in his writings that "truth is on the march!" and that the public would ultimately see the truth of Dreyfus's innocence and restore France's commitment to justice. Zola's most potent appeal to the public came in "J'Accuse!" in which he indicted members of the government and the army for intentionally deceiving the public. In "J'Accuse!" Zola wrote, "I am confident and I repeat, more vehemently even than before, the truth is on the march and nothing shall stop it."[1] Yet the public response to "J'Accuse!" was not what Zola had hoped for. After its publication in January 1898, the Dreyfus case truly became the Dreyfus *Affair*: riots broke out from Paris to Algiers—with Zola and Dreyfus being hung in effigy—and Zola was put on trial for libel, a trial that he ultimately lost.

In July 1898, after several appeals and proceedings, Zola fled to England to avoid having the sentence (a large fine) served on him. In a letter to his wife, Alexandrine, written in October of the same year, Zola spoke of his misgivings about the future of the Dreyfus Affair. In stark contrast to his repeated proclamations in his essays published prior to his exile—"Truth is on the march! And nothing can stop it!"—and to his published claim that France "will always reawaken" and "will always triumph amid truth and justice!"[2] Zola writes in this letter:

> For the sake of my peace of mind, I wish I could recover the faith I have lost. You remember how serenely I used to proclaim, even during the darkest days of my trial, that the truth would triumph over everything. Now as we are drawing near our goal I no longer dare believe that the triumph of truth is inevitable, because what is going on is such a sorry sight that it has destroyed all the hope I once had in men's reason and decency. I know of nothing more dreadful. To think that they are keeping Picquart in prison, that all of Paris did not rise up at the idea that Dreyfus is innocent, that France continues to be accomplice to so many crimes! That means we can expect the worst kinds of infamy, to hide so many other infamies that have already been committed. That is why I continue to be so pessimistic. Until the very last day, the authorities will do everything they can to make the innocent pay the debts of the guilty. Never has a country gone through a more dreadful period. And I will go so far as to say that, even when Dreyfus has been acquitted, you'll see, they will continue to call us traitors and say we've sold out.[3]

Zola's letter bespeaks a deep disappointment with the actions of the legal authorities in Dreyfus's case: they have imprisoned Picquart, the military officer who proclaimed Dreyfus's innocence in opposition to his superiors' claims of Dreyfus's guilt. Further, a military court-martial acquitted Esterhazy (the actual spy). Law here has not safeguarded justice, but has been used as a tool of *in*justice. Yet here Zola is focused not only on the failure of law. His letter also reveals a deep disappointment in the people of France, who "continue. . . to be accomplice to so many crimes!" Zola expresses shock and disappointment, almost a

year after writing "J'Accuse!" that "all of Paris did not rise up at the idea that Dreyfus is innocent." Not only the law, but also the people, have failed to assure justice—and Zola foresees (correctly) that even if Dreyfus is legally rehabilitated, popular and governmental sentiment will not uniformly support it and may still proclaim Dreyfus's guilt.

Zola's writings on the Dreyfus Affair portray it as an instance of what I call "democratic failure": a moment when both law and the people fail to assure justice. While some stories of democracy stay with us because they appear as almost miraculous instances of democratic achievement and inspiration—the American founding, the French Revolution, the American civil rights movement—stories of democratic failure, such as Zola's narrative of the Dreyfus Affair, stay with us for a different reason: they haunt us with the specter of the people betraying their own ideals—sanctioning injustice, inequality, and oppression rather than seeking justice, equality, and freedom.

In this book, I examine three narratives of democratic failure: Zola's writings on the Dreyfus Affair in late nineteenth-century France; Edmund Burke's writings on the impeachment and trial of the governor-general of the East India Company, Warren Hastings, in late eighteenth-century Britain; and Hannah Arendt's writings on the Adolf Eichmann trial in 1960s Israel (Eichmann was a former Nazi who was kidnapped in Argentina by Israeli agents in 1960 and was brought to Jerusalem to stand trial). These writers all claim that law and legal officials failed to do full justice to the crimes they confronted: Hastings's imperial oppression of Indians, the French government's "crime against society" (Zola defines this as the crime of misleading the French people about Dreyfus's guilt), and Eichmann's "crimes against humanity." These writers also argue, however, that this legal failure was enabled by broad public complicity in the national myths that made injustice (or incomplete justice) appear to be "justice." If the theatrical spectacle of each of these trials served as a kind of funhouse mirror for the nations in which they took place, these writers argue, in each case, that the public bought into a false image of itself that distorted its sense of justice.

As we will see, Burke's, Zola's, and Arendt's claims of democratic failure are by no means uncontested. Many others viewing the same events saw them as achievements of justice. These writers' narrations of these events *as* democratic failures thus function not only as attempts

to offer true facts, but also as political claims that contest their contemporaries' rival narratives of justice done. These claims diagnose failures to assure justice that involve, but also exceed, the formal verdict. In particular, their narratives of democratic failure address how court judgments reflect and deepen broader political and social injustices. For example, Arendt argues that the Jerusalem Court was right to find Eichmann guilty for his role in the mass killing of Jews by the Nazis (Eichmann had been in charge of deporting European Jews to extermination camps). However, she also argues that the Court failed to do full justice when it portrayed Eichmann's crimes primarily as "crimes against the Jewish people," rather than as "crimes against humanity." For Arendt, the Court's judgment inadequately attended to how crimes like Eichmann's harm humanity as a whole and how they could be perpetrated against any people in the future, not only the Jews. The failure of justice here is less a failure of justice *to Eichmann* and more a failure to adequately identify, repair, and set a future precedent for protecting the community harmed by his crimes—a community that Arendt claims is humanity itself. This failure of repair is not only a failure of the Court, but also of the public(s) which failed to call for international justice. Arendt's claim of democratic failure in *Eichmann in Jerusalem* thus challenges Israel's claim of justice done, but not because she believes the verdict is wrong. Rather, her claim interrupts nationalistic, state-based, and popularly sanctioned understandings of justice, which she sees as masking a failure to do full justice to Eichmann's unprecedented crimes against humanity.

By saying that these narratives work as political *claims* of democratic failure, I foreground how they do not reflect an empirical reality (indeed, the nature of that reality is contested), but instead *solicit* a public that would affirm, respond to, and act on behalf of them. In other words, these narratives do not throw out the funhouse mirror with which the public identifies in favor of an unmediated reality. Rather, they provide a new or "counter-mirror" with which the public might identify. The "counter-mirrors" offered by Burke, Zola, and Arendt reflect a harsh, jolting image of the public and the justice it supposedly has pursued—revealing a purportedly just national identity as an ugly pretext for exclusion and scapegoating, and the imagined impartiality of the rule of law as an excuse for ignoring crimes and wrongdoing that do not fit within its parameters.

Yet these writers' narratives also attempt 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 and, thus, to suggest that things could have been—and still might be—otherwise. I call this kind of narrative—in which writers repurpose democratic failure on behalf of future democratic possibilities—a "lost cause narrative." While we usually associate the term "lost cause" with a cause that has no chance of success, I choose it here to describe narratives that insist on a cause being irrevocably lost while at the same time insisting on the democratic agency of loss—that is, that democratic support was the enabling condition of injustice. Through foregrounding the agency of loss, lost cause narratives operate in a temporality of "not yet." They encourage their audiences to grapple with popular responsibility for and complicity in injustice and at the same time to imagine how things could have been (and might yet be) otherwise. For example, Zola's narrative of the Dreyfus Affair portrays the people as possible seekers of justice who have bought into the mythological, nationalistic thinking proffered by the army, rather than developing the "taste for truth" that would have allowed them to seek justice. This "could have been" narrative does not lie solely in the realm of imagination. Zola's narrative is buttressed by his depiction and affirmation of Dreyfusard collective action on behalf of justice that persists beyond the Affair. Zola's lost cause narrative, like the other lost cause narratives I examine here, thus works in a double register: on the one hand, to diagnose the irrevocability of democratic failure and, on the other hand, to trace an outline of persistent democratic possibility—an outline that can itself be seen in the actions of Zola and other Dreyfusards.

By showing that democratic action could have made a difference in the past, lost cause narratives call for a public to challenge and redress injustice in the present. Zola's "could have been" narrative, for example, calls to a public of the future that would continue to contest the exclusionary, nationalistic self-understandings that hindered the public from seeking full justice in the Dreyfus Affair. While such contestation can never remedy the injustice done to Dreyfus, it can continue to resist the forms of popular myth and identity that enabled the French public's scapegoating of Dreyfus. Zola's call does not demand that the public begin *ex nihilo*, but rather to continue and maintain a politics already begun during the Affair. Lost cause narratives thus make claims

of democratic failure, but never portray failure as *just* failure. They also highlight the (actual and possible) seeds of democratic resistance and political action contained therein—seeds that may be cultivated and maintained by future democratic action.

This book argues for the importance of conceiving democratic failure as such a site of democratic ambivalence and explores the democratic productivity, stakes, and dilemmas of this "politics of lost causes."

DEMOCRATIC FAILURE OR THE FAILURE OF DEMOCRACY? TWO NARRATIVES

My focus on lost cause narratives of democratic failure stands in contrast to another, more dominant way of narrating democratic failure in political theory and practice: a mode of narration that I call "fatalistic." Fatalistic narratives generalize from particular instances of democratic failure to suggest that democratic self-governance is itself (or may be) a failure—for example, because of the essential irrationality or self-interestedness of the demos. Fatalistic narratives do not call for further democratic action on behalf of justice, but point toward the need for regulation of the demos by experts and/or law.

Lost cause and fatalistic narratives may be easily confused, and for good reason. Both may point to the need for better laws and institutions, or for the replacement of some officials with others. Both also may indict the public for their failure to seek justice. In this sense, one often seems to have the shadow of the other. Yet these narratives are politically distinct. Fatalistic narratives' portrayal of democratic failure as revealing the failure of democracy interpolates citizens into a deferential relation to law and technocracy—positioning citizens as dependent on rules and experts (rather than themselves) for the survival of democracy. The people are simply and always a disappointment. In contrast, lost cause narratives position democratic citizens as agents responsible for, and able to address, their own failures, as well as the failings of laws and experts. In lost cause narratives, democracy is not in danger of falling apart due to the people's irrationality, but has been deadened or corrupted by the people's willingness to defer to expert, elite, and/or legal judgments. In short, the two forms of narrating democratic failure yield radically distinct politics. Fatalistic narratives

locate proper democratic agency in actions and speech that are deferential to rules and experts and that solidify hierarchy and barriers to participation. In contrast, lost cause narratives claim that agency is much more broadly shared and proclaim the importance of resisting (legal and other) restrictions on democratic action.

A fatalistic narrative of democratic failure stands at the origin of the Western tradition of political thought and may radiate throughout it. In Plato's *Apology*, Socrates defends himself against charges of impiety and corrupting youth. Yet we readers know (as does Socrates by the end of the *Apology*) that he will be unjustly convicted and sentenced to death. His only crime, Socrates argues, is challenging democratic norms in Athens on behalf of justice. Plato's *Apology* narrates a particular moment of democratic failure: that both law and the people failed to do justice to Socrates during his trial. Yet Socrates' speeches also narrate this particular moment of democratic failure as caused by the fact that democracy *is* a failure—that is, that the people, when unguided by philosophers, will almost always act irrationally, favoring pleasure over wisdom, wealth over virtue, the will of the stronger over justice. Indeed, Socrates suggests that it was inevitable that he would be killed by the demos: "no human being will preserve his life if he genuinely opposes either you or any other multitude and prevents many unjust and unlawful things from happening in the city."[4] When the demos governs itself, it will inevitably fall victim to its passions and, consequently, sanction injustice.[5]

The foremost modern thinker of democracy—Jean-Jacques Rousseau—repudiates Plato's distrust of democracy while propagating his fatalistic narrative in new form. Whereas Plato's diagnosis of democracy's inevitable failure to assure justice leads him to reject democracy altogether in favor of the rule of experts (philosophers), Rousseau defends popular sovereignty as the necessary condition of individual freedom. Like Plato, however, Rousseau sees popular self-governance as inevitably prone to failure because of individuals' love of particular interest—a love that leads them to will against their true, collective interest. Consequently, Rousseau argues that the demos is inhabited by a tension between the "will of all" (particular interest) and the "general will" (the public interest). Yet where Plato sees the demos's tendency to will injustice as offering reason to reject democracy altogether, Rousseau—who sees popular sovereignty as the condition of

freedom—argues that the demos's tendency toward failure reveals the need to properly *guide* the demos in forming its will. In particular, Rousseau argues that the people "often does not know what it wants, because it seldom knows what is good for it"[6] and, consequently, that it should be guided by a lawgiver who will enable the demos to will its will *correctly*. The supervision of the lawgiver, and the laws he gives, assure the survival of democracy by leading the people to understand and will its true interest.

Many contemporary liberal and deliberative democratic thinkers reiterate the Rousseauian narration of democratic failure as the inevitable tendency of the people to will particular interest ("the will of all") over the public interest ("the general will"). Consequently, they also, like Rousseau, turn to outside agents as necessary constraints on democratic self-governance. Liberals such as Stephen Holmes, for example, argue that the tendency of the demos to will the "will of all" means that democracy, to be legitimate and respectful of individual rights, must bind its hands in advance via constitutional rules and procedures on behalf of assuring its allegiance to its ideals.[7] Deliberative democrats see popular sovereignty as more important than liberals to maintaining democratic ideals of freedom and equality, but like Rousseau, they see the persistent problem of "the will of all"—which poses, in Seyla Benhabib's words, the problem of the "hiatus between rationality and legitimacy"[8]—as pointing toward the importance of democratic proceduralism. Specifically, they argue for channeling democratic deliberation through legitimate procedures that can assure legitimate outcomes.[9] By passing the anarchic discussions of the public sphere through the "sluices" and "funnels" of law and formal democratic deliberation guided by legitimate procedures,[10] the inevitable failure of the demos is forestalled and the narrative of democracy becomes, through the guidance offered by laws and procedures, one of inevitable progress and improvement.[11]

Of course, Rousseau's own framing of his lawgiver is more ambiguous than the turn to law by liberal and deliberative democratic theorists. Rousseau's lawgiver, after all, turns out to be chosen by the very demos he also characterizes as a "blind multitude."[12] His fatalistic narrative thus suggests that laws and expertise are vulnerable to the problem of particular interest they are supposed to resolve. Consequently, the demos's tendency to betray its own desires and values appears as an

intractable problem of democracy that can be addressed through laws and expert guidance, but never fully resolved. In this sense, Rousseau's framing foreshadows the lost cause narratives I focus on here, which not only diagnose the failure of the people to do justice, but also portray legal failure as entwined with and enabled by popular failure. Yet Rousseau's framing of democratic failure as inevitable also downplays the contingency and contestability of instances of democratic failure because he obscures (1) how a particular moment of democratic failure may be due not only to love of particular interest, but also to particular circumstances, conditions, and demotic self-understandings that could have been otherwise; and (2) the contested character of his own claim of democratic failure.

Focusing on lost cause narratives allows us to attend to the contestability and contingency of democratic failure that fatalistic narratives obscure. Specifically, lost cause narratives draw attention—in their practice of narration, as well as in their content—to their own character as a *claim* of democratic failure on behalf of a particular vision of the demos and its laws and, consequently, to the fact that the demos does not speak with one voice. Lost cause narratives also draw attention to how democratic failure is enabled by particular conditions and particular demotic self-understandings that could have been otherwise. Lost cause narratives, in other words, narrate and enact democratic failure as a contested *part* of democratic politics, rather than as the harbinger of democratic death that must be remedied by laws and expert guidance for democracy to survive.

This might seem like a small distinction, but the stakes are large. When fatalistic narratives portray democratic failure as possibly ushering in (or revealing) the death of democracy, they use the blackmail of emergency politics to press citizens into deference.[13] This is how, for example, Jeffrey Toobin has recently portrayed Edward Snowden's leaking of National Security Agency (NSA) documents to the press. In his essay, "Edward Snowden Is No Hero," Toobin disputes characterizations of Snowden as a "hero" who revealed unjust governmental wrongdoing and argues instead that he should be seen as a criminal: "These were legally authorized programs.. . . So he wasn't blowing the whistle on anything illegal; he was exposing something that failed to meet his own standards of propriety." Toobin thus claims that public admiration of Snowden should be seen as a democratic failure—a