

TAKING POLITICS SERIOUSLY

THE PROMISE OF POLITICS. By Hannah Arendt.¹ Edited with an Introduction by Jerome Kohn. New York: Schocken Books. 2005. Pp. xxxvi, 218. \$25.00.

Mid-twentieth-century political philosopher Hannah Arendt defied intellectual categorization. Once asked whether she was a liberal or a conservative, she replied, “I don’t know. . . . I’ve never known. . . . And I must say I couldn’t care less.”² Although she began her academic career in philosophy, as a student of renowned German existentialist Karl Jaspers, Arendt’s later work encompassed such wide-ranging topics as love, totalitarianism, Judaism, the meaning of revolution, and the trial of Adolf Eichmann. Related to this breadth — perhaps its wellspring — was her interest in the connections between disciplines and in how different forms of thought interact and affect one another.³ These interstices were, for her, sources of deep intellectual inspiration.

The Promise of Politics, the latest in a Schocken Books series of newly edited, newly compiled, and newly released works by Arendt, affords an opportunity to reassess the relevance of her work within and around the legal field.⁴ Such a reassessment is best undertaken in Arendt’s own wide-ranging, interstitial spirit. If one expects her to remark frequently and systematically on legal subjects, one may well emerge disappointed. However, a less literal and less disciplinary reading, one that searches out the spaces in her work where law could play a role, reveals a number of fruitful avenues of inquiry arising from her challenging redefinition of politics. The questions raised implicate constitutionalism, civil procedure, and international law.

The Promise of Politics is not Arendt’s title but one that editor Jerome Kohn chose for two separate but connected works contained in

¹ Hannah Arendt (1906–75) was born in Germany but spent most of her academic career in the United States. Her teaching posts included Berkeley, Princeton, the University of Chicago, and the New School for Social Research.

² Hannah Arendt, *On Hannah Arendt*, in HANNAH ARENDT: THE RECOVERY OF THE PUBLIC WORLD 301, 333–34 (Melvyn A. Hill ed., 1979).

³ See Frederick M. Dolan, *Arendt on Philosophy and Politics*, in THE CAMBRIDGE COMPANION TO HANNAH ARENDT 261, 261 (Dana Villa ed., 2000) (“[T]he relationship between philosophy and politics animates [Arendt’s] entire *oeuvre*.”).

⁴ Several of Arendt’s earlier works have influenced legal scholars. See, e.g., Bruce Ackerman, *Revolution on a Human Scale*, 108 YALE L.J. 2279, 2282 (1999) (“I have been much influenced by Hannah Arendt’s essay *On Revolution*.”); Anthony T. Kronman, *Precedent and Tradition*, 99 YALE L.J. 1029, 1050–55 (1990) (marshalling Arendt’s *The Human Condition* to support an argument favoring legal traditionalism); Martha Minow, *Political Lawyering: An Introduction*, 31 HARV. C.R.-C.L. L. REV. 287, 288 (1996) (employing Arendt’s definition of power as a collective enterprise to explicate a political concept of lawyering).

the volume. The first is a series of lectures on Karl Marx and the Western tradition of political thought, published in its entirety for the first time. The second is a long essay — “Introduction *into* Politics” (editor’s emphasis) — hitherto published only in German.

The lectures sketch — pithily if not always systematically — Arendt’s view of the Western tradition of political philosophy and how it went wrong. The problem, according to Arendt, was that most political philosophers failed to place at center stage the activity of politics and the actual political experiences of humankind, and instead thought of politics as a means to other ends (justice, prosperity, greatness, et cetera). The problem began with Plato, whose case for rule by philosophy denigrated politics and opened a gulf between thinking and acting that would shape political thought for centuries (p. 6). Although the Romans prized political action highly (pp. 47–49), Rome produced no philosopher of lasting influence to counteract the Greeks’ suspect distinctions (p. 54). Christian thought, instead of incorporating Christianity’s own enormous political successes, furthered the problem through its otherworldliness, its Platonic distinctions between the City of God and the city of this world (pp. 55–59).

Marx ended this tradition, but not felicitously. In urging philosophers to change the world,⁵ he was responding to one of the lacunae Arendt was later to emphasize, but the repoliticization of philosophy he attempted was actually a repudiation of politics since it venerated labor and production rather than the more creative, exciting, pluralistic activity of political discourse (pp. 79–80). Marx’s classless society, which was to replace government with administration, was antipolitical rather than apolitical; far from “no-rule,” it was rule by bureaucracy in which no one takes responsibility (p. 77).

The Western philosophical tradition thus laid the intellectual foundation for a modern prejudice against politics, the theme of “Introduction *into* Politics,” the essay in the latter half of Arendt’s book. By “prejudice” Arendt means a widely shared and deeply ingrained set of negative presuppositions about politics as an activity (pp. 96–97). Modern citizens associate politics with corruption, dishonesty, violence, tyranny, and bureaucracy, and these associations shape our judgments in important ways (pp. 97–99, 192). In Arendt’s eyes, the prejudice against politics is certainly understandable; in the twentieth century, politics (in the conventional sense) wrought the horrors of totalitarianism and the specter of nuclear cataclysm (p. 97). Nevertheless, she regarded this prejudice as deeply regrettable.

⁵ See Karl Marx, *Theses on Feuerbach*, in THE MARX-ENGELS READER 143, 145 (Robert C. Tucker ed., 2d ed. 1978). The eleventh thesis reads: “The philosophers have only *interpreted* the world, in various ways; the point, however, is to *change* it.” *Id.*

Arendt bemoans the prejudice against politics chiefly because politics is for her an essential component of human freedom — essential not just because what politics can provide for people allows them to flourish in the private realm of productivity, but also because participating in public life is central to a fully human life. When Arendt says that “[t]he meaning of politics is freedom” (p. 108), she means a positive, substantive kind of freedom — which she calls “public freedom”⁶ — as well as a negative freedom from coercion (pp. 116–17). Repudiating politics is, therefore, both the failure to perform a constitutive act and the self-denial of personal autonomy.

“Introduction *into* Politics” is in many ways a project of redefinition. For Arendt, one way to combat the prejudice against politics is to challenge the orthodox meanings of familiar political concepts and categories (p. 152). On the subject of war, for example, Arendt views the advent of weapons of mass destruction as highly significant. A war of annihilation, she says, is no longer a continuation of politics by other means, as Clausewitz theorized,⁷ because it threatens to eradicate all politics (p. 159). On power, her version differs markedly both from that of Lord Acton, who underscored power’s tendency to corrupt,⁸ and from the prevailing view that equates power with coercive force (p. 99). For Arendt, power consists of collective action within the political sphere, while force is simply destructive capability and can be wielded by a single person. Thus, although power and force are sometimes combined, the two are actually opposites in many ways (p. 147).

Then there is the concept of politics itself. Arendt’s is derived substantially from the classical Greek view (pp. 114–35). Unlike most philosophers, who conceive of politics by focusing on what the outcomes of politics should be, Arendt values politics primarily as an independent activity — an end, not a means (pp. 114–15). The keystone of that activity is *plurality*: politics is something that humans do together, that requires and thrives on the vast differences among humankind (pp. 93–94). The principal mode of politics is speech, and so politics requires conditions of noncoercion and of equal freedom of speech within the political sphere (pp. 117–18). Absent these conditions, there can be no politics. Thus a tyrannous regime in which a single potentate rules by the sword is the polar opposite of politics (p. 120). To escape such regimes requires not the renunciation of politics but its reclamation.

⁶ See, e.g., HANNAH ARENDT, ON REVOLUTION 279–80 (1963).

⁷ See CARL VON CLAUSEWITZ, ON WAR 87 (Michael Howard & Peter Paret eds. & trans., Princeton Univ. Press 1984) (1832).

⁸ See JOHN EMERICH EDWARD DALBERG ACTON, ESSAYS ON FREEDOM AND POWER 364 (Gertrude Himmelfarb ed., 1948).

This raises the preeminent political question: What is to be done? How to rescue politics from the clutches of Marx, of totalitarianism, of total war? Typically for Arendt,⁹ “Introduction *into* Politics” maps no game plan. Instead, it invites passion and action (p. 202), leaving specific prescriptions to future political actors.

Jurists, too, might accept Arendt’s invitation. For Arendt, law serves a crucial role: it is a necessary precondition to politics;¹⁰ it creates a space in which politics can take place (p. 190). Spaces without laws are political vacuums. They are unlivable deserts (pp. 189–90). Accepting the core insight of *The Promise of Politics* — that deliberative politics is a deeply enriching activity essential for the freedom of human beings — may mean accepting that the aim of legal rules and institutions should not be to constrain political action but to encourage and improve it.

The Promise of Politics, particularly the essay in its second half, presents several potential avenues of inquiry for legal scholars. First, in the field of constitutional theory, Arendt’s ideas support an interpretive philosophy that promotes politics by improving political processes and creating opportunities for citizens to participate in politics. Second, an Arendtian analysis of civil procedure would favor rules and structures that allow participants in a lawsuit to engage with one another and with the law on more equal and more robust terms. Finally, in the international law arena, Arendt’s views on politics could form the basis of an argument in favor of certain kinds of supranational legal and political institutions.

Constitutional Law. — An Arendtian view challenges us to draft and interpret constitutional texts so as to create political spaces — opportunities for citizens to come together, make commitments, debate policies and principles, and learn to see issues from different points of view.¹¹ One way to build such spaces might be to craft a theory of judicial review that requires judges to defer to legislatures. But this begs the complex question of whether granting legislatures more power does in fact encourage politics.

Scholars have already taken up this question to some extent. For instance, John Hart Ely’s argument that courts should act to reinforce

⁹ See, e.g., HANNAH ARENDT, *THE HUMAN CONDITION* 5 (1958) (“To [the] preoccupations and perplexities [posed by Arendt’s view of the human condition], this book does not offer an answer. Such answers are given every day, and they are matters of practical politics, subject to the agreement of many; they can never lie in theoretical considerations or the opinion of one person . . .”).

¹⁰ See generally Jeremy Waldron, *Arendt’s Constitutional Politics*, in *THE CAMBRIDGE COMPANION TO HANNAH ARENDT*, *supra* note 3, at 201.

¹¹ Arendt criticized the U.S. constitutional tradition for failing to create a lasting institution where regular citizens, as opposed to elected representatives, could debate and decide political issues. See ARENDT, *supra* note 6, at 234–42.

representative politics¹² seems to align with Arendt's pro-political spirit. Where his theory parts with Arendt is in its procedural and somewhat limited conception of what politics is. When Ely says that the Supreme Court should reinforce the political process, he means that it should act as a referee, strengthening the legislature's representative capacity so that the outcomes of that process may be fairer to excluded minorities.¹³ He distinguishes his process-oriented approach from one in which courts seek to discover fundamental substantive values.¹⁴ Arendt's conception of politics is substantive; for her, politics is itself a substantive value. She also acknowledges the limits of representation as a form of politics and does not see legislation as the only form of political action. Although Ely starts us down the path, a fully Arendtian theory of judicial review would pay closer attention to the kinds of political activities courts aim to encourage.

Other dimensions of constitutional law besides judicial review could be used to create new political spaces. One could look to how constitutions apportion power and autonomy to different levels of government. Gerald Frug, for example, has invoked Arendt's concept of public freedom to advocate expanded power for municipalities,¹⁵ arguing that individual involvement in public decisions requires small-scale decisionmaking units.¹⁶ Another approach is to encourage political actors other than courts to assume a greater role in constitutional interpretation. Mark Tushnet's theory of "populist constitutional law" advocates a substantial role for citizens in this regard.¹⁷ But while the outcome of Tushnet's theory may be Arendtian in that it encourages political debate and engagement within spaces outside of legislatures, its philosophical underpinnings are not. For example, Tushnet describes populist constitutional law as being "in the service of self-government, because governments derive their just powers from the consent of the governed"¹⁸ — a populist constitutionalism is a more democratically legitimate constitutionalism. Arendt's chief preoccupation was not legitimacy. To her, Tushnet's explanation might look like another example of the mistaken view of politics as a mere means.

Civil Procedure. — Seen through Arendt's eyes, the courtroom could itself be a locus for politics, not in that judges incorporate personal political preferences into their reading of the law, but in that all actors who come into contact with the judiciary — parties, lawyers,

¹² See generally JOHN HART ELY, *DEMOCRACY AND DISTRUST* (1980).

¹³ See *id.* at 73–104.

¹⁴ See *id.* at 43–72, 87–88.

¹⁵ See Gerald E. Frug, *The City as a Legal Concept*, 93 HARV. L. REV. 1059, 1068, 1071 (1980).

¹⁶ *Id.* at 1069.

¹⁷ See MARK TUSHNET, *TAKING THE CONSTITUTION AWAY FROM THE COURTS* 186 (1999).

¹⁸ *Id.* at 181.

witnesses, jurors — are in some sense engaged in a political process. For Arendt's idea of politics is antiformalistic; whether a space can house politics depends on whether it can house debate among diverse people, not on its institutional label. Arendt's goal in this regard might be to make the courtroom not less but more political — again not in the conventional sense of political actors *outside* the courtroom brandishing a particular legal dispute to serve their own purposes, but in the sense of allowing more actors *inside* the courtroom to participate in legal decisions and debates on more equal terms. Courts could be places where regular people can challenge perceived injustices and emerge with a better understanding of the world and its power arrangements as well as a deeper sense of being active participants within that world.

Different kinds of reform proposals could fit the bill. More liberal rules on standing would allow a wider range of parties to complain before a court about harms they have experienced. New private rights of action would allow “private attorneys general” to enforce laws in lieu of state officials and thus encourage vigilance, participation, and even a kind of legal interpretation by citizens themselves. Changes to the language that judges and advocates use in legal proceedings would render that language more accessible and more meaningful to those outside the legal guild; Herbert Eastman's case for more literary and expressive pleadings is a powerful example of such a reform proposal.¹⁹

International Law. — Arendt's ideas about the impossibility of political action in lawless spaces suggest that she would have supported the creation and expansion of international legal regimes to fill those spaces. One example is laws governing armed combat. Arendt acknowledges that war can be a continuation of politics by other means, but argues that massively destructive means of combat such as nuclear weapons threaten to annihilate war's political function by the existential menace they pose to the human diversity that makes politics possible (p. 159). International legal norms such as the laws of war, nuclear nonproliferation treaties, and conventions on land mines, chemical weaponry, and torture serve the function of keeping war on the political terrain by forbidding the vilest and most destructive of combat techniques — ensuring, as Kant put it, that war does not make the later peace impossible (p. 198).

Because she viewed politics as the preeminent human activity,²⁰ Arendt may also have supported using international law to prevent

¹⁹ See Herbert A. Eastman, *Speaking Truth to Power: The Language of Civil Rights Litigators*, 104 YALE L.J. 763 (1995).

²⁰ See, e.g., ARENDT, *supra* note 9, at 175–247 (discussing “action,” a form of activity Arendt regards as superior to “labor” or “work”).

other kinds of human activities, besides war, from overtaking politics. Her resolute stance against the subjugation of politics to production — the crux of her critique of Marxism (pp. 70–80)²¹ — might have led her to argue that commercial globalization ought to be accompanied by political and legal control over commerce, in the form not only of elite bodies such as the World Trade Organization or the World Economic Forum, but also of spaces where citizens can debate and to some extent shape the trade practices that affect their lives. Human rights tribunals and international refugee norms might also have impressed Arendt to the extent that they provide a political venue to those who fall between the cracks of the nation-state regime. The expansion of international criminal law through U.N. International Criminal Tribunals and the International Criminal Court would likely have garnered her support; indeed, in her own time Arendt favored the use of international tribunals to try Nazi officials because the universal character of their crimes required a legal forum on a corresponding, international, scale.²² This view suggests a kind of proportionality requirement: politics and law must keep pace with other realms of human activity.

While *The Promise of Politics* thus provokes reflection on several areas of the law, it is by no means a comprehensive rendering of Arendt's political theory. That it is a work in progress²³ will surely not escape anyone familiar with Arendt's work. But its lack of finality also encourages reading between the lines, stretching and experimenting with the ideas, delving further into other parts of Arendt's oeuvre. For scholars seeking to connect law and politics in a new and more hopeful way, it promises to be an inspiring read.

²¹ See also *id.* at 79–135.

²² See HANNAH ARENDT, *EICHMANN IN JERUSALEM: A REPORT ON THE BANALITY OF EVIL* 247 (1963).

²³ Arendt had intended "Introduction *into* Politics" to become a systematic political theory but abandoned the project for a number of reasons in 1960 (p. xvii). The lectures on Marx are also part of a partially abandoned project (pp. xi–xvii).