



PERFORMANCE  
PHILOSOPHY

---

## WHAT'S LEFT OF RIGHTS? ARENDT AND POLITICAL ONTOLOGY IN THE ANTHROPOCENE

MARGARET WERRY UNIVERSITY OF MINNESOTA

On the morning of March 14, 2017, the Whanganui River, a majestic waterway in the North Island of Aotearoa New Zealand, became a person. It did not grow legs or arms, or evolve some crucial, but elusive, form of consciousness. It did not materially change (if, that is, we discount the constant, myriad changes that make up the river's daily life: the shifting of silt or sand, the births, deaths, meldings and cleavings of the life-forms that dwell in, on, and around it). What happened, at 12.18pm that day, was that the Whanganui River acquired rights. For a century and a half the *iwi* (the Māori kin collectives) that claim the river as their ancestor had protested the alienation of their riverbank lands, the pollution of industrial farming, gravel extraction and hydroelectric damming, destruction of their eel weirs and fisheries, and the desecration of their *wahi tapu*, or sacred sites. After generations of grief, anger and frustration, legal and political appeals, in 2017 Whanganui *iwi* celebrated the signing of a Bill settling their Treaty claim against the Crown. This settlement (amongst other reparations and recognitions) bestowed upon the river "the rights, powers, duties and liabilities of a legal person." Te Awa Tupua, as the river would now legally be known, would henceforth be represented by Te Pou Tupua ("a human face"), comprised of one *iwi* representative and one state appointee, assigned to determine and act in the interests of the river (New Zealand Legislation 2017, 14).

What is remarkable about the Whanganui settlement is the description it offers of this person: Te Awa Tupua is "an *indivisible and living whole* from the mountains to the sea, incorporating the Whanganui River and *all of its physical and metaphysical elements*." Further, the Bill recognizes in

---

law the genealogy that that makes Whanganui *iwi* and river kin, and affirms a concept of well-being in which the spiritual and physical health of people and river are interdependent.<sup>1</sup> Admitting Indigenous ontology and cosmology into the domain of the state, the Bill has, in effect, created a new political actor: Te Awa Tupua, a collective entity comprised of “different elements and communities”—tributaries and estuary, algae, *taniwha* (water spirits), kindergarteners, pollutants, eel fishers, eels, the vast company of those dead but still present—which respects none of the hierarchies of nature and culture, human and non-human, living and dead, singular and plural that form the Enlightenment foundation of liberal law (New Zealand Legislation 2017, 15). And, in affording to this actor the recognition and protection of the state, the Bill instantiated something quite novel, something we might call non-human rights.<sup>2</sup>

There is much to be written about the Wanganui case—and the Urewera case that preceded it, or the Taranaki case that followed, each working in a similar legal framework, and establishing a forested district and a mountain, respectively, as legal persons. As radical as this innovation might seem by international standards, these NZ settlements owe much to neoliberal juridical precedent, for which the classification of corporations—non-living, non-human entities—as legal persons is a commonplace (Turkiewicz 2017). It is important also to note that what is being established here is neither citizenship status for the river (such that it would become a fully political subject entitled to representation and participation), nor does the bill present a specification and instantiation of new rights themselves (as in a “bill of rights”). Instead, it proposes first, a managerial arrangement that consolidates and represents the river assemblage with respect to other business, state, community, and individual actors; and second, the river’s right to be named as a party to litigation.<sup>3</sup> However, the broader point stands: here a natural entity is being enlisted as a political one through resort to a discourse of rights. And in its very openness to future propositions and claims—its implicit encompassment of future, as yet unimagined, articulations of rights—the Whanganui bill suggests an expansive conception of exactly what might constitute those rights.

New Zealand is not a unique instance. Increasingly, in response to Indigenous activism for sovereignty, other states are enacting or considering similar legislative ventures: Uruguay, Bolivia, India (see Kwek and Seyfert 2018, de la Cadena 2015). These rulings also reflect a conceptual shift occasioned by our historic moment in which many crises of human rights are inextricable from the *nonhuman* processes of the Anthropocene era. The influx of refugees into Europe, for instance, and the conflicts in Syria and central Africa that precipitated it, have many causes, but prominent among them is the destabilizing role of protracted droughts caused by climate change. In response, theorists of ecopolitics call for analytic and policy frameworks that account for the role of a multiplicity of actors—not just human, but also biological, meteorological, or geological agents—in political problems and solutions. On one level, this simply means attending in political discourse to systemic complexity, asking how vast assemblages of humans and non-humans acting on or impacting each other transform the conditions of their interdependency. On another level, it imagines a democratizing revolution, a profound shift in the premises and practices of the political. It calls for us, in Bruno Latour’s language, to admit non-humans into politics, becoming spokespeople for their interests, perhaps even according them rights (Latour 2004). What Latour (1993) calls the Modern contract that cleaved nature from society, and what Elizabeth Povinelli

(2016) calls the geontological contract, that erects the bio-political edifice of extractive capitalism on the foundation of a binary distinction between life and non-life, have long been the necessary (and necessarily ideological) fictions anchoring political reality. Now, both authors argue, they are in crisis, no longer supportable (if they ever were) in the face of ecological catastrophe in which human history and geological, biological, and meteorological history exert destructive force on each other. Clearly, the proposition of according a political role to the non-living, speaking with and for the non-human, is not a solution in and of itself to climate change or any other problem (non-human interests will inevitably conflict with each other as well as with human ones). But it is a way of conceiving and acting on an ethics of mutual response-ability that may be crucial to planetary survival.

### The Problem(s) with Rights

To what extent is the language of rights, with its very definitively Enlightenment legacy, adequate to this demand? Political theorists have, after all, been ringing human rights' death knell for two decades, declaring it a failed project, an ultimately moral vision premised on the abandonment of actual political contestation. Analyzing the rise to dominance of rights discourse in international relations in the 1970s, Samuel Moyn (2010, 2014) links it to the abandonment of revolutionary and decolonial projects, and the turn to global, technocratic neoliberal governance under the auspices of bodies such as the WTO, IMF, and so on. In the place of political change, the people of the Global South got structural readjustment, and the promise that the West would stand with them in defense of human rights, an ethical fig-leaf over the cumulative collateral damages of colonialism, extractive capitalism, and necropolitical governance, that always arrives too late, after the fact of violence. Other critics argue, more bluntly, that when enacted in humanitarian policy the language of human rights provides ideological cover for the expansion of Western interests (Mutua 2016). For Agamben (1998, 2005) (and Schmitt et al. before him), the language of rights is predicated on the logic of sovereignty, which constitutes the rule of law by designating states of exception—black sites, border zones, carceral spaces—where rights, and the humans to which they supposedly apply, have no standing at all.

Such asymmetry, critics claim, is inherent in the structure of rights discourse and practice. Human rights, Hannah Arendt famously argued, are a paradox—they are the possession of those who do not have them, a fact revealed painfully in the wake of WWII when arguments about human rights emerged to lend standing to the legions of stateless refugees, those whose *only* property was their humanity (Arendt 1958, especially "Decline of the Nation State and the End of the Rights of Man," 267–302). Citizens of states, Arendt maintained, enjoying the protection of those states, had no need for human rights. From this perspective human rights names less a set of entitlements due to the human (liberty, property etc.) than a claim about *what kind of subject* is entitled to political participation and protection. And, as Arendt also argued, that determination rests on a flimsy philosophical foundation. Reaching back to critique two pivotal thinkers in the tradition of rights, Hobbes and Rousseau, she showed that both premised rights on sovereignty. For Hobbes, the inalienable natural rights of freedom, self-determination, and agency were synonymous with the

power of the autonomous, sovereign self-interest of the individual, vested in the sovereignty of the state (Arendt 1958). Rousseau likewise reduces rights to sovereign state power by theorizing the latter as the consolidation of a plurality of autonomous, subjective wills freely surrendered (Arendt 1998 [1958]). If rights cannot be imagined outside the sovereign state, *human* rights, then, are the rights of those who—by virtue of being stateless—do not have them. Far from being the inherent, ontological locus of dignity and freedom, the human of human rights is a nullity. To be human in the frame of human rights, is to be *merely* human.

A number of subsequent political theorists have agreed on this foundational aporia in the philosophical formation of human rights. The “universal foundation” for human rights in the classic liberal tradition, some have argued, appears to be little more than an “idolatry” of the human (Ignatieff 2001), an ultimately theological (Moyn 2010, 2014) or metaphysical (Rawls 1999) postulate. It is precisely this apolitical humanism, they argue, that masks the fact that human rights are simply political rights, without ontological foundation; we should, then, (the internationalists and liberals amongst them claim) proceed on that basis, and advocate politically for a common deliberative framework to adjudicate conflict and prosecute injustice. Their more radical colleagues counter that it is this mystification that can make human rights a vehicle for hegemonic interests represented by states, and which renders it hostage to liberalism’s “cunning of recognition”—the logic that circumscribes the subjective, aesthetic, embodied conditions to which citizens must conform in order to be seen as politically legitimate by their compatriots and the apparatus of the state (Povinelli 2002). Human rights, in this reading, is nothing more than a set of normative pretexts and moral trump cards presented by the rights-entitled.

### Arendt, Performance, and the Case for (Non-)Human Rights

For Arendt, the doctrine of human rights appeared as both a historical failure and a moral necessity. While her critique of rights from the *Origins of Totalitarianism*—focusing on the plight of the refugee and the camp prisoner—is well known, and exhaustively discussed, the extent to which her subsequent philosophical project was impelled by the desire to provide rights the ontological, and thus philosophical and political, foundation they lacked, is less well understood. Over the course of several works, Arendt grounded the “right to have rights” in a series of nested concepts—freedom conceived as action, which is both equated with and predicated on appearance, in turn resting on and likened to natality, or *initium*—all formulated in strikingly performative terms.

My project in the remainder of this article is to make a perverse, post-human, and even queer return to Arendt’s thinking on the ontological foundation of rights, to ask: What is *left* of rights? Could the challenge of encompassing and representing non-human entities re-energize the political pursuits that have hinged on rights thinking? Post-humanist proponents of critical race theory, Indigenous studies, disability and queer studies have thoroughly problematized the givenness of the liberal rights-bearing subject, and the attributes of sovereignty, autonomy, motility, reason, self-possession, intention, speech, and efficacy that have qualified it—qualifications that define the parameters of the human by disqualifying bodies (the woman, the slave, the refugee, the disabled) deemed different. But they have, largely, stopped short of

inquiring into a concept of rights that embraces a radically non-human subject, limiting themselves instead to arguing either for a continual expansion of the domain of the human beyond its foundational exclusions, or for an abandonment of rights altogether. But how might conceptualizing rights away from inherited presumptions about how a rights-bearing subject acts, manifests, or appears help us reclaim what was politically generative about the project of rights in the first place? Ultimately, do rights retain any validity if they do not also embrace the non-human? How might performance help us *imagine* non-human rights—help us figure, speak with and for, non-humans in the domain of the political? And what insight might we gain from revisiting Arendt in the light of post-humanist thought?

This is a problem of interest to performance scholars, as performance is—historically and in practice—the space in which the subject of rights is constituted. Human rights have long been embraced as a central concern of theatre. Thinkers and artists have seized on the stage as a site to expose violations, stage testimony, cry for redress, claim freedom of expression, or test the reach of state or religious power. Theatre, it has been suggested, is the ideal instrument of what philosopher Richard Rorty (1993) called the “sentimental education” essential to the culture of rights: the process of building empathy between the powerful and the powerless, of “humanizing” its subjects. But it is simplistic, as Paul Rae (2009) has argued, to suggest that theatre is inherently *for* human rights. The medium that can humanize can equally dehumanize; it can speak for power as easily as for the powerless. And it can gratify liberal audiences’ self-regard through tailoring for their consumption stories about the misery—or savagery—of supposedly illiberal others. It can, that is, accentuate rather than bridge the gulf between the rights-less (the spoken-about) and those empowered to bestow rights (the speakers). Theatre’s humanist universalism is in fact, its critics have argued, very particular—enshrining and campaigning for a Western, liberal, individualist, sovereign concept of the human, and the rights that are its rightful property.

By the same token, the canon of Performance Studies is essentially founded on a humanist, representational and ultimately liberal concept of performance as demotic technology, in which people exercise political agency by self-expressing, and forming publics, counter-publics, or communities in which they imagine political alternatives and bring pressure to bear on the mechanisms of state, or other, power. The work of scholars such as Jill Dolan, José Esteban Muñoz, Diana Taylor, or Dwight Conquergood fits such a description. In this conception, performance itself constitutes a human right—more or less commensurate with the freedom of expression—by means of which (human) subjects can lobby for other rights.

More critical approaches focus on performance’s capacity to disturb the mechanisms of exclusion by which those subjects and publics are constituted, and constituted as possessing rights. For Rancière (1999), for instance, properly political performance is the scene of “dissensus”, where the uncounted, the unrepresentable, the “part who have no part” disrupt the “common sense” or givenness of political life. For Butler (2015), likewise, assembly and protest are spaces in which illegible or unthinkable subjects materialize, and come to matter in the scene of public life through the sheer performative force of collective presence. Drawing on Arendt, she attends to the ways in which the boundaries of appearance and thus of the public are policed to exclude the “specific

forms of agency and resistance” of the rightless. In performance studies, André Lepecki (2013a) pairs Rancière and Arendt to understand choreographies as aesthetic acts that are “configurations of experience” with the capacity to “redistribute the sensible” (Rancière 2004a). That is, they reorganize those divisions between what is visible and invisible, sayable and unsayable, audible and inaudible, the recognizable and the unrecognizable, public and private, artwork and political speech that secure the political order. In doing so, they imagine (rehearse, learn, nurture, and practice) “how to move politically”, by which Lepecki means (following Arendt), “how to move freely.”

Performance is, for these scholars, an embodied, vital, critical—and crucially open—answer to the question: “who is the subject of the Rights of Man?”: to perform is to exercise and claim rights, to manifest the subjectivity that demands political representation and protection (Rancière 2004b). But surely considering the performance of a river strains this openness: in what way can a river be said to perform? Where does the threshold of political legibility ultimately lie? The most basic characteristics of what we commonly, humanistically understand as performance, political or artistic, do not pertain: a river cannot speak, it must be spoken for; it possesses no discrete body that it can bring to bear on other bodies in willed action; its constituent elements might be in constant motion, but it cannot (in Lepecki’s sense) be said to move, or (in Butler’s) assemble into a public; while it exerts palpable affect, can it be said to express desire, intent, or identity? Even the temporality in which a river might be said to act fails to align with that imagined by human politics: the Whanganui has experienced the impacts of European colonization over a century and a half, its response to Māori habitation and interaction evolved over perhaps a millennium, and the force it has exerted on the other constituents of the region’s ecosystem must be measured in the grand span of (for Pākehā) geological or (for Māori) cosmological time. To the extent that we can refer to the Whanganui even as a living actor, that life is not defined by the clear and finite span between birth and death (the death from which, in conventional construals of rights, the subject must be protected); the river might be damaged, might lose the capacity to sustain itself in its current form, but it will not die *per se*. The river’s *mauri* (life force) and *hau* (living breath) which is what this legislation aims to protect, are not (in Māori thought) fully contained either materially or temporally by a given body. And in what recognizable performances are the claims of *mauri* and *hau* exercised and manifest?<sup>4</sup> Clearly, to fully encompass a river as a subject of rights, the forms of performance through which that subject appears need to be thoroughly reimagined.

Arendt would seem an unlikely ally for this theoretical project. She is often dismissed for endorsing a normative, individualist, masculine definition of the political subject, and a rationalist (discursive-linguistic) definition of the political sphere. Arendt’s oeuvre is full of “cuts,” binaries and hierarchies that have prevented her uptake in a fully radical, especially feminist politics: between the public and the private, the biological and the political, necessity and freedom, the artwork and political speech, between action and work. But feminists and queers who remain committed to Arendtian thought have reclaimed her by seeing those “cuts” as symptomatic of the conditions of her writing rather than foundational to her ultimate project; they articulate precisely the normative contours of political life that must be troubled in order to imagine and practice politics otherwise. Rancière (2004b), for instance, has critiqued what he called her “archipolitical” stance (299). If human rights

traditionally construed are essentially civil rights, and the condition of the barely human (the camp prisoner or refugee) is a deprivation of those rights to civil, public life, Arendt's affirmation of the political as the realm of publicness amounts to a consent to the public/private divisions that relegate some to the condition of rightslessness in the first place. For Rancière, Arendt depicts rights as tautologically foreclosed rather than continually, dissensually contested. And yet, her formulation of the political has been enabling to those such as Butler or Lepecki, who attend, precisely, to dissensual contestation by analyzing non-normative modes of corporeally manifesting, assembling, moving, and aesthetically presencing that seize the promise of appearance to make claims on the public or demos.

In the remainder of this article, I want to cast yet another queer eye on Arendt's thought to suggest that her conceptualization of the ground of rights was already more queer than theorists have acknowledged. The ground of Arendtian rights is ontological, material, and phenomenological but not, I suggest, ultimately exclusive to the human. Moreover, her formulation of the right to have rights is generative and encompassing precisely because of its emphasis on ontology rather than expression; although saturated with references to and examples of conventionally humanist performance (speech, narration, display, virtuosity etc.), Arendt's attempt to reimagine the foundation of human rights offers an opportunity to reimagine performance as a non-human political capacity, and thus non-humans as rights-bearing actors.

### The Ontology of Rights: *initium*, *natality*, and *appearance*

The ontological (rather than theological or metaphysical) ground for the subject of human rights and our common humanity—the two, for Arendt, are linked—hinges on *natality* as an explicitly performative event. This subject has no inherent or fixed nature, but is instead unpredictable, unexpected—a beginning. In explaining this concept of *initium*, Peg Birmingham (2006) notes Arendt's debt to Montesquieu's *Spirit of the Laws*, in which he theorizes the animating affection or origin (*arche*) of action, a *principium* that operates as a moving principle, orienting action and mapping out directions, but never exhausting itself in any one realization, and manifesting "in the act as long as the activity endures, but no longer" (15).<sup>5</sup> Birmingham notes also Arendt's interest (in *Men in Dark Times*) in Benjamin's "Theses on the Philosophy of History" and the temporal logic he discerns in the phenomenon of citability. Citability, in Arendt's reading of Benjamin, is the "force that destroys the complacency of the present by robbing from the past that which is foreign and unfamiliar" (Birmingham 2006, 20). It is not a repetition of the past as origin of action; instead, the citation is inaugurative rather than descriptive, it introduces a novel reality. But the new that it offers is not part of progressive discourse precisely because it belongs to the untransmitted and untransmittable elements of the past: that foreign and incommensurable element that cannot be either reduced to the known or same, and thus not be empathized with.

Both these formulations, derived from Montesquieu and from Benjamin, sound familiar from (subsequent) conversations about performativity and performance: the non-determinate purposiveness and ephemeral temporality of action, the productive force of performativity. Where Arendt diverges is to wrest the performative force that instantiates this subject from the domain

of the past, the determined, the known. In Arendt the *initium* of natality is an absolute newness, a singular and unprecedented beginning. Crucially, the subject that natality theorizes inhabits the domain of *zoe*: that of bare, unadorned life, of what Arendt called (in the context of her discussion of the rights of the refugee) unqualified existence. This *givenness*, Arendt argues, carries the demand of unconditional affirmation, the right to have rights, and forms the grounds of our common responsibility. Only a subject thus constituted, and a right conceived in this way, could form a bulwark against the foundational violence of Western philosophy and political life (detailed in her analysis of imperialism and the genocidal drives of fascism) that could not recognize the dignity of the alien, the other.

Natality, in much of Arendt's oeuvre, forms a dyad with appearance, echoing the Augustinian counterpoint of *zoe* with *bios politikos*, and anchoring many of the other distinctions that structure Arendtian political thought (public/private, action/work, freedom/necessity, and so on). In appearance, the subject emerges into the scene of publicness, to act and be witnessed. Appearance, as such, precedes the formal constitution of the public sphere, and predicates both the capacity for action and for political speech—without appearance, there can be none—creating “the essential condition of being recognized as a member of the community of [human] beings and the world, and being treated accordingly” (Han 2012). Appearance, the standard reading of Arendt tells us, is the defining characteristic of the human as a political being—not some ineffable, ill-defined quality of humanity or assumption of will. Thus, appearance establishes rights not on the ground of either individual or collective sovereignty, not on the ground of formal equality before the law (juridical rights), but on the ground of political participation: the right “to belong to an organized political space, with its inherent plurality of actors” (Birmingham 2006, 36). These are rights based not in the freedom of will but in the freedom of action, where action is understood primarily as presence and expression, being seen and being heard. Freedom, then, for Arendt is a positive rather than negative formulation: a freedom to, not a freedom from.

In the conventional reading of Arendt on rights, the reading she most explicitly invites, appearance is an event subsequent to natality. It is a linguistic second birth that separates human from biological life, *bios politikos* from *zoe*: “It is the space of appearance in the widest sense of the word, namely, the space where I appear to others as others appear to me, where men exist not merely like other living or inanimate things but make their appearance explicitly” (Arendt [1963] 1990, 198–99). And yet, Arendt repeatedly and tellingly muddies this distinction. To wit, this peculiar and tantalizing passage from the *Life of the Mind* (1978) (where Arendt exhaustively theorized the concept of appearance), in which we find her drawing inspiration from Swiss botanist Adolf Portmann's study of expressivity in plants (27–30): “To be alive means to be possessed by an urge toward self-display which answers the fact of one's own appearingness. Living things *make their appearance* like actors on a stage set for them” (21). Appearance and *vitality*, not humanity, in this view are mutually constituting: seeming, citing, presencing, displaying—forms of performance that exceed speech—are the grounds of political personhood. Everything that possesses this “innate impulse” towards self-presentation appears, entailing a “promise to the world, to those to whom I appear, to act in accordance with my pleasure” (36). Peculiarly ahead of her time, Arendt is in line with a number of contemporary biologists who have come to see this kind of aesthetic expressivity



in plants and animals not as a utilitarian adaptation to environment or reproductive advantage, but as decadent, superfluous, and without any purpose other than the urge toward beauty. Not only, they suggest, is human perception not equipped to comprehend the full aesthetic expressivity of non-human world, but that beauty might stand as evidence that “Animals are agents in their own evolution” (Fabr 2019). In this passage, Arendt confuses—indeed, fuses—appearance and natality: the plant and the political actor are both making an entrance, initiating the new.

### I Want You To Be: Arendt the Ecologist

The moment points us to a construal of political agency and subjecthood that is grounded in vitality rather than humanity; even as she appears to differentiate human from other-than-human appearing, Arendt establishes their commensurability. To do so, she bypasses what Derrida called the “naturalist” conception of communication that underpins liberal representation (by which I mean representation as both delegation and speech): appearance, Arendt shows here, does not re-present and thus communicate something (an idea, a subject, a constituency) that pre-exists it.<sup>6</sup> It is a doing that instantiates a being. Such a conception of appearance as performativity wrenches our understanding of political action away from the communicational norms of sentience, intention, self-presence that bedevil attempts to imagine, say, a river as a political actor. In such a reading, that river need not be conscious, sentient, deliberate, rational, or even a singular unity to be capable of public appearance and thus deserving of rights.

Even as many of Arendt’s explicit arguments for human rights reference a distinction between *zoe* and *bios politikos*, then, they also rest on a set of ontological claims about life and liveliness that are—I argue—fundamentally ecological rather than humanistic in character. In “What is Freedom” she describes the “automatic processes” of the earth, asserting that “we ourselves are driven by similar forces insofar as we too are a part of organic nature.” The claim supports her assertions about the creativity of action, suggesting that initium—the capacity to begin—is a natural, indeed cosmological, process that provides for human existence and perpetuation: “It is in the very nature of every new beginning that it breaks into the world as an ‘infinite improbability,’ and yet it is precisely this infinitely improbable which actually constitutes the very texture of everything we call real. Our whole existence rests, after all, on a chain of miracles, as it were—the coming into being of the earth, the development of organic life on it, the evolution of mankind out of the animal species” (Arendt 1961,169). Appearance, she contends elsewhere, is “driven by the motor of biological life which man shares with other living things and which forever retains the cyclical movement of nature” (Arendt [1958] 1998, 97).

Initium thus conceived is radically different from human free will: it is an emergence rather than an actualization of pre-existing potential, an emergence conceived in startlingly biological terms. Reading Heidegger, Arendt proposes that “the Greeks, especially the pre-Socratics, often thought of being as *physis* (nature) whose original meaning is derived from *phyein* (to grow), that is, to come to light out of darkness. Anaximander, say Heidegger, thought of *genesis* [becoming] and *phthora* [passing away] in terms of *physis*, ‘as ways of luminous rising and declining’” (Arendt 1978, 190). Natality, on this basis, names these continuous appearances and departures from a durable and

adaptable world—a world constantly innovating, becoming. Human rights can never be conceived independently of this capacity of *initium* that they and all natural entities share.

The formulation gets at something of the fragility, interdependence, but also the ongoingness of ecological life that contemporary thinkers such as Donna Haraway (2016) have theorized as a rejoinder to the anthropocentric fatalism of climate change catastrophizing. Human continuity, they argue, depends on an educated hope and ethics of common responsibility that entails “living with the trouble” begun by the human assault on non-human worlds, and affirming the (re)generative capacity of natural systems. This is, of course, nothing new for the Indigenous claimants of the Whanganui case, whose cosmologically grounded commitment to this common responsibility rests in a kin relationship between the river and its people which requires constant tending.

When Arendt is at her most anthropocentric, when she argues for the primacy of appearance over natality as the mark of “where men exist not merely like other living or inanimate things but make their appearance explicitly,” she always also trains our attention on the quality of “mere” life—the state of unqualified existence that forms the ontological ground for human rights (Arendt [1958] 1998, 198–99). The right to have rights, as she conceives it, is not just the right to appearance—to make one’s entrance on a public stage—but the right derived from mere existence, which entails the intrinsic common responsibility to desire the other’s presence in the world. In a passage concluding the famous discussion from *Origins of Totalitarianism* about the (non)-rights of the refugee, Arendt elaborates *zoe* thus: “This mere existence, that is, all that which is mysteriously given us by birth and which includes the shape of our bodies and the talents of our minds, can be adequately dealt with only by the unpredictable hazards of friendship and sympathy, or by the great and incalculable grace of love, which says with Augustine, “*Volo ut sis* (I want you to be),” without being able to give any particular reason for such supreme and unsurpassable affirmation” (Arendt 1958, 301). “*Amo: volo ut sis*,” Arendt writes elsewhere, “I love you: I want you to be’—and not ‘I want to have you’ or ‘I want to rule over you’” (Arendt 1978, 136). This is the common responsibility at the root of the right to have rights: the unconditional affirmation of the singularity of other beings and, implicitly, other modes of being, in their unqualified existence. Arendt’s efforts to make the human exceptional arrive, to a crucial degree, after she establishes this claim.

### Revisiting the Archipolitical Arendt: making room for the non-human actor

Understanding the importance of “the given” helps us re-engage what has been most confounding about Arendt’s political philosophy for contemporary commentators, namely her insistence (erected on the foundation of *bios politikos/zoe*) on the distinction between public and private, necessity and freedom, and her determination that embodied difference should have no part in the domain of equality that is political life. In *The Human Condition*—grappling with the calamity of European fascism and the generations of genocidal imperial racism from which it stemmed—Arendt reviles *zoe*, framing it as the domain of base, violent, necessity from which we must be liberated to achieve the freedom of political action. And yet, as Peg Birmingham (2006) has argued, “The very plurality that Arendt understands as the condition *sine qua non* of political life is infused

with an ineradicable difference or alienness that is inextricably part and parcel of the right to have rights" (71). This was the tension that her supposed archipolitics sought to overcome: *zoe*, "the disturbing miracle" of the given, must be included in *bios politikos*, at the same time as the politicization of embodiment (and in particular the specter of racialization, and of unrepresentable thus eliminable difference) must be avoided (Arendt 1958, 301). While Arendt's referents are resolutely human, she offers no insurmountable reason why this protection of difference might not extend to other miraculous existents, such as a river.

The post-humanist, ecopolitical Arendt is, of course, a willful, even eccentric, counter-reading. The effort to make the right to have rights encompass the non-human, seems doomed to run aground on the particular *style* of performance that dominates her oeuvre: theatrical, oratorical, virtuosic, the appearance of an actor that is, if nothing else, human, individualist, rational. This style could not be further from the quiet, collective, selfless presencing of a river. The quintessentially Arendtian political figure is (at least to her critics) a preening (Pitkin 1998), authoritarian (Rancière 2010), heroic Hellenophile who exalts in the refinements of speech, lauds the philosopher, and sneers at the earthy labors of those who dig his [sic.] potato plot or fetch his water. From this point of view, the proposition that the soil of the philosopher's plot or the river that is the source of his water are equally political actors seems patently absurd.

This figure is, however, a caricature. These criteria of political personhood—the human, the individual, the rational—are repeatedly made strange across the body of Arendt's writing. Her concept of political action, for instance, instantiates an agency that simply does not look like the agency of the liberal human subject: Arendtian action is non-instrumental, non-predictive, non-intentional, non-sovereign (Thiele 2009). Its context and antecedent are not deterministic; its outcomes can't be known in advance or limited by the will of the actor. Likewise, the Arendtian individual is singular but never autonomous: we exist in a web of relations that enable us to build a world together as well as destroy one another, a "world in common that is shareable yet diverse, communicable yet open to misunderstanding, and that appears as one yet is refracted through many different narratives and perspectives" (Benhabib 2011, 53). Arendtian action is not even necessarily linguistic: it is, she states, "the freedom to call something into being which did not exist before, which was not given, *not even as an object of cognition or imagination*" (1961, 151). Arendt's term is virtuosity, and her analogy is that of the performing arts, which requires an audience and a "publically organized space," and whose accomplishment "lies in the performance itself and not in an end product which outlasts the activity" (153). What Arendt describes is surely performative in the Austinian sense (and scholars such as Lepecki have clearly made this point). But the exercise of freedom, for Arendt, cannot be reduced to a speech act: instead, it is a manifestation-in-relation, a becoming-with, a joyous presencing within the assemblage of political relevance that it is the work of rights to protect, nurture, and validate.<sup>7</sup>

### Performing a River's Rights

The public concerns of the Whanganui River's parliamentary advocates were in many ways pragmatic and fell on the nether side of that most fundamental of Arendtian cuts, that between

political action and governmental work: how to manage conditions, mitigate risk, and regulate development to better foster the welfare of the River and its kin. And yet, they argued, to do so—properly and fully, without further violence to either the river or its human or non-human co-existents—required a fundamental affirmation of that river’s originary alterity. In the legislation that affirmation went by the name of rights. For Whanganui *iwi*, the extension of the rights of personhood to a non-human existent required no justification: the river was always and already a member of their political and social collective, and due the same dignity and protection as every other one. But for the juridical apparatus of anthropocentric Western liberalism into which the river was admitted (and which was irrevocably changed by that admission), the legislative act demands a fundamental—long overdue—rethinking of the philosophical and ontological grounding of rights. It is this task, I have argued, to which Arendt’s argument for the “right to have rights” might be turned.

For Arendt the right to have rights is derived from the ontological fact of natality, which demands an unqualified affirmation of the given, the unanticipated, the infinite difference of others, and not necessarily human others, born into the same web of relations. Her theory of appearance meanwhile posits performance as the freedom of political action that rights must protect: the right to take one’s place in a political collective, to be politically legible, to *matter*. Crucially, however, I have suggested that this performative participation cannot be reduced to political speech or freedom of expression (with all it entails of rationality, individuality, etc.). Appearance, at base, proposes a capacious formulation of performance as the quality of *being vitally, and joyously present before a community of others*.

But how do we build a bridge between the ineffability of appearance, thus construed, and the realpolitik of government in order for rights to be translated into life-supporting practices that can extend to non-humans? We need to evolve or recover aesthetic practices of translation and witnessing, of co-presence and listening, of attuning ourselves to non-human performativities, and perhaps of co-performance with non-humans. For if speech, for human democracies, is understood as “the bodily and linguistic exercise of rights” (Butler 2015), how might we hear a river speak? How might we, the human we, talk *for*, as well as with and to non-human kin?

It is beyond the scope of this article to either analyze such non-human performativities, or lay out a methodology for politically engaging them. (Although I would note that this has been assayed by numerous scholars in the fields of political ontology and political ecology, from Eduardo Kohn, Marisol de la Cadena, Vivieros de Castro, or Amiria Salmond, to Donna Haraway and Bruno Latour—many of them drawing on the work of experimental artists, speculative fiction authors, and Indigenous collaborators to do so). But, provoked by Arendt, I would like to conclude by returning to the Whanganui case, to argue that performance studies might pay a renewed, and deeply theoretical attention to Indigenous performance practices as inspiration and guide (but not, crucially, as a resource to be raided). The so-far slight body of work in our discipline on Indigenous performance has tended to engage it at the level of representational strategies rather than its underlying ontological assumptions, political praxis or poetics, and has tended to focus on the stage rather than performance’s manifestation in Indigenous-state relations.<sup>8</sup> And yet, these

scenes of Indigenous-state engagement can—read carefully—provide a well-tested model for the performative articulation of non-human rights.

For the *iwi* of the Whanganui River who lobbied for Te Awa Tupua's status as a person, human rights and non-human ones depend on each other. And for them, as for most other Indigenous peoples in settler nations, the threat of annihilation by human-induced ecological catastrophe is nothing new: they have long recognized that what Alfred Crosby called "ecological imperialism" is part and parcel of the slow violence of settler colonialism's genocidal strategies of elimination (Crosby 2004, Nixon 2011, Wolfe 2006). To them the Enlightenment exclusion of non-humans from politics has always seemed a violation of sociality itself. It is primarily *this* that Whanganui *iwi* sought redress from in their settlement.

After the vote on the Whanganui River Bill, the speaker of the house deferred to the parliamentary gallery, where the river's kin—members of the Whanganui Māori delegation—called, chanted, spoke, danced and sang the river's rights into being with a full thirteen minutes of *karakia*, and *mihi*, *karanga*, *waiata*, and *haka*. This was not a colorful addendum to the real business of legislation: it was a profound performative. These more or less traditional forms of performance invoke the entities comprising *whakapapa*—often translated as genealogy, but more precisely understood as the generative and encompassing relational networks that sustain creation, including human kin, plants, animals, geographical entities, deities, meteorological forces (Salmond 2013, Roberts et al 2004). *Karakia* (prayers), *mihi* (greetings), *karanga* (chants/calls), *waiata* (songs), and *haka* (dance chants), presence non-human kin by naming them, acknowledging and honoring them. At the same time, the bodies of the performers themselves presence the absent entities by virtue of their ancestry: they are, in an absolute sense, co-substantial. In the words of the Whanganui *whakataukī* (saying) that prefaced the bill itself: "*Ko au te Awa, ko te Awa ko au,*" "I am the River, and the River is me."

In Māori cosmo-onto-epistemology (in *mātauranga Māori*—Māori knowledge systems—the three sectors of philosophy are inextricable from one another), the presence or force of an entity, human or non-human, living or non-living, is not confined to its material duration in time and space. Instead, *hau* (breath), *mana* (charisma, status, standing), and *mauri* (life force, present in all vital things, from healthy rivers to newborn children) can be transmitted from entity to entity, often through the agency of performance (Hēnare 2001). As explained by Charles Te Ahukaramu Royal, performance conducts and amplifies powerful affects, in the fully material, Deleuzian sense of the word: forces and intensities that traverse bodies. *Mauri*, *hau*, or *mana* are made manifest and sensible through the effects of performance, through *ihi*, *wehi*, and *wana*—the awe and power you feel as a witness to a magnificent performance, the chill on your scalp, the goosebumps on your spine (Royal 1998, Marsden 2003, Barlow 1991, Kruger 2004, Hokowhitu 2014, Mead 1997). Sensitivity to these affects, then, is a way of registering the *appearance* of the non-human through the performance of the human. MP Marama Fox, in a speech delivered at the third hearing of the Bill, invoked elders of the Whanganui *iwi* who had passed during the long campaign for the river's rights:

Their waiata and whakataukī, and their karanga and karakia provide other means to understand te mana o te awa [the mana of the river]. They help describe the heart and soul from which to interpret te mana o te iwi... They told us: “Kauaka e kōrero mō Te Awa ēngari, kōrero ki Te Awa!” [“Do not talk about the River but speak to it!”] So, we too went to the River. (New Zealand Legislation 2017a, 9–10)

The tears of the *kaumātua* and *kuia* (elders) in the gallery and the MPs on the floor as these *waiata*, *karanga*, and *karakia* were performed, the power and fullness of their performance, were not a wholly human affair; they were a very complex form of spokespersonship, a speaking to and for, a listening and interpreting, a presencing and co-presencing, a braiding of human and non-human, by which the Whanganui made an appearance.

And so, a river ran through parliament. In appearing, in performing and being performed, it exercised its rights—not as a gift bestowed, but as a common responsibility acknowledged, a singular existence affirmed, a gratitude and pleasure taken in the animating bond of the ‘we’ (Birmingham 2006, 105). For thirteen joyous minutes, the river’s right to have rights was audible, visible, sensible in a chorus saying—in many other words—what Arendt, after Augustine might have said: “I want you to be.”

## Notes

<sup>1</sup> “Te Awa Tupua is a spiritual and physical entity that supports and sustains both the life and natural resources within the Whanganui River and the health and wellbeing of the iwi, hapū and other communities of the River.” (New Zealand Legislation 2017b, 14).

<sup>2</sup> Although philosophers such as Peter Singer have long argued for the rights of animal non-humans, only welfare protections (prevention of cruelty, duty of care, etc.) rather than positive rights have been recognized in law. It is notable also that arguments for animal rights largely rest on claims of similarity between animals and humans as living and mortal individuals (ex. sentience, the capacity to suffer, and so on). By these measures, the unqualified attribution of human-equivalent rights to an assemblage of living and (arguably) non-living existents such as a river is entirely novel.

<sup>3</sup> On the history of the Whanganui case, and a critique of the ways in which the river’s rights have been legally circumscribed, see Salmond (2017).

<sup>4</sup> For a discussion of the philosophical, ecological, and ontological dimensions of these concepts, resting on a now substantial Māori-authored literature on *mātauranga Māori* (Māori knowledge systems), see Salmond (2017).

<sup>5</sup> I gratefully acknowledge Birmingham’s influence on my understanding of Arendt’s theory of natality.

<sup>6</sup> Cf. Karen Barad’s materialist reconceptualization of performativity in Barad (2003).

<sup>7</sup> On the joyous, expressive quality of Arendtian action, see Lepecki (2013b).

<sup>8</sup> I would like to acknowledge recent work by Stephanie Noelani Teves, Jacqueline Shea Murphy, and Julie Burrelle that is moving the field forward in this direction.

## Works Cited

- Agamben, Giorgio. 1998. *Homo Sacer: Sovereign Power and Bare Life*. Translated by Daniel Heller-Roazen. Palo Alto, CA: Stanford University Press.
- . 2005. *State of Exception*. Translated by Kevin Attell. Chicago: University of Chicago Press. <https://doi.org/10.7208/chicago/9780226009261.001.0001>
- Arendt, Hannah. (1958) 1998. *The Human Condition*. 2nd ed. Chicago: University of Chicago Press.
- . 1958. *The Origins of Totalitarianism*. Cleveland: Meridian Books.
- . 1961. "What Is Freedom?" In *Between Past and Future: Six Exercises in Political Thought*, 143–172. New York: Viking.
- . (1963) 1990. *On Revolution*. New York: Penguin.
- . (1971) 1978. *The Life of the Mind*. New York: Harvest/HBJ.
- Barad, Karen. 2003. "Posthumanist Performativity: Toward an Understanding of How Matter Comes to Matter." *Signs: Journal of Women in Culture and Society* 28 (3): 801–31. <https://doi.org/10.1086/345321>
- Barlow, Cleve. 1991. *Tikanga Whakaaro: Key Concepts in Māori Culture*. Auckland: Oxford University Press.
- Benhabib, Seyla. 2011. *Dignity in Adversity: Human Rights in Troubled Times*. Cambridge, MA: Polity.
- Birmingham, Peg. 2006. *Hannah Arendt and Human Rights: The Predicament of Common Responsibility*. Bloomington: Indiana University Press.
- Butler, Judith. 2015. *Notes Toward a Performative Theory of Assembly*. Cambridge, MA: Harvard University Press. <https://doi.org/10.4159/9780674495548>
- Crosby, Alfred. 2004. *Ecological Imperialism: The Biological Expansion of Europe 900–1900*. Cambridge: Cambridge University Press. <https://doi.org/10.1017/CBO9780511805554>
- Han, Jennie. 2012. "Making An Appearance." *Amor Mundi*, March 12. <https://hac.bard.edu/amor-mundi/making-an-appearance-2012-03-12>
- Haraway, Donna J. 2016. *Staying with the Trouble: Making Kin in the Chthulucene*. Durham, NC: Duke University Press. <https://doi.org/10.1215/9780822373780>
- Hēnare, Mānuka. 2001. "Tapu, Mana, Mauri, Hau, Wairua: A Māori Philosophy of Vitalism and Cosmos." In *Indigenous Traditions and Ecology: The Interbeing of Cosmology and Community*, edited by John A. Grimm, 197–221. Cambridge, MA: Harvard University Press for the Centre for the Study of World Religions.
- Hokowhitu, Brendan. 2014. "Haka: Colonized Physicality, Body-Logic, and Embodied Sovereignty." In *Performing Indigeneity: Global Histories and Contemporary Experiences*, ed. by Laura R. Graham and H. Glenn Penny, 273–304. Lincoln: University of Nebraska Press. <https://doi.org/10.2307/j.ctt1d9nmw6.14>
- Kwek, Dorothy H. B., and Robert Seyfert. 2018. "Affect Matters: Strolling through Heterological Ecologies." *Public Culture* 30 (1): 35–59. <https://doi.org/10.1215/08992363-4189155>
- Ignatieff, Michael. 2001. *Human Rights as Politics and Idolatry*. Edited by Amy Gutmann. Princeton, NJ: Princeton University Press. <https://doi.org/10.1515/9781400842841>
- Jabr, Ferris. 2019. "How Beauty is Making Scientists Rethink Evolution." *The New York Times Magazine*, January 19. <https://www.nytimes.com/2019/01/09/magazine/beauty-evolution-animal.html>
- Kruger, Tāmami. 2004. "The Qualities of Ihi, Wehi and Wana." In *Nga Tikanga Tuku Iho a te Māori, Customary Concepts of the Māori: A source book for Māori Studies students*, edited by (Sidney) Hirini Moko Mead, 92–99. Wellington: Victoria University of Wellington.
- Latour, Bruno. 2004. *The Politics of Nature: How to Bring the Sciences into Democracy*. Translated by Catherine Porter. Cambridge, MA: Harvard University Press.

- . 1993. *We Have Never Been Modern*. Translated by Catherine Porter. Cambridge, MA: Harvard University Press.
- Lepecki, André. 2013a. "Choreopolice and Choreopolitics: Or, the Task of the Dancer." *TDR/The Drama Review* 57 (4): 13–27. [https://doi.org/10.1162/DRAM\\_a\\_00300](https://doi.org/10.1162/DRAM_a_00300)
- . 2013b. "From Partaking to Initiating: Leadingfollowing as Dance's (a-personal) Political Singularity." In *Dance, Politics, and Co-Immunity*, edited by Gerald Siegmund and Stefan Hölscher, 21–38. Zurich and Berlin: diaphanes.
- Marsden, Māori. 2003. *The Woven Universe: Selected Writings of Rev. Māori Marsden*. Edited by Te Ahukaramū Charles Royal. Ōtaki, NZ: Te Wānanga-o-Raukawa.
- Mead, (Sidney) Hirini Moko. 1997. *Landmarks, Bridges, and Visions: Aspects of Maori Culture*. Wellington: Victoria University Press.
- Moyn, Samuel. 2014. *Human Rights and the Uses of History*. London and New York: Verso.
- . 2010. *The Last Utopia: Human Rights in History*. Cambridge, MA: Harvard University Press.
- Mutua, Makau. 2016. "Is the Age of Human Rights Over?" In *The Routledge Companion to Literature and Human Rights*, edited by Sophia A. McClennen and Alexandra Schultheis Moore, 450–458. London and New York: Routledge. <https://doi.org/10.4324/9781315778372-48>
- Nixon, Rob. 2011. *Slow Violence and the Environmentalism of the Poor*. Cambridge, MA: Harvard University Press. <https://doi.org/10.4159/harvard.9780674061194>
- New Zealand Legislation. 2017a. *Te Awa Tupua (Whanganui River Claims Settlement) Bill — Third Reading*, 14 March [https://www.parliament.nz/en/pb/hansard-debates/rhr/combined/HansDeb\\_20170314\\_20170315\\_12](https://www.parliament.nz/en/pb/hansard-debates/rhr/combined/HansDeb_20170314_20170315_12)
- . 2017b. *Te Awa Tupua (Whanganui River Claims Settlement) Act 2017*, 20 March, <http://www.legislation.govt.nz/bill/government/2016/0129/latest/DLM6830851.html>
- Pitkin, Hanna Fenichel. 1998. *The Attack of the Blob: Hannah Arendt's Concept of the Social*. Chicago: University of Chicago Press.
- Povinelli, Elizabeth. 2002. *The Cunning of Recognition: Indigenous Alterities in the Making of Australian Multiculturalism*. Durham, NC: Duke University Press. <https://doi.org/10.1215/9780822383673>
- . 2016. *Geontologies: A Requiem to Late Liberalism*. Durham, NC: Duke University Press. <https://doi.org/10.1215/9780822373810>
- Rae, Paul. 2009. *Theatre & Human Rights*. Basingstoke: Palgrave Macmillan. <https://doi.org/10.1007/978-0-230-36458-5>
- Rancière, Jacques. 1999. *Disagreement: Politics and Philosophy*. Translated by Julie Rose. Minneapolis: University of Minnesota Press.
- . 2004a. *The Politics of Aesthetics: The Distribution of the Sensible*. Translated by Gabriel Rockhill. London: Continuum.
- . 2004b. "Who Is the Subject of the Rights of Man?" *South Atlantic Quarterly* 103 (2/3): 297–310. <https://doi.org/10.1215/00382876-103-2-3-297>
- . 2010. *Dissensus: On Politics and Aesthetics*. Translated by Steven Corcoran. London: Continuum.
- Rawls, John. 1999. "The Law of Peoples." In *Collected Papers*, edited by Samuel Freeman, 529–564. Cambridge, MA: Harvard University Press.
- Roberts, Mere, Brad Haami, Richard Benton, Terre Satterfield, Melissa Finucane, Mark Henare, and Manuka Henare. 2004. "Whakapapa as a Māori Mental Construct." *The Contemporary Pacific* 16 (1): 1–28. <https://doi.org/10.1353/cp.2004.0026>
- Rorty, Richard. 1993. "Human Rights, Rationality, and Sentimentality." In *On Human Rights (Oxford Amnesty Lectures, 1993)*, edited by Stephen Shute and Susan Hurley, 111–34. New York: Basic Books.



- Royal, Charles Te Ahukaramū. 1998. "Te Whare Tapere: Towards a New Model for Māori Performing Arts." PhD diss., Victoria University of Wellington.
- Salmond, Amiria. 2013. "Transforming Translations (Part I): 'The Owner of These Bones.'" *Hau: The Journal of Ethnographic Research* 3 (3): 1–32. <https://doi.org/10.14318/hau3.3.002>
- Salmond, Anne. 2017. *Tears of Rangī: Experiments Across Worlds*. Auckland: Auckland University Press.
- Thiele, Leslie. 2009. "The Ontology of Action: Arendt and the Role of Narrative." *Theory and Event* 12 (4). <https://doi.org/10.1353/tae.0.0101>
- Turkiewicz, Julie. 2017. "Corporations Have Rights. Why Shouldn't Rivers?" *New York Times*, 26 September. <https://www.nytimes.com/2017/09/26/us/does-the-colorado-river-have-rights-a-lawsuit-seeks-to-declare-it-a-person.html>
- Wolfe, Patrick. 2006. "Settler Colonialism and the Elimination of the Native." *Journal of Genocide Research* 8 (4): 387–409. <https://doi.org/10.1080/14623520601056240>

## Biography

Margaret Werry is an Associate Professor in Theatre Arts and Dance at the University of Minnesota. She is the author of *The Tourist State: Performing Leisure, Liberalism, and Race in New Zealand* (University of Minnesota Press, 2011) and articles on pedagogy, multimedia and immersive performance, indigenous and intercultural theatre, and indigenous performance activism against climate change in the island Pacific. She is currently working on a short book entitled *Theatre & Tourism* (Palgrave Macmillan, 2020), and another major project (*The Performing Dead: Public Culture at the Borders of the Human*) concerning the way we treat, trade, and display human remains in museums and popular culture.

© 2019 Margaret Werry



Except where otherwise noted, this work is licensed under a [Creative Commons Attribution-NonCommercial-ShareAlike 4.0 International License](https://creativecommons.org/licenses/by-nc-sa/4.0/).