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The Perplexities of the Rights of Nature

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The Bernard and Audre Rapoport Center for Human Rights and Justice

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ABSTRACT

This paper examines the potential implications of Hannah Arendt's critique of human rights in *The Origins of Totalitarianism* (1951) for contemporary environmental rights discourse. Reflecting first on canonical, but refreshingly strange early modern European formulations of "personhood," the paper suggests that advocacy projects on behalf of nonhuman animals and environments court the same paradoxes Arendt identified. In that respect, the paper proposes that Arendt's critique of human rights is less anthropocentric than prominent strains of its reception suggest. Considering Arendt's critique against her discussion of "earth alienation" in *The Human Condition* (1958), the paper then frames Arendt's account of legal personhood as an attempt to "speak from nowhere." It concludes by tracing the first stirrings of Arendt's development of the notion of this "nowhere" to an early, unpublished poem.

KEYWORDS:

Human rights, environmental discourse, Anthropocene, Hannah Arendt, legal personhood

The Perplexities of the Rights of Nature

Give me a place to stand on, and I will move the earth.
—Archimedes of Syracuse (ca. 212 BC)

When I regard my hand—
Strange thing accompanying me—
Then I stand in no land,
By no Here and Now,
By no What, supported.

—Hannah Arendt, "In sich versunken" (1926)

The cradle of democracy had no floor. A gentle hollow in the northeastern face of a hillside, it lay exposed to snow, sunlight, and to storms blowing in from the sea. To reach it, the people of Athens had to travel two miles south of the city's commercial center and climb one hundred meters to a saucer-shaped depression in the earth. There, the members of the popular Assembly (*ekklesia*) gathered forty times a year to legislate, hold trials, and elect the members of the city-state's ruling council. According to archeological data, the only artificial structure in this *ekklesiasterion*, or meeting place of the *ekklesia*, was a stone platform near the lip of the natural amphitheater, elevated by a mound of soil.[1] From the citizens' vantage point, Alcibiades, Aristedes, Pericles, and other figures who spoke during this putative "Golden Age" (480 – 404 B.C.) appeared to hover over Attica, superimposed on the marble pillars of the Parthenon.[2]

[1] Homer A. Thompson, "The Pnyx in Models," *Hesperia Supplements* 19 (1982): 133–227, 134; K. Kourouniotes and H. A. Thompson, "The Pnyx in Athens," *Hesperia* 1 (1932): 90-217, 96. Thucydides refers to the structure in Book II of *History of the Peloponnesian War* (Oxford: Oxford University Press, 2009), 90: "When the moment arrived he [Pericles] walked forward from the grave and mounted the high platform which had been constructed there so that he could be heard as far among the crowd as possible" (II. 34).

[2] See Thompson, "The Pnyx in Models," 134. Slabs of the Parthenon's same Pentelic marble lay at intervals around the hillside, marking not the perimeter of the indentation where the members of the Assembly gathered but, instead, the boundaries of the public property reserved for their purposes (Kourouniotes and Thompson, "The Pnyx in Athens," 108; Thompson, "The Pnyx in Models," 137). The one surviving slab bears the words "ὅρος Πνύξ," or mountain of the "Pnyx," an onomatopoeia meaning "tightly packed together." For a literary account of what this vantage point would have looked like to the spectator, see also the *Acharnians* (1-42), Aristophanes' absurdist drama about an Athenian citizen who brokers a private treaty with the Spartans, cited in Thompson, "'The Pnyx in Models," 134.

During the last several years of the fifth century B.C. the orientation of the auditorium was reversed. The hollow in the hillside was filled with soil, inverting its natural slope. At least some benches were laid over the hard limestone. But the most significant change was that the spectators now faced the sea. For the first time, the orators appeared to hover not over the city-state they invoked in their speeches but over its geographical limit.[3]

A final change to the *ekklesiasterion* occurred in the third century B.C. Outside of gathering for the occasional election, the members of the Assembly deserted the hillside. They began to meet instead in an artificial structure located on the southern slope of the Acropolis, with a view of the Mount Hymettus to the east. Unlike the Assembly, this built auditorium welcomed not only citizens but also people from varied walks of life, including children, male and possibly female community members, foreigners, and some enslaved people.[4] Devoted initially to ritual festivals, the theater consisted of a circular orchestra set against a sweeping backdrop, with raked seating that accommodated three times as many spectators as the Pnyx. It, too, came to house competing narratives, yet the messengers of these narratives wore masks that concealed and displaced their given identities in order to permit the emergence of a character. Slaying her own children, blinding himself with a brooch, and standing trial for the murder of his mother while the collective figure of the "chorus" looked on in wonder and sorrow, these characters expressed a relationship to their own behavior summarized by William Butler Yeats: "Actions are a bastard race to which a man has not given his full paternity."[5] We are speaking of course about the institution of the theater—in the case of the Assembly's new meeting place, the Theater of Dionysus.

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[3] See Thompson, "The Pnyx in Models," 138-9.

[4] Classical scholars are divided on this issue. For an outline of the debate see Marilyn A. Katz, "Did the Women of Ancient Athens Attend the Theater in the Eighteenth Century?" *Classical Philology* 93, no. 2 (1998), 105–124.

[5] According to tradition, these acts of violence for which the plays are best known happened offstage, reported by a third party. In the case of the examples indicated, from Euripides' *Medea* (431 B.C.), and

The flight of Athens' chief legislative body from the dusty flank of a hillside to the theater's embrace offers a neat counter-script to a familiar picture about the relationship between, on the one hand, the ensemble of texts and rhetorical techniques that have come down to us as "literary" and those today called "juridical." As the picture would have it, literature is no legal refuge. Instead it supervenes, parasitically and sometimes dangerously, on the exercise of reason. There is a fact of the matter distinct from the tale we tell about it, and our access to the former is often blurred or occluded by that tale. Law's task is monitor and moderate the corrupting influence of passion on our judgements by recovering these facts, even and especially when they do not amount to a good story.

Rooted in Plato's exile of the poets from his *kallipolis* in Books II, III, and X of the *Republic,* this vision of the relationship between literature and law has received a wide range of salvos not only in classical studies but also in philosophy and literary studies generally.[6] That it originated in a text imbued with literary references, written in dramatic verse, and penned by a frustrated playwright who reportedly set fire to his own poems is well known. What will preoccupy this paper is the vision's complicity with a dominant account of Greco-Roman law's protagonist, the "natural person," or human being. This account, usually traced to John Locke and alive today in the work of Derek Parfit and John Perry, defines personhood in terms of individual identity. What makes the living being a "person" on this view is not her capacity to suffer, nor her ability

Sophocles' *Oedipus Rex* (429 B.C.) and Euripides *Eumenides* (458 B.C.), the third parties are Apollo, the leader of the Chorus, and a Messenger, respectively. See *Medea* (line 1309)*, Oedipus Rex* (1261-1286), and *Eumenides* (566-1043). For a discussion of the role of the chorus in Greek theatrical poetics see Jean-Pierre Vernant and Pierre Vidal-Naquet, *Myth and Tragedy in Ancient Greece*, trans. Janet Lloyd (Cambridge: MIT Press: 1990), p. 46. The Yeats quotation is from a letter cited in Colm Tóibín, "The Playboy of West 29th Street" 40 no. 2 (25th January 2018) https://www.lrb.co.uk/the-paper/v40/n02/colm-toibin/the-playboy-of-west-29th-street Accessed 22 September 2020.

[6] For influential examples of its uptake in philosophy and literary studies see especially Gadamer (1980), Naddaff (2002), Nussbaum (2001), and Badiou (1999).

to act, nor even—only—her capacity to think. In his *An Essay Concerning Human Understanding* (1689), Locke locates it instead in her ability to aggregate her thoughts and experiences into a single unified entity, or "thinking thing," that remains unaltered and identical to itself even as its conditions shift:

> This being premised, to find wherein personal identity consists, we must consider what *person* stands for;—which, I think, is a thinking intelligent being, that has reason and reflection, and can consider itself as itself, the same thinking thing, in different times and places; which it does only by that consciousness which is inseparable from thinking, and, as it seems to me, essential to it. (II.XXVII)

Among the infelicitous consequences of Locke's account is the implication that, as Jenny Teichman observes, one ceases to be a person when asleep.[7] The contrast Locke draws here between the "thinking thing" and the "different times and places" it occupies, as well as the emphasis he places on the mind's capacity to unify its sundry manifestations under the banner of a single "identity," has earned him notoriety.[8] Even considered apart from the link he establishes between personhood and self-ownership in the *Second Treatise* (1689), Locke's formulation of personhood as self-identicality rests, after all, on one of postmodernism's chief targets: Aristotle's law of non-contradiction.[9]

[7] Locke addresses the paradox explicitly earlier in the essay. When he does, however, he discusses it not as a problem for his theory of personhood but, intriguingly, as a problem for the notion Freud would later champion: that dreaming should be understood as a form of thinking: "[I]f it be possible that the *soul* can, whilst the body is sleeping, have its thinking, enjoyments, and concerns, its pleasures or pain, apart, which the *man* is not conscious of nor partakes in,—it is certain that Socrates asleep and Socrates awake is not the same person[.]" (II.XI). See also Jenny Teichman, "The Definition of Person." *Philosophy* 60, no. 232 (1985): 175–85. http://www.jstor.org/stable/3750997.

[8] See especially Esposito (2012 and 2015) for a critical discussion that questions the importance of unity for Roman and Christian conceptions of the person.

[9] "Though the earth, and all inferior Creatures be common to all Men, yet every Man has a Property in his own Person: This no body has any right to but himself" (§27). Locke, *Second Treatise of Government,* ed. Mark Goldie (Oxford: Oxford University Press, 2016), 15.

Of interest here is the verb on which Locke's definition turns, one that typically escapes remark in critical reconstructions of personhood that address his work: to "stand for" in the sense of "represent." Thirty-eight years before his *Essay* appeared, Thomas Hobbes had offered, in *Leviathan,* a conceptualization of personhood that defined it explicitly as a form of representation. That Hobbes's account is often passed over in debates on artificial intelligence, euthanasia, and nonhuman consciousness is perhaps not surprising given their tacit association of personhood with individual moral agency. As Kevin Curran has observed, Hobbes' mechanistic, nominalist conception—prioritizing theatricality over interiority—does not square with a post-Enlightenment intellectual tradition that has inherited Locke's association of personhood with the individual, that which is insofar as it is *in-dividuus,* undivided.[10] It was not until the early seventeenth century that the term "individual," from the Latin *individuus* and the Greek ἄτομος ("undivided")—referring to the basic unit of matter in science—came to signify the natural person, and even then its sense was initially pejorative, pertaining to eccentrics.[11] During the nineteenth century, this sense of "individual" sustained Marxist and structuralist critiques to achieve a total eclipse of "ἄνθρωπος" in its hamartic sense. The actor who fumbles across the stage, knowing not what she does or who she is, ceded her position to the hero of classical economics: the rational agent who strides clear-eyed into the drama of public life to forge contracts and participate in commercial exchanges. With this shift, the speaking being, formerly a plaything of the gods, assumed a new role in a production that cast him not as a conflicted hero but as an author of his actions and the indivisible substrate of "rights."

[10] Kevin Curran, ed. *Renaissance Personhood: Materiality, Taxonomy, Process.* Oxford, 2020.
[11] See Raymond Williams, *Keywords: A Vocabulary of Culture and Society* (New York: Oxford University Press [1976] 1983), 161-5.

This paper asks how this Enlightenment concept of the person, a notion that integrates Roman juridical practices with rhetorical and poetic techniques, found an afterlife in the liberal attempt to extend moral and legal standing to parahuman forms of life. Focusing on Hobbes' definition of the person in *Leviathan,* it proposes a continuity between the "rights of nature" framework and early modern European conceptualizations of "personhood." Nevertheless, it argues that the framework faces perplexities analogous to those Hannah Arendt famously identified in the movement to formalize rights for all members of the human species, chief among them this: by extending a legal personality to "the environment as a whole" the law absorbed and reinscribed, in a different register, the Archimedean wish to occupy no place at all.[12]

Scholars invested in decentering the human being as law's protagonist do not often turn to social contract theory for ammunition. Many frame the legal concept of personhood as anthropocentrism's Trojan Horse, smuggling colonial baggage into a putatively decolonial effort to acknowledge nonhuman others.[13] Yet these interventions have occasionally neglected the degree to which certain early European fictions of the "person," examined on their own terms, were irreducible to the specifically human being in a way that they would not remain for Kant. Within the horizon of Hobbes' *Leviathan,* for example, to "have standing" as a person before the law was not to speak from the vantage point of a specifically *human* or *corporate* entity but, on the contrary, to "stand for" another, primarily but not exclusively an owner. Personhood for Hobbes named a situation of belonging not to a given species but to a scene.

[12] Christopher Stone, "Should Trees Have Standing? Towards Legal Rights for Natural Objects," *Southern California Law Review* 45 (1972): 450-501, 456.

[13] See for instance Joseph Campana, "Should (Bleeding) Trees Have Standing?" in Kevin Curran (ed.), *Rennaissance Personhood* (Edinburgh: Edinburgh University Press, 2020), Chapter 5; Donna Haraway, "The Promises of Monsters: A Regernerative Politics for Inappropriate/d Others" in Lawrence Grossberg, Cary Nelson, Paula A. Treichler (eds.), *Cultural Studies* (London: Routledge, 1992), 295-337; Timothy Morton, *Solidarity With Nonhuman People* (Brooklyn: Verso, 2017).

I begin by addressing the question of how being a "person" for the Greco-Romans became associated with the notion of having a *locus standi,* or place to stand ("standing," in legal terminology). Through a brief discussion of Christopher Stone's landmark defense of environmental rights in "Should Trees Have Standing?" (1972), I demonstrate an affinity between Stone's argument and Hobbes's conceptualization of personhood in *Leviathan.* In that text, I argue, Hobbes prepares a sense of personhood as "appearing" not reducible to being human or even to having a body (being "corporate").

The paper then turns in a second step to Hannah Arendt's critique of human rights discourse in *The Origins of Totalitarianism.* It offers a reading of Arendt's critique that focuses on its implications for the "rights of nature" framework: the contemporary movement to extend legal standing to nonhuman animals, natural objects, and entire ecosystems. I propose that Arendt's critique of human rights implicates the "rights of nature" framework by betraying its fidelity to a fantasy she associates with modern scientific discourse. Through an exegesis of selections from Arendt's *The Human Condition* (1958), I argue that the "rights of nature" framework expresses, within the legal sphere, the same "view from nowhere" Arendt first identifies in an early poem.

A Place to Stand

The word "standing" entered English in the fourteenth century, from an Indo-European root shared by the German word for "town," "land," and "state." Originally signifying the action, by a living being or object, of assuming a fixed position, it ultimately developed a parallel sense of "appearing in court."[14] In the early nineteenth century, that sense crystallized into its contemporary technical definition of a position of relevance with respect to a claim. According

[14] "standing, n." *OED Online*, Oxford University Press, September 2020, www.oed.com/view/Entry/188987. Accessed 18 September 2020.

to Black's Law Dictionary, to have standing today is, since 1924, to have the "right to appear in court," or *locus standi* (i.e. a place to stand):

> A party's right to make a legal claim or seek judicial enforcement of a duty or right. To have standing in federal court, a plaintiff must show (1) that the challenged conduct has caused the plaintiff actual injury, and (2) that the interest sought to be protected is within the zone of interests meant to be regulated by the statutory or constitutional guarantee in question.

To have standing in federal court today in the United States, one need not be a "person" in the commonplace sense of "human being." Nor must one demonstrate any of the faculties—e.g. speech or reason—associated with being human in the Greco-Roman context. Unlike being a "person," defined principally as a "human being" or "natural person," having a "standing" does not entail membership in a given species. It instead signifies a *position*—a relationship to the claim for which the claimant seeks adjudication that falls within a protected "zone of interests." Condition (1) rescues this definition from tautology: to occupy the zone, the plaintiff must demonstrate not only that their interests are recognized by law but also that they themselves have been harmed by the conduct of another—again, not necessarily human—party. The introduction of the notion of injury into the concept of standing might be surprising were it not for the fact that the concept already animates the term "plaintiff." An offshoot of the Old French *plaintif,* or "lamentation," the word stems from the Latin *planctus,* or "beating of the breast." An association with harm, through the sense of grieving a loss, thus inheres in the etymology of the term for what it means to come before a court in the first place.

Equally striking for our purposes is the peculiar way in which the doctrine of standing assumed its judicial meaning. Signifying a firm basis, it nonetheless appears to lack firm roots in

Anglophone legal terminology, flowering laterally and with interruptions. About its lichen-like development one legal scholar observes:

> The word standing is rather recent in the basic judicial vocabulary and does not appear to have been commonly used until the middle of our own century. No authority that I have found introduces the term with proper explanations and apologies and announces that henceforth standing should be used to describe who may be heard by a judge. The word appears here and there, spreading very gradually with no discernible pattern. Judges and lawyers found themselves using the term and did not ask why they did so or where it came from.[15]

The source of the concept of standing in its colloquial use is equally elusive. According to the Oxford English Dictionary, the term has referred variously to a dramatic stage (1885), a position in a schema (1881), a position from which to shoot game (*a*1425), a shelter for animals (*c*1440), and the age of a tree (1830).[16] This heterogeneity lends a certain poignancy to its importance for the law: the word itself, evoking the fantasy of a fixed position, could not keep still.

The doctrine of standing gained currency among environmentalists with the 1972 publication of Christopher Stone's essay, "Should Trees Have Standing?", widely hailed as a stimulus for the contemporary "rights of nature" movement. Stone's essay translated into legal-philosophical terms a notion Aldo Leopold had developed two decades earlier by situating not only natural objects but also nature "as a whole" as the next frontier of a widening radius of moral sympathy.[17] On this view, damage to natural objects caused by pollution, deforestation, and even

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[15] "standing" in *Black's Law Dictionary* (11th ed. 2019), edited by Bryan A. Garner. Accessed 18 September 2020, cited in Campana (2020).

[16] "standing, n." *OED Online*, Oxford University Press, September 2020, www.oed.com/view/Entry/188987. Accessed 18 September 2020.

[17] "I am quite seriously proposing that we give rights to forests, oceans, rivers and other so-called 'natural objects' in the environment—indeed, to the natural environment as a whole." Stone, "Should Trees Have Standing? Towards Legal Rights for Natural Objects," 456.
For Aldo Leopold's development of the notion of the "land ethic" see Leopold, "The Land Ethic," *A Sand County Almanac* (Oxford, 1987), 201-226.

human overpopulation would become legible to the court as harm to the damaged entity, rather than to the party who owned that entity. That the river, forest, or mountain could not plead its own case was no more of an obstacle to this proposal, by Stone's lights, than the fact that a child, compromised human being, or corporation could not speak for itself.[18] Indeed, one does not have to have read one's Lacan to discern that to speak for oneself at all is to have been spoken for early in life, or one's Heidegger to appreciate that one will exit the world in the third person. That a natural object, animal, or indeed Gaia herself cannot address the court in the first person, so to speak, does not trouble Stone. Like the child or compromised adult, such an entity could have standing to sue the responsible parties through a court-appointed guardian responsible for evaluating its interests.

Stone's paper might have languished had it not crossed the desk of William O. Douglas, the Supreme Court Justice and avid mountaineer. The justice not only cited Stone's paper in his dissent in *Sierra v. Morton* (1972), a case brought by environmental advocates aiming to prevent the Disney corporation from converting a portion of the Sequoia National Forest into a twenty-mile highway and ski resort. He also endorsed Stone's proposal: "Contemporary public concern for protecting nature's ecological equilibrium should lead to the conferral of standing upon environmental objects to sue for their own preservation," Douglas wrote. Following Stone's suggestion of a guardianship model to serve as a mechanism for the conferral of rights, the judge suggested a "federal rule that allowed environmental issues to be litigated before federal agencies or federal courts in the name of the inanimate object about to be despoiled, defaced, or invaded by roads and bulldozers."[19]

[18] For a different take on the practical utility of corporate rights for rights of nature frameworks, see Gwendolyn Gordon, "Environmental Personhood," *Columbia Journal of Environmental Law*, *43*, no. 1 (2018): 49-91.
[19] Cited in Stone, "Should Trees Have Standing? Towards Legal Rights for Natural Objects," 38.

Radical from a Lockean horizon, Douglas's dissent stood squarely in the tradition of personhood as articulated in an earlier text: Hobbes's *Leviathan*. Forewarning in the Epistle Dedicatory to the text that he intends to speak "not of men, but (in the Abstract) of the Seat of Power," Hobbes speaks of the person in that text not as Locke later would, in terms of self-identicality, but, on the contrary, in terms of the person's ability to represent and be represented.[20] At the outset of a chapter that concludes the first part of the text, titled "On Man," Hobbes presents his definition without preamble:

> A person is he whose words or actions are considered, either as his own, or as representing the words or actions of another man, or of any other thing to whom they are attributed, whether truly or by fiction. When they are considered as his own, then is he called a natural person, and when they are considered as representing the words and actions of another, then is he a feigned or artificial person. (I.XVI)[21]

In Hobbes's account, to be a person is to play a role: either one's own or that of another—not necessarily animate—entity. One speaks and acts either for oneself, as the author or "owner" of one's words and deeds, or on behalf of someone or something that has no such dominion. Consider the conspicuous absence of the living being qua "human" in Hobbes's development of the term. In lieu of an emphasis on consciousness, thought, and interiority, Hobbes defines personhood as a form of performative representation that pivots on a *distinction* rather than an *equivalence* between the representer and the represented. The importance of the distinction is quickly made explicit:

> A multitude of men are made one person when they are by one man, or one person, represented; so that it be done with the consent of every one of that multitude in particular. For *it is the unity of the representer, not the unity of the represented, that maketh the person one*. And it is the representer that beareth the person, and but one person: and unity cannot otherwise be understood in multitude. (emphasis added, I.XVI)

[20] Cited in Quentin Skinner, "Hobbes on Persons, Authors, and Representatives" in *The Cambridge Companion to Hobbes's* Leviathan*,* ed. Patricia Springborg (Cambridge, Cambridge University Press, 2007), 175.
[21] Thomas Hobbes, *Leviathan* (Cambridge: Cambridge University Press, [1651] 1996), 129.

The modern reader would appear to have traveled a great distance here from Locke's *Essay*, long before that text appeared. For Hobbes, the "unity" of the person consists not, as it would for Locke, in an essence or consciousness that endures through shifting times, places, and moods, but, on the contrary, in "unity of the representer." The "person" on this view, while it *appears* unified, may well stand for a plurality. What the representer stands for is not at issue for Hobbes. What is at issue is the performative act of representing some unspecified and possibly heterogeneous entity *as* a single unit.

Considered against Hobbes' account of personhood, a proposal like Christopher Stone's is not as radical as it might appear. On the contrary, it squares with Hobbes's definition of one subset of the "person"—namely, the artificial person, who plays the part of another. Whereas in Locke, persons have become owners of themselves, in Hobbes they are still actors who speak on behalf of the owners. A close look at Hobbes's account gives us reason to doubt the intuition expressed by some judges that extending rights to entities that do not already possess it would amount to judicial overreach. As Hobbes would have it, the "person" is too humble a creature to accomplish such a feat. Hobbes defines the "natural person" as a practice—the activity of speaking for oneself—rather than membership in a given species. For Hobbes, rather than confer sacred status, legal forms of recognition like personhood index sites where para-legal forms of association—practices from the dramatic arts, in his context—come into relief.

In the half century since Douglas cited Stone's article, advocates and judges have brought its provocation to life. Natural objects have achieved formal recognition as bearers of rights through legislative actions, judicial decisions, and constitutional amendments.[22] As of 2020, for

[22] Guillaume Chapron et al, "A Rights Revolution for Nature," *Science* 363, no. 6434 (2019), 1392–1393. Jurisdictions in which courts have satisfied, or partially satisfied, advocates' motions for personhood on

example, great apes residing in Argentina, the Balearic Islands qualify as legal "persons." In May 2019, a High Court in India went so far as to endow all animals with a "distinct legal persona" in 2019. Another court conferred a legal personality on glaciers, the Ganga and Yamuna rivers, and other ecosystems in the state.[23]

Nonetheless, paradoxes continue to bedevil the enforcement of these newly acquired "rights." The Rights of Nature articles codified in 2008 in Ecuador's constitution are a case in point. Predicated on an anti-proprietary ethic attributed to Indigenous actors, these articles have nonetheless left Ecuador's Indigenous citizens powerless to veto incursions by corporate "persons" with designs on the land they inhabit.[24] A similar paradox explored in detail by environmental historian Bathsheba Demuth has surfaced within the field of international environmental law: The International Whaling Commission has been notoriously slow to acknowledge the rights of Indigenous constituents who kill and eat whales—yet nonetheless consider whales persons—to continue doing so.[25] This clash of ontologies highlights the limits of the conservationist ethic to vindicate the interests of the constituents it purports to enfranchise. A moral code that condones the killing of fellow persons for sustenance points to an entirely different understanding of the relationship between personhood, law, and death.

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behalf of their clients include Bangladesh Bolivia, Colombia, Ecuador, Germany, India, New Zealand, and the United States.

[23] Karnail Singh and others v. State of Haryana [Rajiv Sharma, J]. 31 May 2019. No. CRR-533-2013. p. 104. https://www.jurist.org/news/wp-content/uploads/sites/4/2019/06/PHCJudgment31519.pdf. Accessed 17 March 2020.

[24] For a fuller discussion of the tensions besetting the Ecuador framework, see Part 4 of Nathalie Rühs and Aled Jones, "The Implementation of Earth Jurisprudence through Substantive Constitutional Rights of Nature," *Sustainability* 8, no. 2 (2016): 174. For further commentary on the conflict of the framework with aboriginal perspectives, see Gabriel Eckstein, Ariella D'Andrea, Virginia Marshall, Erin O'Donnell, Julia Talbot-Jones, Deborah Curran, and Katie O'Bryan, "Conferring legal personality on the world's rivers: A brief intellectual assessment," *Water International* (2019) DOI: https://doi.org/10.1080/02508060.2019.1631558.

[25] See for instance Batsheba Demuth, *Floating Coast* (New York: Norton, 2019) and Rupa Gupta, "Indigenous Peoples and the International Environmental Community: Accommodating Claims Through a Cooperative Legal Process," *New York University Law Review* 74 (1999).

As I have hoped to show, far from representing a radical break from the liberal rights tradition, the "rights of nature" framework invokes a formulation of personhood accommodated by one of the core texts of social contract theory: Hobbes's *Leviathan.* According to Hobbes's non-anthropocentric formula, being a "natural person" names the practice of speaking on behalf of oneself, rather than participation in the human species. Why, then, in legal cultures saturated by Greco-Roman terms and frameworks, have the "rights of nature" proven so difficult to enforce?

The following section addresses this question through a discussion of what I call, with Hannah Arendt, the "perplexities of the rights of nature." I begin with a reading of Arendt's critique of human rights in *The Origins of Totalitarianism* (1951). In concert with her concept of "earth alienation," I suggest, the "rights of nature" discourse displays the same aporia Arendt identifies in human rights doctrine. Along the way I hope to show how, for Arendt, international legal actors responded to the plight of the stateless by doing what I call "speaking from nowhere," a standpoint prepared by the early European industrial and scientific practices. I conclude by tracing the first stirring of Arendt's concept of this "nowhere" to a draft of a little-known poem.

The Archimedean Point

> But they will teach us that Eternity is the Standing still of the Present Time, a *Nunc-stans* (as the schools call it); which neither they, nor any else understand, no more than they would a *Hic-stans* for an Infinite greatness of Place.
>
> —Hobbes, *Leviathan*, IV, 46[26]

Hannah Arendt is not a name one encounters frequently in environmental thought. Recent interventions that address the relevance of her arguments to ecological concerns are exceptions

[26] Cited in Jorge Luis Borges, *The Aleph and Other Stories* (New York: Penguin, 2004), 118.

that prove the rule: Arendt's political philosophy is generally understood not only to center the human but also to prioritize the world of *homo faber* over the given one.[27]

A cursory look at Arendt's themes bears this out. Taken in the context of her corpus, her remarks on what she calls the "earth" are glancing, appearing in a single section of *The Human Condition* (1958) and developed in the subsequent essay, "Man's Conquest of Space" (1963).[28] While she devoted much attention to the Enlightenment doctrine of "rights," and is best known for pointing out the aporia inherent in the concept, she never explicitly considered whether the same aporia inheres in the attempt to grant rights to other-than-human parties. Her skepticism about the possibility of rooting actionable legal protections in the condition of being human indeed suggests, on the face of it, that she would view the attempt as fanciful: Since membership in the human species guarantees nothing meaningful in Arendt's reckoning, it is hard to imagine that she would see much promise in the effort to extend rights to other-than-humans, e.g. animals and forests, on the basis of their "membership" in the even more spacious wilderness of merely being alive. If, in other words, being human confers no place to stand with respect to the law for Arendt, merely being part of the given world should provide even less of a foundation. Indeed, according to Arendt it was precisely by groping for traction in the "dark background of mere givenness" in order to legitimate their declarations that stateless people deserve protection that advocates compromised their ability to deliver on that promise.[29]

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[27] For examples of Arendt's uptake in environmental studies see Anne Chapman, "The Ways That Nature Matters: The World and the Earth in the Thought of Hannah Arendt," *Environmental Values* 16, no. 4 (2007), 433- 445; Alistair Hunt, "…Of Whom?" in *The Right to Have Rights* ed. Stephanie DeGooyer (Brooklyn: Verso, 2018), 75-102; Ari-Elmeri Hyvönen, "Labor as Action: The Human Condition in the Anthropocene," *Research in Phenomenology* 50, no. 2 (2020), 240-260; and Kerry H. Whiteside, "Worldliness and respect for nature: an ecological application of Hannah Arendt 's conception of culture," Environmental Values 7, no. 25 (1998), 25-40.

[28] See Arendt, *The Human Condition* ([1958] 2013), 257-268 and Arendt, "Man's Conquest of Space," *The American Scholar* 32, no. 4 (1963): 527–40.

[29] Arendt, *The Origins of Totalitarianism,* 301.

The wager of this section is that there is in fact life growing in the apparently barren valley between the field of ecocriticism and the fortress of Hannah Arendt's philosophical interventions. This admittedly stubborn vegetation comes into view when one considers the importance of *locus standi,* in the sense of "having a place to stand," for Arendt's conceptual repertoire. The idea captures her imagination in *The Human Condition* and elsewhere, but it is not typically brought into conversation with her critique of human rights. Nevertheless, Arendt's discussion of the early modern fantasy of locating an Archimedean point from which to view and act on everything bears a striking affinity with the metaphor of a "nowhere" that underpins her critique of human rights doctrine. I will argue that Arendt's conceptualization of the Archimedean point crystallizes what I call, following her own phrase, the "perplexities of the rights of nature." My thesis in what follows is: By extending moral and legal standing to their own *locus standi,* an entity as total and encompassing as "the environment as a whole," courts restaged a fantasy of omniscience Arendt associates with the early modern Enlightenment tradition. In the context of contemporary environmental rights litigation, an unexpected affinity between legal and scientific-industrial practices therefore suggests itself. In light of Arendt's reflections in *The Human Condition*, the attempt to bestow a legal personality on the given world can be understood as an expression, within the legal sphere, of the same desire Arendt identifies in the context of the scientific Enlightenment project.

Before turning to that text and the implications for the ecological debates, let us consider the phrase for which Arendt first gained notoriety: the "right to have rights." It first appeared in an article by Arendt titled "'The Rights of Man': What Are They?," published in 1949 in an American labor movement magazine. It is best known for its appearance two years later in Arendt's *The Origins of Totalitarianism*. In the book's ninth chapter, "The Decline of the Nation-State and the

End of the Rights of Man," Arendt examines two pathbreaking attempts to substantiate the first "right" in a human being's "right to have rights." The first, the "Déclaration des droits de l'homme et du citoyen" issued in 1789 by the National Assembly of France, grew out of the French revolution and helped spark the movement for equal recognition of those of all ethnicities under law; the second, the "Universal Declaration of Human Rights" adopted in 1948 by the United Nations General Assembly, stimulated the body of agreements known as "international human rights law." The term "person" [*personne*] appears only once in the 1789 document, in the sense of apprehension by authorities. By 1948 it emerges as a focal point, appearing five times as an independent noun and even acquiring its own clause in the form of Article 6: "Everyone has the right to recognition everywhere as a person before the law."

Exactly what did recognition "as a person" guarantee in the postwar era? Not much, in Arendt's reckoning. The plight of ten million "Displaced Persons," herself among them, in the wake of the second world war not only confirmed that being "human" conferred no privileges, Arendt held. It also dramatized a paradox implicit in the doctrine of human rights, one that eluded its drafters but not its intended beneficiaries: "The survivors of the extermination camps, the inmates of concentration and internment camps, and even the comparatively happy stateless people could see without Burke's arguments that the abstract nakedness of being nothing but human was their greatest danger," she wrote (1973: 300). Platitudes of the natural rights tradition notwithstanding, to be "nothing but human" was not, for Arendt, to arrive at the indivisible source of moral authority. It was, on the contrary, to forfeit the very qualities that made one legible to others. The nation-state need not fret, the confident declarations imply. The human genome will carry the day. For Arendt, the bearer of this genome, assured that it grants him "inalienable rights," instead finds himself in the position of the supplicant in Kafka's parable "Before the Law [*Vor*

dem Gesetz]," excluded from the law yet still subjected to its drama of submission and control, seeking permission from a gatekeeper who ultimately blocks his path but still takes from him everything he has.[30]

The doctrine of human rights failed in Arendt's view not only because it shifted the public's attention away from the actions of persecuting governments, but also because, by conflating personhood with species membership, it forgot that biology alone guarantees nothing. In promising otherwise, this doctrine yoked biology to political identity, absorbing a core assumption the racist ideology it sought to counter. Locating the origin of standing not in the fragile and fallible sinews of community membership but in the "dark background of mere givenness," it conjured a person who seems to "exist nowhere."[31]

It is Arendt's notion of existing "nowhere" that I would like to dwell on here. The image animates her critique of the "right to have rights," yet, somewhat curiously, it does not preoccupy the two dominant strains of that critique's reception. The first strain, pioneered by Seyla Benhabib, understands the "right" Arendt identifies in a normative sense, as a challenge and invitation to legal institutions to substantiate it:

> The first use of the term "right" is addressed to humanity as such and enjoins us to recognize membership in some human group. In this sense this use of the term "right" evokes a *moral imperative: "Treat all human beings as persons belonging to some human group and entitled to the protection of the same."* What is invoked here is a moral claim to membership and a certain form of treatment compatible with the claim to membership…One's status as a rights-bearing person is contingent upon the recognition of one's membership. But who is to give or withhold such recognition? Who are the addressees of the claim that one "should be acknowledged as a member"? Arendt's answer is clear: humanity itself. And yet she adds, "It is not clear that this is possible." (emphasis LS)[32]

[30] Kafka, *The Trial* ([1925] 1956), 267-269.
[31] Arendt, *The Origins of Totalitarianism,* 301.
[32] Seyla Benhabib, "Political geographies in a global world: Arendtian reflections *." *Social Research* 69, no. 2 (2002): 539+. *Gale Academic OneFile* (accessed April 3, 2023). https://link-

Benhabib understands the first use of "right" in Arendt's phrase "right to have rights" as structurally distinct from the second use. The second use designates what Benhabib calls its "juridico-civil usage," and it reflects the reciprocal obligations and entitlements rooting a subject to her particular community. For Benhabib, the first use of "rights" is reducible to a biological species classification: "humanity as such." But the aporia persists, because "humanity" does not name a community in the sense of those bearing reciprocal duties and obligations. Resolution comes in the form of a Kantian imperative which, for Behnabib, is anthropocentric:

> The asymmetry between the first and second uses of the term "right" derives from the absence in the first case of a specific juridico-civil community of consociates who stand in a relation of reciprocal duty to one another. And what would this duty be? The duty to recognize one as a "member," as one who is protected by the legal-political authorities and treated as a person entitled to the enjoyment of rights. This claim and the duty it imposes on us are "moral" in the Kantian sense of the term because they concern us as human beings as such, thus transcending all cultural, religious, and linguistic affiliations and distinctions that distinguish us from each other.

Benhabib here understands Arendt's first "right" to reflect a Kantian imperative that addresses all members of the human species. Humanity alone, for Benhabib's Kant, bestows a civil duty to enter into society and calibrate one's entitlements to the rights of others in the name of freedom and dignity. From this perspective, Arendt's grave doubts about the desirability of a "world government" remain opaque. As Benhabib herself admits: "It remains one of the most puzzling aspects of Arendt's political thought that although she criticized the weaknesses of the nation-state system, she was equally skeptical of the idea of a world government."[33] Arendt's skepticism about

galecom.yale.idm.oclc.org/apps/doc/A90439544/AONE?u=29002&sid=summon&xid=12640455. See also Benhabib, *Dignity in Adversity: Human Rights in Turbulent Times* (Cambridge: Polity, 2011)

[33] Ibid.

a "world government" is puzzling for Benhabib's account because it leaves Arendt's notion of a political "nowhere" underexplored. Once the implications of Arendt's thought experiment about the imaginary realm the law must conjure for itself in order to address "all humanity" are appreciated, the dubious virtues of a "world government" become more palpable.

The second dominant strain of interpretation of the first "right" in Arendt's "right to have rights" moves closer to theorizing the "nowhere" not of interest for Benhabib. In her discussion of Arendt's critique, Judith Butler parses the first "right" in terms of a "right to appear" rather than in terms of an irreducible end-in-itself consolidated by membership in the human species:

> In Arendtian terms, we can say that to be precluded from the space of appearance, to be precluded from being part of the plurality that brings the space of appearance into being, is to be deprived of the right to have rights. Plural and public action is the exercise of the right to place and belonging, and this exercise is the means by which the space of appearance is presupposed and brought into being.[34]

For Butler, the first "right" lacks the Kantian ring it has for Benhabib. It designates, instead, the right to enter a "space of appearance" within which otherwise neutral behaviors show up as "action[s]." The first "right" is thus fundamentally alienable for Butler in a way that it cannot be for Benhabib. A human being—for Benhabib, the substrate of the first "right"—cannot become biologically inhuman, no matter what her consociates assert. But appearance—for Butler, the precondition of the first "right"—is species-agnostic and dependent on recognition by the others before whom one acts.

Butler's line of interpretation, taken up by Slavoj Zizek and Jacques Rancière, receives the phrase "right to have rights" as a provocation designed to illuminate the limits of law, rouse the

[34] Judith Butler, *Notes Toward a Performative Theory of Assembly* (Cambridge, Harvard University Press, 2015), 59-60.

sleeping horse of democracy, and provoke readers into refreshing their political commitments.[35] It understands the doctrine of human rights as neoliberalism's handmaiden, a means of perpetuating harmful economic imperatives under the guise of humanitarian solicitude. And yet, Butler does not reckon any more explicitly than Benhabib with Arendt's concept of the political "nowhere." Where the notion is cited, it is typically taken as a rhetorical flourish meant to highlight the forcefulness with which Arendt diagnoses the plight of those who are "nothing but human." Both interpretive camps more or less converge in defining Arendt's argument as unthinkable beyond the zone of (human) politics.

There is a tension, however, between Arendt's skepticism about the possibility of a "right to have rights" and her reception as an anthropocentric thinker. If to be human alone (as opposed to a citizen or member of a polity) is indeed to "exist nowhere," as she posits, it follows that the "political" is not welded in her understanding to humanity as such. To be political is, rather—and here she moves in the tradition of Aristotle and to some extent the later Wittgenstein—to be a being who speaks and acts in concert with others, a "who" rather than a "what." If being biologically human is *not a sufficient condition* in Arendt's reckoning for being a "who," the consensus that she is indifferent and even hostile to ecological concerns is somewhat puzzling. After all, the claim that simply being part of humanity, biologically speaking, in fact confers *no access* to the political realm is quite literally the premise of her critique.

Jacques Rancière famously charged Arendt with ontologizing a difference between the person and the mere "human," depoliticizing the latter in the process.[36] In "Who is the Subject of

[35] See especially Butler, *Notes Toward a Performative Theory of Assembly* (Cambridge, Harvard University Press, 2015) and *Precarious Life: The Powers of Mourning and Violence* (Brooklyn: Verso, 2014).
[36] Jacques Rancière, "Who is the Subject of the Rights of Man?" *The South Atlantic Quarterly* 103: 2/3 (Spring/Summer 2004): 297-310. Ayten Gündoğdu has questioned whether Arendt in fact provides the basis for Agamben's account of sovereign violence, as Rancière proposes. While Agamben reads Arendt's paradox as the expression of a split between *bios* and *zoe* that holds human life hostage to sovereign power,

the Rights of Man?" (2004), Rancière traces Agamben's influential distinction between *bios* and *zoe* to Arendt's argument about the paradoxes of human rights. Rancière diagnoses the paradox Arendt identifies as a "tautology" that creates what he characterizes as an "ontological trap" that distracts from the issue at stake: the process of depoliticization brought about by the way certain democratic principles and practices, chiefly that of consensus, established themselves in modern nation-states.[37] For Rancière, Arendt's critique highlights one manifestation of this broader issue, rather than a paradox endemic to human rights discourse specifically.

In contrast Rancière develops, by way of Jean-François Lyotard's concept of the "Inhuman" from his 1993 lecture "The Rights of the Other," an alternative account of the "human" as a political operation that smuggles in those democratic principles under the guise of "bare life" (*zoe*):

> The Inhuman is the irreducible otherness, the part of the Untamable of which the human being is, as Lyotard says, the hostage or the slave. Absolute evil begins with the attempt to tame the Untamable, to deny the situation of the hostage, to dismiss our dependency on the power of the Inhuman, in order to build a world that we could master entirely.
>
> Such a dream of absolute freedom would have been the dream of the Enlightenment and of Revolutionary emancipation. It would still be at work in contemporary dreams of perfect communication and transparency. But only the Nazi Holocaust would have fully revealed and achieved the core of the dream: exterminating the people whose very mission is to bear witness to the situation of hostage, to obey the law of Otherness, the law of an invisible and unnamable God. ''Crimes against humanity'' appear then as crimes of humanity, the crimes resulting from the affirmation of a human freedom denying its dependency upon the Untamable. The rights that must be held as a response to the ''humanitarian'' lack of rights are the rights of the Other, the rights of the Inhuman.[38]

Gündoğdu reads Arendt as targeting the terms in which modern ethical dilemmas are couched rather than urging a retreat from all concepts (e.g. rights and citizenship) connected with sovereignty. See Ayten Gündoğdu, "'Perplexities of the Rights of Man': Arendt on the Aporias of Human Rights." *European Journal of Political Theory* 11, no. 1 (January 2012): 4–24.

[37] Jacques Rancière, "Who is the Subject of the Rights of Man?", 302.

[38] Rancière, ""Who is the Subject of the Rights of Man?", 309.

Rancière suggests here that "human rights" proved toothless not because they were hypocritical or apolitical. They were corrupted in his account precisely because they sought to represent what Lyotard calls the "Inhuman"—the 'untameable' spheres of the private and the sacred—and thereby reinscribed in their application a trace of the very violence that made them expedient. This line of argument leads Rancière to posit brilliantly that "[c]rimes against humanity" were in fact "crimes of humanity"—assertions of the will to dominate the "given." A comprehensive reckoning with Rancière's multilayered argument is beyond our scope here, but let us accept, for the sake of argument, his challenge to Arendt: the "human," far from the sign of a hopelessly depoliticized status, is already and problematically political. It has in fact only ever been a political instrument for enfranchising some and excluding others from the realm of rights and privileges.

What happens? Arendt's aporia stands. When the "human" is redefined as a proxy for the "person," misattributed by Arendt to the "dark background of mere givenness," the sense of "human" is displaced from that term onto what she calls "nowhere." Arendt's target—i.e., the notion of an entity ontologically prior to the law that the law comes to represent and protect through the category of the "person"—survives.

To bring out this point, let us return to the passages in which Arendt evokes the person who seems to "exist nowhere." When she speaks about this figure in *Origins,* Arendt clarifies that she is not referring to an actual living being or to that being's ontological status. The stateless person does, after all, exist somewhere—namely, earth. She eats and sleeps to the extent possible. She can barter, bargain, argue. She can flee, as Arendt herself did over the Pyranees. It is precisely because this figure *has* a literal location, necessarily, at all times, that makes the way the law talks about her so remarkable:

> From the beginning the paradox involved in the declaration of inalienable human rights was that it reckoned with an 'abstract' human being who seemed to exist nowhere….
>
> …This new situation, in which 'humanity' has in effect assumed the role formerly ascribed to nature or history, would mean in this context that the right to have rights, or the right of every individual to belong to humanity, should be guaranteed by humanity itself. It is by no means certain whether this is possible. For, contrary to the best-intentioned humanitarian attempts to obtain new declarations of human rights from international organizations, it should be understood that this idea transcends the present sphere of international law which still operates in terms of reciprocal agreements and treaties between sovereign states; and, for the time being, *a sphere that is above the nations does not exist*." (emphasis added)[39]

The passages reward sustained attention. They confirm, on the one hand, that the "nowhere" Arendt describes refers not to an actual position assumed by the displaced person. It signifies, on the contrary, the position *the law itself* must occupy in order to speak coherently about—indeed, invent—such a figure. The human rights declarations, although they reflected real agreements between nations, were not after all legally binding. The position their drafters had to occupy in order to speak coherently of "human rights" hovered outside the law, in an imaginary "sphere…above the nations." Opining on the rights of the stateless "person," the declarations therefore betrayed nothing whatsoever about their putative subjects. They instead projected, onto those subjects, a desire to be both everywhere and nowhere that by the twentieth century the secular liberal tradition had long ago disavowed.

Arendt hastens to clarify that the sphere she describes is empty *not* because it has *not yet been filled.* In other words, the vacancy is not a historical contingency. This would indicate that the law may, one day, establish a sovereign body that could adjudicate between nations. Arendt is unsentimental about what such a world state could entail. A formally defined, interrelated global

[39] Hannah Arendt, "The Decline of the Nation-State and the End of the Rights of Man" in *The Origins of Totalitarianism* (New York: Harcourt, [1951] 1973), 267-304, 291, 298.

government could decide by vote, without violating any democratic principles, to annihilate a portion of its own people:

> For it is quite conceivable, and even within the realm of practical political possibilities, that one fine day a highly organized and mechanized humanity will conclude quite democratically—namely by majority decision—that for humanity as a whole it would be better to liquidate certain parts thereof.[40]

When Arendt refers to "nowhere," in other words, she is referring not to a *desirable but absent* executive authority but to a *position that could not conceivably exist*.

Arendt concludes the passage somewhat enigmatically. After inveighing against the possible excesses of a world state, she lights again on the origins of the wish to speak from the impossible vantage point in question. In her reading, the wish is not reducible to tragic hubris or to Nietzschean *Wille zur Macht.* It resuscitates, instead, "one of the oldest perplexities of political philosophy…

> which could remain undetected only so long as a stable Christian theology provided the framework for all political and philosophical problems, but which long ago caused Plato to say: 'Not man, but a god, must be the measure of all things.'[41]

In groping for a place to stand proper to the "human" being as such, Arendt suggests, international law responded to the stupefying violence of the twentieth century as any trauma survivor might: by resorting to a vocabulary it thought it had outgrown—in this case, the rhetoric of theology. In doing so, human rights law partook in a gesture Ludwig Wittgenstein memorably characterized, in his "Lecture on Ethics," as "run[ning] against the boundaries of language":

> I see now that the nonsensical expressions were not nonsensical because I had not yet found the correct expressions, but that their nonsensicality was their very essence. For all I wanted

[40] Ibid., 299.
[41] Ibid., 299.

> to do with them was just to go beyond the world and that is to say beyond significant language. My whole tendency and, I believe, the tendency of all men who ever tried to write or talk Ethics or Religion was to run against the boundaries of language.[42]

While Arendt would likely balk at the sweeping brushstrokes with which Wittgenstein consigns ethics to "nonsensicality," her remarks illuminate in the doctrine of human rights the same tendency he identifies here. Like the Athenian *ekklesia* discussed at the beginning of this paper, whose legal actors fled the windy Pnyx to practice their trade in a structure devoted to poetic and religious forms of expression, post-Enlightenment drafters of human rights declarations sought refuge in a discourse outside law's remit. Unlike the compact, elitist Athenian *ekklesia,* however, whose occupation of the palatial and all-inclusive Theater of Dionysus remained awkward, the law behaved in the case of the human rights declarations as though it had travelled nowhere unusual.

How, if at all, does Arendt's critique of the "right to have rights" speak to the effort to extend standing to nonhuman animals and environments? An answer suggests itself when one considers Arendt's critique in concert with her introduction of the concept of "earth alienation" in *The Human Condition*. There, Arendt revisits the tendency of human thought to gravitate toward an impossible standpoint. This time, however, she is speaking about the gaze of modern science rather than that of international human rights law. Her remarks appear in her narrative account of the modern age, *The Human Condition,* which explores the reconfiguration of labor, action, and work from the emergence of Descartes' demon to the rise of automation in the 19th century.

In a section of Chapter VI titled "The Discovery of the Archimedean Point," Arendt examines the intellectual conditions of the shift from a geocentric to a heliocentric to, finally, the "centerless" worldview brought about by Einsteinian relativity.[43] What stands out to her in this

[42] Wittgenstein, "A Lecture on Ethics" *The Philosophical Review* 74, no. 1 (1965b): 3-12, 12.
[43] Arendt, *The Human Condition,* 263.

progression is not so much the changes in representations of time and space enabled by modern science and technology as their mutual expression of what she describes as the capacity of human beings to occupy, through the exercise of imagination, an "Archimedean Point." More than the machines that have enabled human beings to transgress the constraints of time and space, Arendt is struck by the imagined, impossible vantage point they presuppose, one that "lifted [Copernicus] from the earth and enabled him to look down upon her as though he actually were an inhabitant of the sun."[44]

This sublime forgetfulness, whereby the scientist "think[s] in terms of the universe while remaining on earth," comes for Arendt at a cost. It predicates itself on a relationship to nature she terms "earth alienation"[45]:

> Without actually standing where Archimedes wished to stand (*dos moi pou stō*), still bound to the earth through the human condition, we have found a way to act on the earth and within terrestrial nature as though we dispose of it from outside, from the Archimedean point. And even at the risk of endangering the natural life process we expose the earth to universal, cosmic forces alien to nature's household."[46]

The form of alienation produced by the invention of this Archimedian point is far more consequential, for Arendt, than her more frequently cited notion of "world-alienation." Indeed, she goes so far as to propose that in comparison to "earth alienation," the excesses that precipitated the political condition she diagnoses as "world-alienation" are "of minor significance."[47] Yet they traffic in that same view from nowhere she identifies in the discourse on human rights. Here,

[44] Ibid., 259.
[45] Ibid., 264.
[46] Ibid., 262.
[47] "Compared with the earth alienation underlying the whole development of natural science in the modern age, the withdrawal from terrestrial proximity contained in the discovery of the globe as a whole and the world alienation produced in the twofold process of expropriation and wealth accumulation are of minor significance." (1958: 264)

however, Arendt takes that diagnosis a step further: in speaking from the imagined "Archimedean Point," modern science has not only assumed the same position the law assumes when it announces, by fiat, the dignity of human life. It also forgets the fragility of what it seeks to control.

This less-sublime forgetfulness is ironically brought about in Arendt's view by a promiscuous intimacy with earth's processes. Fossil fuel mining, atomic accelerators, gene editing software, biotechnologies, and the like emerge in Arendt's reading as expressions of the tragicomic wish to "handle nature from a point in the universe outside the earth."[48] Comic because impossible: however enticing the alternative might be, legal actors do in fact reside somewhere. Tragic because, as the climate crisis demonstrates, the combined effect of their interventions may well destroy those earthly conditions that, for the time being, support the continued existence of their constituents.

"Deadly danger to any civilization is no longer likely to come from without," Arendt wrote in the final paragraph of her critique of human rights.[49] The specter of anthropogenic climate change has proven her correct, if not for the reasons she anticipated. The "global, universally interrelated civilization" she foretold has come to pass in the form of a neoliberal economic order that speaks not in totalitarian directives but in what Rob Nixon has characterized as the "[c]alm voice of global managerial reasoning."[50] Its industrial conversions of organic life has now "produce[d] barbarians from its own midst" in the form of today's Displaced Person: the climate refugee.[51] Obliged to seek asylum in the very communities whose idol of limitless growth helped

[48] Arendt, *The Human Condition,* 262.
[49] Arendt, *The Origins of Totalitarianism,* 302.
[50] Ibid., 302; Rob Nixon, *Slow Violence* (Cambridge: Harvard University Press, 2011).
[51] Arendt, *The Origins of Totalitarianism,* 302. In 2018, the world bank estimated that climate change would displace just 143 million people within their countries by 2050. As of July 2019, eight islands drowned in the Western Pacific. The case of a family from the Pacific Island state of Kiribati denied refuge in New Zealand helped prompt the U.N. to issue a landmark ruling prohibiting states from repatriating refugees to countries where the climate crisis threatens their lives. See Rigaud et al. (2018). See also "How Climate

conjure the seas that destroyed her house, this figure confronts the hand-wringing global North with the Darwinian premise of its alchemy: to be "human" alone was never anything other than to be animal, a "human resource."

We are now prepared to grasp the implications of Arendt's discussion of the Archimedean point for the discourse on environmental rights. The thesis is distilled, in a different context, by the Kantian philosopher Christine Korsgaard:

> If everything that's important is important *to* someone, to some person or animal, there's just no place to stand and make a comparative and absolute judgement about the importance of creatures themselves.[52]

From an Arendtian perspective, in attempting to extend moral and legal standing to its own *locus standi,* law abstracts it from the only context that could make those rights enforceable. It stops "standing" anywhere at all.

Consider, for example, the discourses that provoked the fateful Endangered Species Act of 1973. As ever, the Archimedean fantasy was not far off: it was only once global biodiversity databases became accessible that conservation laws got off the ground. The cultural theorist Ursula Heise persuasively situates these databases as iterations, within the domain of ecology, of the 19th century systems of classifying and administering human life Foucault identified as "biopower." The databases provoked "Red Lists" that highlighted "threatened" or "endangered" species, preparing the ground for the 1973 Act:

> In conservation biologists' jargon, a species that moves from Vulnerable to Near Threatened is 'downgraded,' whereas one that moves from Vulnerable to Endangered is 'upgraded,' in an odd reversal of the value judgements that usually come with upgrading

Change Can Fuel Wars." *The Economist*. May 23, 2019. https://www.economist.com/international/2019/05/25/how-climate-change-can-fuel-wars. Accessed 14 March 2020, cited in Podesta (2019).

[52] Christine Korsgaard, *Fellow Creatures: Our Obligations to the Other Animals* (Oxford: Oxford Unviersity Press, 2018).

> and downgrading…The more endangered a species is, the more valued it becomes, in a logic that resonates both with the capitalist valuation of scarce resources and with the cultural fascination, inherited from the Romantic age, with impending death—the aura of 'the last.'[53]

Indeed, under the terms of that Endangered Species Act, a given being qualifies for protection only insofar as its kind is disappearing.

"He found the Archimedean point, but he used it against himself; it seems that he was permitted to find it only under this condition."[54] The aphorism by Kafka forms the epigraph to Arendt's remarks on "earth alienation." It summarizes the awesome irony she identifies in the enterprise of modern science: With the warped logic of a dream, the ambition expressed by the mathematician Archimedes' dictum, "Give me a place to stand, and I will move the earth," has come to pass, in the reverse. The fantasy of moving the earth threatens to deprive living beings of a place to stand.

Arendt's remarks also illuminate the subtler upshot of Archimedes' axiom: his curious impression, despite all evidence to the contrary, that he has no dwelling place. Arendt, who frequently turned to the poetry of Rilke, Auden, and Brecht for critical inspiration, evokes this sense of being placeless in a poem of her own. Her biographer Elisabeth Young-Bruehl provides

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[53] Heise's provocative observations about the jargon of modern conservationist discourse are worth quoting in full: "…a narrative of risk and of value attribution is hardwired into these very categories, where extinction and endangerment are defined positively, whereas species that thrive are tagged by means of negation or approximation: 'near threatened' and 'least concern'—as opposed to, say, labels such as 'safe,' 'stable,' or 'increasing.' In conservation biologists' jargon, a species that moves from Vulnerable to Near Threatened is 'downgraded,' whereas one that moves from Vulnerable to Endangered is 'upgraded,' in an odd reversal of the value judgements that usually come with upgrading and downgrading…The metadata structure and the way in which it is socially used therefore imply a hierarchy of values that places the greatest investment in endangered species, with 'Critically Endangered' at the top. The more endangered a species is, the more valued it becomes, in a logic that resonates both with the capitalist valuation of scarce resources and with the cultural fascination, inherited from the Romantic age, with impending death—the aura of 'the last.'" Heise, Ursula. *Imagining Extinction* (Chicago: The University of Chicago Press, 2016), 72.

[54] Cited in Arendt, *The Human Condition*, 248.

us with the text, written by Arendt in 1926, not long after she abandoned her Christian theology studies in Berlin to write her dissertation at Marburg. Titled "in sich versunken," it reads:

> When I regard my hand—
> Strange thing accompanying me—
> Then I stand in no land,
> By no Here and Now,
> By no What, supported.
>
> Then I feel I should scorn the world.
> Let time go by if it wants to
> But let there be no more signs.
>
> Look, here is my hand,
> Mine, and uncannily near,
> But still—another thing.
> Is it more than I am?
> Has it a higher purpose?[55]

The vertigo Arendt here evokes finds an echo in the etymology of "exist." From the Latin *ex* (out) and *sistere* (take a stand), the word bears the trace of her claim in *Origins*. [56] To confront one's existence *as* a living being is in a certain sense to lose one's footing, to do what nations did when they tried to reckon with what Agamben called "bare life."[57] Here, at the dawn of Arendt's development and in a form she would later abandon, we therefore find the germ of that critique: to confront "the dark background of mere givenness" is in a felt sense to "stand in no land." In the dizziness of that encounter, the gravity exerted by the world of "signs" cedes its grip to different claims on Arendt's imagination.

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[55] Elizabeth Young-Bruehl, *Hannah Arendt: For Love of the World.* (New Haven: Yale University Press, 1982), 50-51.
[56] "exist, v." *OED Online*, Oxford University Press, September 2020, www.oed.com/view/Entry/66261. Accessed 22 September 2020.
[57] Georgio Agamben, *Homo Sacer: Sovereign Power and Bare Life.* Translated by Daniel Heller-Roazen (Redwood City: Stanford University Press, 1998), 10.

It is perhaps no accident that Arendt concluded her remarks on the aporia embodied by the "right to have rights" in aporetic terms, with an allusion to theology. She could easily have elaborated. She had after all written her dissertation on Saint Augustine. But she left the point at this:

> 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." (1973: 301)

There is no evidence that Arendt ever read Wittgenstein. He died the year *Origins of Totalitarianism* was first published. But the two philosophers converge on this point: When the law addresses itself to the value of given things, it steps into poetry.

Nature's Mask

The Ancient Athenian house of poetry—host to the fugitive *ekklesia*, home to dramatic spectacles and religious ceremonies—eventually saw, like the Pnyx, its own transformation. During the early years of the fifth century, the spectator who settled in the Theater of Dionysus before the play began could lift their gaze from the orchestra to the landscape against which the drama unfolded. Only a small wooden structure behind the stage interrupted the view.

Known as the "skene" [*skēnḗ* or σκηνή], this makeshift structure initially served as a hut where actors could change into and out of their costumes. Soon, however, this use was abandoned, and the skene was incorporated into the play as an artificial backdrop. Over the course of the century, the skene expanded into a two-story structure framed by wings and affixed with columns and doors for the *mēkhanē,* a crane that enabled actors playing gods to hover above the orchestra.

By the fourth century B.C., laborers had replaced the wood of the expanded skene with stone, making the skene a permanent part of the stage set.

With this shift, the transformation of the theater of Dionysus came to a rest. The private place in which actors "got into character" was converted into an artificial backdrop meant to supplant the spectators' view of the landscape.[58] This new façade, which flowered in Elizabethan theater and survives today in the temporal rather than spatial sense of "scene," obscured the mountains, sky, and advancing storms that had driven the *ekklesia* from their hillside.[59] "Nature" had assumed a persona.

The physical transformation of the theater illustrates, in visual terms, the question pursued in this paper: how did the modern liberal conception of the "person," a notion that integrates Roman juridical practices with classical rhetorical and poetic techniques, find an afterlife in the jurisprudential effort to expand liberalism's membership roster by extending legal standing to the environment? I have suggested that the "rights of nature doctrine" does not represent a radical break from the liberal definition of personhood as articulated in Hobbes' *Leviathan*. Nevertheless, it faces perplexities analogous to those Hannah Arendt famously identified in the movement to formalize rights for all human beings. For Arendt, by personifying humanity as such, legal actors echoed the scientific wish to speak from a position that could not conceivably exist. Following Arendt, I argue that in contemporary proposals to extend a legal personality to our dwelling place—i.e., what Christopher Stone called "the environment as a whole"—that same wish to speak from nowhere prevails.[60]

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[58] See "skene" in *Encyclopædia Brittanica*. Published 28 December 2018. https://www.britannica.com/art/skene Accessed 23 September 2020.

[59] Most scholars have attributed the *ekklesia*'s first transition—the change in orientation discussed in the first part of this paper—to an attempt to escape the wind that would sweep over the hillside. The same motive likely compelled their transition to the theater. See Thompson (1982), 139.

[60] Stone, "Should Trees Have Standing?" 456.

Arendt traces the changes wrought by the industrial revolution to modern scientists imagining themselves into just such a non-place. While she was more sanguine than her contemporaries in the Frankfurt school about their ramifications, the changes nonetheless came for her at a price. The Archimedean temptation presupposed by mathematics, she contended, echoing Hegel, placed humanity in the position of the spectators in fourth-century Athens, witnessing in their representations of nature nothing beyond the elaboration of their own minds: "[M]athematics," she wrote in *The Human Condition,* "succeeded in reducing and translating all that man is not into patterns which are identical with human, mental structures." It thereby enabled man to "move, risk himself into space and be certain that he would not encounter anything but himself, nothing that could not be reduced to patterns present in him."[61]

Whether cracks exist in that tautology is an open question for Arendt. In a well-known essay, "A Name of A Dog," her contemporary, Emmanuel Levinas, detailed one. Like Arendt, he had studied in Heidelberg with Husserl and Heidegger, though the two did not meet until 1970.[62] Levinas, too, spent time in a Nazi prisoner-of-war camp. "A Name of a Dog" recounts the experience:

> There were seventy of us in a forestry unit for Jewish prisoners of war in Nazi Germany. …[T]he other men, called free, who had dealings with us or gave us work or orders or even a smile—and the children and women who passed by and sometimes raised their eyes—stripped us of our human skin. We were subhuman, a gang of apes. A small inner murmur, the strength and wretchedness of persecuted people, reminded us of our essence as thinking creatures, but we were no longer part of the world. Our comings and goings, our sorrow and laughter, illnesses and distractions, the work of our hands and the anguish of our eyes, the letters we received from France and those accepted for our families—all that passed in

[61] Arendt, *The Human Condition,* 266.
[62] According to Simon Critchley, Levinas was "somewhat perplexed" on that occasion by the enthusiasm with which Arendt joined in the singing of the national anthem. See Anya Topolski, *Arendt, Levinas and a Politics of Relationality* (London: Rowman & Littlefield, 2015), 10.

> parenthesis. We were beings entrapped in their species; despite all their vocabulary, beings without language.[63]

Then one day, a feeling of humanness is briefly restored:

> And then, about halfway through our long captivity, for a few short weeks, before the sentinels chased him away, a wandering dog entered our lives. One day he came to meet this rabble as we returned under guard from work. He survived in some wild patch in the region of the camp. But we called him Bobby, an exotic name, as one does with a cherished dog. He would appear at morning assembly and was waiting for us as we returned, jumping up and down and barking in delight. For him, there was no doubt that we were men.[64]

Levinas, elsewhere an unambivalently anthropocentric thinker, here locates the affirmation of the "inner murmur" totalitarianism had all but extinguished in an unlikely source: the voice of a cherished animal.[65]

One wonders what Arendt would have made of the passage. We know, from an appreciative footnote in *Origins,* that she read Levinas.[66] She would likely have had much to say in response to his subtle suggestion that Bobby the dog, without recourse to Latin or its legatee, English, nevertheless stated, *I want you to be.*

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[63] Emmanuel Levinas, "The Name of a Dog, or Natural Rights," *Difficult Freedom: Essays on Judaism,* trans. Sean Hand (Baltimore: Johns Hopkins University Press, 1997), 152.
[64] Ibid., 153.
[65] Ibid., 152.
[66] Arendt, *The Origins of Totalitarianism,* 80, noticed by Topolski, *Arendt, Levinas and a Politics of Relationality,* 9.