

The Multivocity of Human Rights Discourse

Jeff Malpas

The fundamental deprivation of human rights is manifested first and above all in the deprivation of a place in the world which makes opinions significant and actions effective...
(Arendt, *The Origins of Totalitarianism*, New York: Meridian, 1958, p.296).

I. There is a strange tension at the heart of many contemporary discussions of human rights discourse: while ideas of human rights are often the focus of criticism on the basis of their 'universalist' character – such universalism being seen as a vehicle for the disguised continuation of an essentially European political hegemony,¹ even of colonialism² – that very attack typically depends on principles and commitments that are themselves part of the very idea of human rights in its contemporary form, even including principles and commitments that may be said to have similar 'European' origins. My aim in this chapter is to explore this tension – or at least certain aspects of it. It is a tension can be understood as itself exemplifying one form of the aporetic as it appears in human rights discourse, although all too often it is an aporia that remains unrecognised and unaddressed.

As an aporia that is present in many *critiques* of human rights, the aporia that is expressed above is only indirectly an aporia *of rights*. Properly it is an aporia that belongs, not to rights as such, but to a certain critical rights discourse. However, inasmuch as that aporia derives from considerations concerning the relation between universality and particularity (since the critical claim is that the putative *universalism* of human rights is undercut by what is actually their *particularist* character), so the aporia that affects certain critiques of human rights also seems to be connected with what genuinely appears as an aporia affecting rights themselves – an aporia that appears in terms of a tension between universalism and particularism that is indeed present within the very idea of rights. Thus talk of rights, and especially human

rights, seems to require a commitment to both the universal and to the particular, since if rights are to be anything more than mere abstractions, they must be given concrete meaning and significance in relation to particular individuals, circumstances, and situations, while at the same time, if rights are to carry any genuinely normative force, then they must surely aspire to a grounding that goes beyond the particular alone.³ Moreover, given the interdependence that obtains between the idea of human rights and notions of citizenship (an interdependence in which some rights can be seen as themselves derivative of certain forms of citizenship⁴), so the aporiae that appear here – both of rights *and* the critique of rights – can be seen as no less significant for citizenship as for human rights. If citizenship is to be founded in anything beyond the merely conventional and contingent, and in particular, if it is to connect with who and what we are as *human* (where this is understood as itself a primarily *ethical* category), then citizenship, whatever its singular instantiations, must also aspire to a universality akin to that which is expressed in the idea of a universal human right.

In exploring the issues at stake here, I want first to consider the idea of 'universalism' itself, as well as associated notions of both commonality and plurality. I will argue that some of the difficulty surrounding contemporary human rights discourse derives from a misunderstanding of the nature of the 'universalism' that such discourse invokes, as well as from a tendency to treat such universalism as *univocal* in character, rather than as actually allowing for the possibility of a discourse that is genuinely *multivocal*. This point turns out to have a significance that goes beyond human rights discourse alone, but when applied to human rights in particular, it also enables us to see how the idea of human rights is actually underlain by a more fundamental commitment to a certain pluralist conception of the human. Such a view of human rights can also be seen to carry over to the idea of citizenship: even though citizenship may be understood as involving the citizen's belonging to a particular polity, and so as implying a mode of commonality, it also,

at the same time, implies a mode of plurality that is essential to the idea of a polity as such.⁵

II. The 1948 Universal Declaration of Human Rights, which is clearly the key document relating to human rights in the period following the Second World War, is first and foremost a political document that results from a political process. This means that although it can certainly be located within a larger tradition of rights discourse, the Declaration cannot be taken as purely an outgrowth of that tradition, nor can it wholly be assimilated to it, or viewed independently of the particular events and negotiations that gave rise to the Declaration.

The immediate background to the 1948 Declaration, and to the rights expressed in it, was, of course, the experience of the Second World War, not only in Europe, but also, although it is sometimes overlooked, in East Asia, the associated rise of authoritarian and totalitarian politics, the violence enacted against, and the suffering borne by, individuals, communities, and populations. As is often pointed out, although the contrary view is nevertheless also frequently repeated, the Declaration was endorsed by, and negotiated with, a genuinely international constituency. Of those countries that abstained from voting on the Declaration in 1948 – there were no opposing votes – only Saudi Arabia did so on grounds that clearly derived from issues of cultural difference, and their concerns focussed particularly in the articles concerning marriage. It is certainly arguable that the remaining abstentions, by the USSR and its allies, as well as Yugoslavia and South Africa, were based in essentially political considerations. Of course, one might claim that the very framework of the Declaration was a European one, and that those who participated in the negotiations and discussions that led up to the Declaration, no matter their origins, had nevertheless been schooled into, and had accepted, an essentially European mode of thought and practice.⁶ Yet in this sense, the very framework of modern international politics, and of relations between states, may be said to be 'European', as is the larger frame of legal and political discourse in which

the Declaration of Human Rights is embedded. More to the point, that larger framework is generally not contested even by those who contest the discourse of human rights – and this is most obviously, but not exclusively so at a governmental level.

If one examines the articles of the Declaration then one can see that they encompass what might be viewed as a wide range of different rights. Some are quite general, relating to basic rights of political participation and citizenship, while others more directly relate to particular social institutions and practices, including marriage, religion, education, and employment. In this respect, the Declaration encompasses some of what might be viewed, within an older tradition, as rights that are possessed 'by nature', by virtue just of one's 'humanity', as well as some that arise only in relation to particular forms of social and political life (Article 23, which includes the right to form and to join trade unions, is an especially clear example). In this respect, it would be mistaken, as authors have pointed out, to view the Declaration as enshrining any particular underlying conception of rights – even a conception of rights as based in a purely liberal notion of the autonomous individual.

Admittedly it is individuals who appear as the primary bearers of rights in the Declaration, but the Declaration does not itself rule out the possibility of other forms of rights, and subsequent documents, notably the UN Declaration on the Rights of Indigenous Peoples of 2007, have articulated conceptions of rights as belonging to other than individual persons alone (although there is a also significant variation among human rights documents beyond the UN context). Significantly, the history of European rights discourse itself includes other such conceptions of rights, including conceptions of collective rights or rights that might belong to communities, while also making clear that notions of individual right need not always be in conflict with ideas of collective value. Moreover, as Brian Tierney points out, there are also notable examples from the history of European thought of rights discourse being put in the service of the defence of indigenous communities –

most notably in the work of the sixteenth century Spanish neo-scholastic thinker Bartolomé de las Casas.⁷

Rather than view the conception of human rights that appears in the Universal Declaration as the expression of a homogenous concept of human rights deriving from a liberal individualist view of the person, it seems more sensible to view the idea of rights that it deploys as a more heterogeneous notion – a working concept adapted to the practical political context in which it was applied. Henk Ten Have, who was formerly Head of UNESCO's Ethics Division, once commented that UNESCO's work in ethics was always driven by the idea that one should focus one's efforts in those areas that were reasonably tractable and amenable to resolution, in the hope that, in the longer-term, it would gradually enable the development of a body of agreement that would render other areas that were less tractable more so. Such a way of approaching matters, especially in the sphere of ethics and politics, seems an eminently sensible and practically oriented one, and although it may be seen to depend on keeping issues of normative and meta-ethics in the background, it nevertheless also depends on a mode of proceeding that itself involves a certain conception of the basis of ethical practice – a conception that can be understood as fundamentally 'hermeneutic' in character. Such a mode of proceeding presupposes that ethical understanding is already embedded in our modes of social engagement with one another, and that ethical reasoning depends on being able gradually to arrive at an articulation of that embedded understanding – an articulation that may not be identical with any particular ethical judgment that we may be inclined to make prior to such articulation. On this basis, ethical practice is always dialogical and negotiatory, as is political decision-making also, and it operates on the basis of our willingness to participate in, and ability for, genuine communicative engagement. On this point, of course, hermeneutics can be seen to converge with aspects of critical theory, and especially with the communicative approach exemplified in Habermas' work.⁸ One might argue that much the same point is at the

heart of Rawlsian political theory as well⁹ – even if there it is also allied with some other, more problematic, assumptions.

Understanding a document such as the Universal Declaration of Human Rights as a document that arises out of a concrete political process, rather than being merely a statement of political opinion or ideology, ought to enable us better to see how such a document cannot straightforwardly be condemned as the expression simply, for instance, of a pre-existing and purely European tradition of thought, or as just an instrument for the continuation of the European colonialist project. Of course, neither does it mean that elements of these are completely absent, but it does require that we take a more nuanced view of what is actually at issue in the document, and a more nuanced view of what it represents and how it is to be understood. This is, in fact, part of what I mean by the multi-vocal nature of human rights discourse – such discourse combines a number of elements, a number of voices, and in the case of the Universal Declaration – where those different voices are most self-evidently present in the variety of different rights the Declaration gathers together – this multivocality is a direct consequence of the way the document is embedded in and arises out of a larger set of political structures and practices, or what I would also refer to as a wider discursive context.

III. Although it might be said to emphasize the social and political context in which human rights discourse arises, the multivocality for which I am arguing here, and the emphasis on human rights discourse as essentially practical and negotiatory in character, should be clearly distinguished from any idea of human rights as lacking in universal relevance or application (of rights as so completely constituted by their historical or cultural contexts that they have little or no meaning outside of those contexts¹⁰) or, indeed, of such rights as mere social or political 'constructions'. The latter view' (which can be seen as a more developed version of the former and even as encompassing it) is one that brings serious difficulties with it, and not only when applied to human rights – I would argue that *the very idea* of social construction is

one of the most problematic of contemporary notions, even as it is also one of the most widespread.

To the extent that any and every phenomenon varies across its instances, and is always subject to determination by other factors, including social and political factors, constructionism is an unobjectionable position – although also a position that is, as a consequence, relatively un-illuminating (much of its significance has been in its polemical and sometimes pedagogical impact¹¹). Aside from its tendency to exaggerate its own explanatory or theoretical significance, and to misidentify causation with 'construction', constructionism is a problematic position to the extent that it denies or ignores the way in which the variability in phenomena is itself constrained by the character of the phenomena as such (it is the specification of such constraint that is partly at issue in conceptual articulation or analysis). Inasmuch as concepts and forms of discourse are seen, on a constructionist approach, primarily in terms of their character as products of particular social and political conditions, so they come to be identified with specific social and political formations. Thus particular concepts are viewed, not in terms of a content that might belong to the concept *as a concept*, but rather of the concept as expressive of a particular set of social or political determinants.

Yet it is characteristic of concepts that, far from being exhausted by the factors or conditions that give rise to them, they do indeed have a content that extends beyond the conditions of their generation, and this is itself a condition for conceptuality as such (which is just to say that generality is one of the hallmarks of the concept). In this respect, the fact that articulations of human rights such as appear in the 1948 Declaration arose on the basis of a specific historical circumstance, and through specific processes of discussion and negotiation, need not undermine their legitimate claim to wider, even universal, relevance. In much the same way, the fact that for something to be said, it must be said in a language which is historically and culturally specific, does not imply that what is said in that language only has

relevance to the historical and cultural context of that language or of the circumstances of the saying.

Concepts are, by their nature, universal or general in their scope. As the Latin origins of the term might suggest – the 'primary idea' in the Latin *concupiere*, from which 'concept' comes, being 'to take effectively, take to oneself, take in and hold'¹² – the concept is that which draws-in or gathers or is itself drawn-in or gathered. It does so 'within' the mind (as the Greek term usually translated as concept, *énnoia*, suggests – the term is literally 'in-mind', 'in'-*noûs*), but clearly it also does so within itself. The concept is thus that which gathers together those multiple instances to which it applies, and is thereby also common to those instances. As conceptuality is closely tied to discourse, so discursivity has to be understood as similarly oriented towards that which is common, which is gathered, which extends beyond any particular instance or set of instances (the Greek *lógos*, which can refer to discourse and to idea, as well as to language, reason, rationality, or principle, also connects, through *légein*, to the idea of gathering or gatheredness). Yet even though the concept is characterized by its extension across instances, this does not require that the instances across which the concept extends be completely determinable or specifiable, or that the intension that is associated with that range of instances be completely determinate either. Indeed, it is characteristic of the concept that it always retains an essential *indeterminacy*, both of extension and intension. This means that there is always more than one way of characterizing a concept – in the same way as there is always more than one way of translating a term. Rather than understanding the concept as that which is determined by the conditions that give rise to it, or that is completely defined by a specific intension or extension, concepts are best understood as opening up a conceptual space that allows different phenomena, different instances, to appear in certain ways. This also implies that the key to conceptual clarification and articulation is not the identification of sufficient and necessary conditions, nor the adjudication of marginal cases, but rather the

exploration of connections between concepts, and the elaboration of agreement as to what counts as a central case of the concept.¹³

Concepts are thus to be understood, much as Gadamer understands 'pre-judgments' or 'prejudices',¹⁴ as points of entry into the world, that open up ways of thinking and speaking about the world, and that are not to be construed simply as social or political constructs. Thinking is always conceptual, and this means that it is always a matter of configuring and reconfiguring the world in ways that relate to the world and yet never exhaust the world. Conceptuality is itself a dialogue between commonality and diversity. Moreover, the claim to universality – to a commonality that encompasses multiple instances – is at the very heart of conceptuality, as it is at the heart of thinking. All discourse, then, and not only the discourse of human rights, is universalist in character. Moreover, such universality does not undermine the possibility of attentiveness to difference – what is universal is precisely that which spans differences, giving salience to difference, and distinguishing between differences. The universality at issue here is also the universality that enables discourse to function as a mode of engagement between and across interlocutors. It is because discourse claims universality, as language itself does, that speaking is essentially about the making of a claim that never remains within a wholly private sphere, but always extends into the realm of the intersubjective, even, of the public.

The constructionist critique of human rights discourse, and other critiques like it, that assert the constructed (or culturally or historically specific) nature of rights talk, to say nothing of the idea of the human, thus involves certain fundamental misunderstandings of the nature of conceptuality, as well as of the universality or generality that the concept claims. Such critiques also misunderstand the nature of their own commitment to universality and generality as this follows from the conceptual and discursive character of critique as such. Here is part of the tension that I observed at the start of my discussion: the attack on human rights discourse as universalist nevertheless proceeds on the basis of its own universalist commitments – commitments that are evident, moreover, not only through the way

such claims already move within the domain of the conceptual and the discursive, but also through the way the way the critique of human rights is often based in a commitment to a universality that can be seen as lying at the heart of the political and the critical as such. In simple terms, the progressivist commitments that often motivate both proponents and opponents of human rights are not distinguished by a commitment to universalism on the one side and particularism of the other, but instead by different understandings of what the commitment to universalism, which I would argue they share, actually implies, and so also how particularism should then be understood.

IV. One might say of the idea of the universal, as of the ideas of the common and the unitary, that these are not best understood in terms of notions of the homogenous and the univocal, but always in terms of the opening up of a space of heterogeneity and multivocality. All too often are these ideas misconstrued in terms of ideas of unity without difference, of universality without plurality or particularity – as if unity and universality were paradigmatically to be treated on the model of that which is numerically one and generically simple.

This means that not only does the multivocal character of human rights discourse refer to the character of such discourse as always emerging within a larger domain of political negotiation and contestation, but also to the character of the rights that emerge out of it, and are expressed within it, must themselves be predicated on the plurality of the domain across which those rights extend, at the same time as that domain is indeed understood as a domain of commonality and universality. One might even argue that the idea of human rights already carries with it the idea of a domain in which the question of human rights in their specificity can arise as a question – in a way that is perhaps analogous to (although not necessarily committed to the details of) the Arendtian conception of the fundamental 'right to have rights' as that which first opens up the space of political discourse as such.¹⁵ That space is indeed a space predicated upon, as well as expressive of, a

certain fundamental commonality and universality. One might also argue that it is in this space that citizenship itself appears, not merely as the marker of belonging to some pre-existing and exclusive commonality, but as that which gives form to, as it establishes the possibility of, a genuinely *political* mode of engagement that is based on participation in a specific polity and yet thereby also extends beyond that polity – and so also makes citizenship itself something that can be the object of questioning and critique. Just as it connects with the idea of citizenship, so the idea of the space that is opened up by the idea of human rights, but that is also at issue in the ideas of conceptuality and discursivity, connects directly with the idea of the human.

Part of the critique of human rights that is so widespread consists in the claim that such rights rest on the idea of some common 'human nature' that lacks both empirical and theoretical legitimacy – there is no 'nature', no 'essence', so it is claimed, that all human beings have in common. Yet although there is certainly a way of thinking about 'nature' or 'essence' that is problematic – that takes these notions as designating some transcendent entity over and above that to which they belong – there is also a more straightforward sense in which talk of 'nature' or 'essence' concerns just the question as to *what something is*¹⁶ and so too, what is to be understood as pertaining to the *concept* of that thing. Such a question is quite legitimate – even when asked with respect to the human – and so the question of 'nature' or 'essence' has to be construed as legitimate also. Yet it also has to be viewed against the same understanding of conceptuality that was outlined in the section just above. The explication of 'nature' or 'essence' thus cannot rest merely on the specification of sufficient and necessary conditions, nor is it decided by the adjudication of marginal cases. Instead it is a matter of correctly situating that which is in question within a larger framework – the explication of 'nature' or 'essence' is thus a matter of the explication of a set of *relations* just as much as is the explication of a concept.

If human 'nature' is understood as consisting in some unique list of individual capacities or characteristics that belong only to the human, and to every

human so designated, then such a notion is clearly empty – there is no such 'nature' that belongs to the human. Yet this does not mean that the notion of the human is itself empty or meaningless, or that one cannot speak at all of the 'essence' of the human or even of a 'nature' that belongs to the human. Although the idea of the human is sometimes used as just a biological classification (as in *homo erectus*, *homo neanderthalensis*, *homo sapiens*, *homo sapiens sapiens*), it also has a sense that goes beyond the biological alone. It is this sense that is at issue in the idea of the 'humanitarian' and the 'humane', that is invoked when we talk of the 'humanity' of an organization such as *Médecins Sans Frontières* as well as of the 'inhumanity' of a regime such as that of Syria's Bashar Assad, and that is also at issue in ideas of human suffering, human dignity, and human rights. It is a sense of the human that is fundamentally *ethical* in character, and as such stands altogether apart from biological notions (and so is not tied to any notion of species any more than to 'race'). It is also a sense that is characterized less by any positive determination that belongs to it (at least of the sort that is usually looked for), than by its own *lack* of determination – by its fundamental openness to itself, to others, and to the world. The 'essence' or 'nature' of the human is given in this very 'indeterminacy' or openness, and so also in its orientation towards the plural as well as the unitary.

Here the idea of the human converges with the idea of the space of political engagement understood as itself a space, or better, a *place*,¹⁷ of both openness and unity, of commonality and plurality. In this respect, what I have called the multivocity of human rights discourse is also a multivocity that belongs not only to the political, but also *to the human* (the human thus always carries an irreducible plurality within it no less than it also carries an irreducible unity or singularity). It is, moreover, a multivocity that is essentially given in and through the opening up of a space of commonality and plurality that is also a space of conceptuality and of language – a space of assertion and denial, of articulation and contestation, of questioning as well as answer, of speech and of silence (so the nature of the human can now itself be seen to connect directly with the nature of conceptuality and of

language¹⁸). On this basis, if we are to speak of a right to have rights, then that right is indeed one that is inextricably bound up with the right to speak and to be heard, as well as with the right to formulate opinion and to act, but this right is inconceivable without the original entry into language with which comes the entry into the domain of human being, and so into the domain of the ethical and the political both.

V. The thinking of plurality or difference is inseparable from the thinking of unity and commonality, as particularity is inseparable from universality. That this is so may often appear obscured by the focus on the fact of plurality, difference or particularity as such, just as plurality, difference and particularity may be obscured by too narrow a focus on unity, commonality and universality. To suppose that one could focus on either set of concepts independently of the other, or on any single concept alone, however, would be to overlook the *relational* character of concepts, with respect to which these concepts are no exception. Plurality and unity, difference and commonality, particularity and universality, must themselves be understood as standing always in an essential relation to one another – none possessing an absolute priority over the others. Moreover, the very idea of relation appears here, not as a more fundamental mode of unity, or indeed of plurality, but in terms of the play of plurality and unity as such. Relatedness is the sameness of what differs as it is also the difference of what is the same.¹⁹ The interplay that obtains between these concepts is central to understanding the character of conceptuality and discursivity, as well as to the understanding of particular discursive structures and concepts, including that which is exemplified in contemporary discourse around ideas of human rights.

The opposition that is so often taken to obtain between plurality and unity, difference and commonality, particularity and universality, although always problematic, gives rise to special difficulties in the thinking of politics and the political. Recognition of the irreducible plurality of the political, as of human life and

society in general, is often thought to mean that the only basis that can be found for politics, for political institutions, actions, and decisions, is an essentially pragmatist or historical one (sometimes under the guise of the 'political' itself): political life is founded in a historically contingent political practice. One of the difficulties, however, is that such a foundation for politics, although based in the recognition of supposed plurality, cannot genuinely operate to defend such plurality except within highly circumscribed contexts. In cases where there is deep division, such as might obtain between different communities with different political histories, it is not that there is no means for the resolution of differences, but that the means for resolution that each might have at their disposal will be equally legitimate and equally arbitrary. Understood as founded in a narrow conception of politics alone, and so as historically and politically conditioned – and especially when understood as also given over to an irreducible plurality – politics becomes a domain of contestation in which legitimacy is to be found only through victory in such contestation. Politics becomes political pragmatism ameliorated, if at all, only by historical distance.

In the absence of any understanding of a basis to discourse and discursive action that is other than the contingency of discourse itself, then whatever succeeds in discursive contestation has to be counted as legitimate. One might argue that this is precisely the situation in which much public discourse finds itself today – a situation in which, it should be noted, any idea of genuine critique becomes impossible. What obtains instead is little more than a free-play of opinion – perhaps one might say, of 'spin' – that is answerable to nothing other than itself. This is why, in contrast, truth (all too often attacked, like notions of 'rights' or of the 'human', as part of the project of capitalist and imperialist hegemony that carries with it an essential violence²⁰) plays such a key role in any understanding of discourse as something other than merely the arbitrary play of discursive practice: truth constrains discourse and thereby makes it possible – one might also say that it 'disciplines' discourse, but only in the sense in which the boundary disciplines, constrains, and thereby also makes possible, the space that appears within the

boundary. In one sense, truth does indeed operate as a principle of unity here – it demands that we attend to what is at issue in discourse, and that discourse be answerable to that about which it speaks – but equally one can understand truth as a principle that encompasses both unity and difference in that it insists both on the identity and non-identity of what is spoken and what is spoken about – discourse converges in its objects at the same time as it also stands apart from them, and this is the very foundation of discourse as well as of meaning.

What I have here referred to as the 'multivocality' of human rights discourse involves an understanding of ideas of human rights and of citizenship, and the discourse in which these are embedded, in a way that is directly connected with this understanding of truth. Truth is properly to be understood as opening up discourse rather than closing it off – it also does so precisely through the way it also 'disciplines' and so constrains discourse. Human rights discourse not only operates within a certain field of discursivity that opens up possibilities for discursive engagement, but it also takes as a prime concern the proper maintenance of such discursive openness. One of the consequences of this approach is that human rights have to be understood, as perhaps citizenship must be understood also, more as a *project* than an *accomplishment*. There will never be a time when the question of the rights that pertain to the human is settled or at which we can point to a single definitive list of n no specification of the conditions that are determinative of the human. In part, this is because the domain of human rights is always a domain of questionability rather than of final answers – in which we must always remain attentive to, and questioning of, the demands that are made *on behalf* of the human, as well as those demands that may also be made *against* the human. Such attentiveness, such questioning, itself arises, however, only in the space of 'universality' – which means, at the same time, of 'particularity' – that belongs to the human as such. At this point, the aporetic character of human rights that is expressed through the tension that seems to obtain between universality and particularity can be seen to point towards the character of rights discourse as itself

essentially aporetic – there is always a 'difficulty of passage' associated with rights discourse, just as the domain of rights is always a domain of questionability and contestation. Moreover, that this is so is in part because the aporia that belongs to rights is itself tied to an aporia that belongs essentially to the human.

¹ See eg, Chris Brown, 'Universal Human Rights: A Critique', *The International Journal of Human Rights* 1 (1997): 41-65. Brown's position is exemplary of a widespread approach that often derives from a variety of neo-Hegelianism also associated with the work of Richard Rorty and others.

² See, for instance, Makau Mutua, *Human Rights: A Political and Cultural Critique* (Philadelphia: University of Pennsylvania, 2008). Mutua's is a more sophisticated version of a very common approach to human rights discourse that also to have a high degree of popular currency especially in parts of Africa and Asia.

³ Even those rights that

⁴ So that even rights that may appear highly specific (rights, for instance, that obtain only within certain communities or sorts of communities) can be seen to have a grounding in what goes beyond that specificity.

⁵ The interconnection of commonality with plurality at issue here echoes ideas in several contemporary theists, perhaps most notably, Jean-Luc Nancy, in *Being Singular Plural*, trans. Robert D. Richardson (Stanford: Stanford University Press, 2000). It is an idea that I would argue (as indicated below) derives most immediately from Martin Heidegger's thinking of the relation between identity and difference.

⁶ As does Makau Mutua – see eg. *Human Rights: A Political and Cultural Critique*, pp.154-55.

⁷ Tierney, 'The Idea of Natural Rights: origins and persistence', *Northwestern Journal of International Human Rights* 2 (2004): 1-12.

⁸ See, for instance, Habermas, *Moral Consciousness and Communication Action*, trans. Christian Lenhardt and Shierry Weber Nicholsen (Cambridge, Mass.: MIT Press, 1990).

⁹ See, for instance, Rawls, *Political Liberalism* (New York: Columbia University Press, 2005).

¹⁰ Which seems to be close to the view adopted by Chris Brown, 'Universal Human Rights: A Critique', as cited above. See also Rex Martin, *A System of Rights* (Oxford: Oxford University Press, 1993). To some extent, it might be argued that the arguments advanced by writers such as Brown and Martin commit a version of the genetic fallacy: assuming that the conditions of genesis of a concept are relevant to the truth or appropriate applicability of that concept, whereas the conditionality that pertains to the way a concept arises is a conditionality that is *prima facie* distinct from the conditionality that pertains to the concept as such or to its content. One might argue that it is only a mistaken construal that finds such a fallacy present in the work of such as Brown and Martin (a more generous reading takes them to be pointing to certain inconsistencies in the positions they critique), but even if that is indeed the case, the fallacy does seem to be present in many constructionist approaches.

¹¹ Something acknowledged by Max Travers in 'The Philosophical Assumptions of Constructionism', in Keith Jacobs, Jim Kemeny, Tony Manzi (eds.), *Social Constructionism in Housing Research* (Aldershot: Ashgate Publishing Company, 2004), pp.14-31.

¹² See *Oxford English Dictionary*, Vol I (Oxford: Oxford University Press, 1971), entry for 'conceive', p.757

¹³ This is very much in keeping with the strategy that seems implied in the practice sketched by Henk Ten Have that is referred to below.

¹⁴ 'Prejudices are biases of our openness to the world' – Hans-Georg Gadamer, 'The Universality of the Hermeneutical Problem', *Philosophical Hermeneutics*, ed. David E. Linge (Berkeley: University of California Press, 1976), p.9.

¹⁵ See Arendt, *The Origins of Totalitarianism* (New York: Meridian, 1958). See also Seyla Benhabib's reading of this Arendtian notion in *The Rights of Others* (Cambridge:

Cambridge University Press, 2004), p.56-61. I read the Arendtian idea of a 'right to have rights' in more strongly ontological terms than does Arendt herself (although she is not always consistent on this matter).

¹⁶ So Aristotle uses the phrase that is usually translated as 'essence', the *ti ên einai*, literally 'the what it was to be', as more or less the same as the *ti esti*, the 'what it is' – see for instance, Aristotle *Metaphysics* Z 4.

¹⁷ The idea of place is implicit in much of my discussion here, and is central to the mode of thinking that this essay can be seen as exemplifying, and which I have elsewhere referred to as philosophical topography or topography – see, for instance, *Heidegger and the Thinking of Place* (Cambridge, Mass.: The MIT Press, 2012).

¹⁸ It should be noted that the idea of language at issue here is not some merely technical notion that designates a certain formal syntactic and semantic structure or any mere system of communication, but rather refers to that very space in which are possible assertion and denial, articulation and contestation, question and answer, speech and silence.

¹⁹ The key text in twentieth century thought for the understanding of what is at issue here (although it uses slightly different language) is Martin Heidegger's *Identity and Difference* (New York: Harper & Row, 1969), although I would argue that it is also a point that appears elsewhere in the philosophical tradition, most notably perhaps in Aristotle.

²⁰ See, for instance, Gianni Vattimo and Santiago Zabala, *Hermeneutic Communism* (New York: Columbia University Press, 2011); see also the discussion of Zabala and Vattimo's position in Jeff Malpas and Nick Malpas, 'Politics, Hermeneutics, and Truth', in Silvia Mazzini (ed), *Renewing Communism through Hermeneutics? On Vattimo and Zabala's Hermeneutic Communism* (London: Continuum/Bloomsbury, forthcoming, 2013).