

Ethics at the Beginning of Life

A phenomenological critique

JAMES MUMFORD

OXFORD STUDIES IN THEOLOGICAL ETHICS

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A Phenomenological Critique

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For Rich Nathan, a great inspiration

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Introduction

Myth has long proved a useful source of counterfactuals, for how things might otherwise be but are not. And when it comes to first 'emergence' in the world what we find in myth are figures making their entrances in a whole variety of fashions. So, Athena leaps fully-formed from the head of her father Zeus when it is cut open by Hephaistos. Aphrodite by contrast emerges from the white foam of the Cyprian sea. 'Out stepped a modest and beautiful goddess,' Hesiod reports. Of course, in *Genesis*' creation accounts, while Adam is created from the dust, Eve is created from his rib, though both are again instantly formed as adult members of their kind. And then there is the autochthonous myth of the creation of the founders of Thebes. Having killed a water-dragon, upon the instruction of Athena the Phoenician prince Cadmus sows the dragon's teeth and up from the ground instantly springs a 'crop' of full-grown ferocious warriors.

What is the significance for ethics of the fact that human beings are *not* brought into the world in any of these ways? That 'human emergence'—by which I refer not to human evolution but rather to the way in which each human being first appears on the scene, to the reality of gestation—is an altogether different phenomenon? What are the implications for morality of the fact that new members of our kind all appear in the same way? And that none appear fully formed? These are the sets of questions with which this book will be concerned, and they will be approached through a distinctly phenomenological lens.

Historically, phenomenology is a philosophical movement which has been far more interested in death than it has in birth. 'Factical Dasein exists as born,' Heidegger wrote, 'but as born it is already dying.' And while there are important treatments of birth in the phenomenological tradition—I will examine, for instance, those of Jean-Luc Marion and Jean-Yves Lacoste, as well as Iris Marion Young's seminal essay, 'Pregnant Embodiment'—as of yet there has been no systematic phenomenological investigation of how

¹ Martin Heidegger, *Being and Time* (1927), trans. John Macquarrie and Edward Robinson (Oxford: Blackwell, 1962), §72, 426.

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human beings first appear in the world. This, then, will be the task undertaken in Part I of this study. It will not consist of sustained engagement with a single major author such as Edmund Husserl, Martin Heidegger, or Maurice Merleau-Ponty. In my view, no one phenomenologist has written enough on our subject to warrant that. Rather, the aim is to piece together insights from across a range of phenomenological writing, both German and French, both twentieth and twenty-first century, and apply them to the question of how human beings first appear in the world. I want to draw not only upon Husserl, Heidegger, and Merleau-Ponty, but also Marion and Lacoste, Edith Stein, Hannah Arendt, Jean-Luc Nancy, Gabriel Marcel, Michel Henry, Luce Irigaray, Iris Marion Young, Hans Jonas, and Robert Spaemann.

Though it may not have been applied to the present subject, phenomenology is attractive for our purposes here because it is a method of reflection wanting to return to the world and to see it as if for the first time. It aims to achieve a more accurate description of the world and the experiences it furnishes by returning to the first-person point of view, to 'whatever is immediately evident to consciousness as it wakes up and looks around it'. Since for phenomenology 'the divorce between fact and value has long since been overcome', attempts to record reality are no longer subject to a strict, stifling distinction between raw data and real meaning.³ Rather, recognizing that 'reality gives itself to the whole person' and that 'to exist is to maintain a complex relation with reality', phenomenology is able to appreciate that numbers appear in a different way from values, sensible objects in a different way from death, and yet that none of those entities are less 'real' for all that.⁴ And phenomenological descriptions of worldly experiences and entities are richer and better because they are attentive to the way things appear over time. The phenomenologist does not naively expect everything in the world to appear to her instantly, without delay.

² Jean-Yves Lacoste, 'Du phénomène de la valeur au discours de la norme', in his *Le monde et l'absence d'œuvre et autres etudes*, 107–27 (Paris: Presses Universitaires de France, 2000), 109.

³ Jean-Yves Lacoste, 'Ethique et phénoménologie' (2006), in *Présence et Parousie*, 231–56 (Paris: Ad Solem, 2006), 241.

⁴ Lacoste, 'Ethique et phénoménologie', 241.

Having in Part I undertaken a phenomenological investigation of human emergence, I proceed in Part II (Chapters 4 and 5) to assess the implications of this for moral, political, and theological ethics. What a phenomenological approach suggests, I contend, is that the reigning ethical frameworks in our culture have largely ignored the reality of human coming-to-be. The theories of recognition underpinning reproductive medicine and policymaking in late modern Western societies are predicated on things being otherwise than they are.

The pivotal presupposition which justifies this application of phenomenology to ethics is that ethics has a stake in description. Some of the most pivotal moral decisions we face, even decisions taken at moments of crisis, hinge upon competing descriptions. How we describe something—some phenomenon in the world, some situation in which we find ourselves involved—makes all the difference as to how we decide we are permitted to act. Say, for example, someone was to describe sex as a purely physical encounter. Would it be coincidental that that person then seized any sexual opportunity that presented itself, regardless of any existing relational commitments he or she might have? Well, so too with beginning-of-life ethics: how we think we are justified in acting depends upon how we have described the entity found inside the mother's womb and, indeed, to the whole phenomenon of human emergence.

Before coming to summarize briefly the chapters of this book, it is worth from the outset drawing attention to an important feature of my argument. It is this: in so far as it is phenomenology which is brought to bear upon descriptions of human emergence presupposed by contemporary English-speaking ethicists, this book essentially constitutes an immanent *philosophical* critique of beginning-of-life ethics. In other words, the primary challenge to reigning 'liberal' moral and political conclusions comes not from religion but from a rival philosophical tradition. This does not mean that religion is irrelevant—its constructive role is vital, as we shall see in the final chapter. But it does mean that the force of the critique of English-speaking ethics comes essentially from Continental philosophy.

Chapter 1, 'Phenomenology and Pregnancy', begins with a short, introductory sketch of the phenomenological movement. Following Merleau-Ponty, I argue that a philosophical approach is distinctly phenomenological if it is committed to describing the world from a first-person viewpoint— that is, as it appears to an individual

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consciousness. Aspiring both to universality– concerned with questions of what something essentially 'is' – yet also wanting to offer 'an account of space, time, and the world as we "live" them', phenomenology seeks access to larger structures of reality via an understanding of phenomena from within.⁵ As such it is a tradition which is 'anti-scientistic', eschewing descriptions of reality preoccupied with questions of psychological origin and causal explanations, but also irreducible to the idealist return to consciousness. For phenomenology, the 'I' who is the 'absolute source' of perception is no detached consciousness but rather 'defined by (its) situation' and thoroughly rooted in the world.⁶ Accordingly, any phenomenological description of human emergence must be committed to describing the phenomenon from the perspective of the mother—as Luce Irigaray puts it, 'She who has been the company and the mediator of our first being in the world.'7 Drawing upon both feminist phenomenology and maternal testimony, I examine first pregnant women's sense of being 'decentred, split, or doubled' and, secondly, their experience of the hiddenness of that which is appearing to them. What is the significance of these elements of maternal experience? Respectively, I contend, they reveal pregnancy to constitute a personal encounter with an other 'irreducible to me', but also that it is at the same time an extraordinary encounter since the phenomenon only shows itself over time.

'A picture held us captive,' said Wittgenstein. Having in Chapter 1 established pregnancy to be an extraordinary encounter, Chapters 2 and 3 further explore the nature of this encounter. This is achieved by identifying two different 'pictures' or models of human encounter that have held sway in modernity and prevented us from seeing the object of human emergence 'as it really is'. These two pictures are the 'I-Thou' model developed by Martin Buber at the beginning of the twentieth century and, reaching further back in time, the seventeenth-century contract formulation of human encounters.

Buber's picture of encounters, so I argue in Chapter 2, has 'held us captive' by making us think that any human encounter which is not characteristized by a certain degree of reciprocity—which is not suffused by affection or highly inter-subjective—is sub-personal (for Buber, an

⁵ Maurice Merleau-Ponty, *Phenomenology of Perception* (1945), pp. vii–xxiv, trans. Colin Smith (London: Routledge, 1962), vii.

⁶ Merleau-Ponty, Phenomenology of Perception, p. vii.

⁷ Luce Irigaray, Sharing the World (London: Continuum, 2008), 117.

'I-It' form of relation). Though Buber is more nuanced in what he actually wrote (particularly in the later essays, which serve to qualify his pioneering treatise of 1917), the legacy of his strongly polarized scheme is essentially to *idealize encounters*. And the effect of this is to dismiss the original encounter between mother and 'newone' as in some way 'inauthentic', in turn ensuring that we miss the significance of the condition of hiddenness in which human beings first make their entrances in the world.

In a parallel way, in Chapter 3, I contend that the contract formulation of encounters, emanating as it did from seventeenth-century political philosophy, tempts us to conceive of human encounters which are *not* mutually dependent and equally willed by both parties as in some way lacking. This leads in turn to our missing the significance of what Heidegger termed the *Geworfenheit* or essential fortuitousness of life—the fact that in the first instance we are 'thrown into' an encounter in which we are fully dependent upon the other party.

These two chapters, then, fill out my phenomenological investigation of human emergence. They do so by engaging dialogically with thought-systems that have impeded us from seeing what we should have seen. Within them, it is worth signalling from the start, certain strands of feminist thought, attentive to the maternal viewpoint and instinctively suspicious of modernity and its constructs, proves pivotal to deconstructing these 'screens that conceal the workings of things'.

Chapters 4 and 5, constituting Part II of this book, assess the moral implications of Part I's phenomenological investigation. Keenly aware of how daunting it is to wade into the English-speaking contemporary beginning-of-life ethics, my initial move is to divide those questions into two distinct categories. On the one hand are questions about the 'what', that is, about the status of the subject. On the other hand are questions about the 'where', that is, about the particular situation or context in which the subject is found and the action potentially to be launched. These are the topics of Chapter 4 and Chapter 5 respectively.

Chapter 4, entitled 'Grounds for Recognition', really brings us to the heart of this study. Do the secular theories of recognition both proposed and operative in our late modern culture truly take into account the way human beings appear in the world? By 'theory of recognition' I refer to the basis upon which human rights come to be ascribed; to the different ways of answering King Lear's fundamental boundary question—'who's in and who's out?' In other words, which creatures are to be treated as fully our equals? Which are to be considered persons? The first theory of recognition I explore is empathy. If only we could imagine ourselves into another's position, so thinkers such as Richard Rorty and Raimond Gaita have advocated, then we would realize that he or she is a human being just as we are. Where this approach breaks down, however, is in its presupposition of the intimate acquaintance with the other, precisely the kind of acquaintance which, as we saw in Chapter 2, is denied at the beginning of human life. In short, the 'original encounter' is not the unqualified I-Thou encounter required for empathy.

If the empathetic model fails to reckon with our findings in Chapter 2, then the second proposed grounds for recognition, that based on the attribution of certain capacities, fails to do justice to Chapter 3's conclusions. For when liberal Western societies landed upon 'viability' as the threshold in pregnancy when abortion was no longer to be permitted they were, I argue, essentially selecting the particular capacity of autonomy or self-sufficiency as a basis for recognition. Yet, so I maintain, this is to ignore the way that human beings first appear in the world as radically dependent; it is to ignore what Hans Jonas termed the 'radical insufficiency of the begotten'.⁸

The role phenomenology will play in this study is, therefore, essentially critical. Phenomenology delivers resoundingly negative conclusions when assessing the adequacy of dominant theories of recognition. Yet, as many contemporary ethicists have been at pains to show, the question of personhood—that is, what the newone essentially is—is not the only relevant issue in beginning of life ethics. The question of where the newone is located—that is, the nature of the moral situation in which the newone finds itself involved—may prove pivotal to determining which courses of action may or may not be permitted. Chapter 5 therefore holds up to phenomenological scrutiny the more contextual, casuistic discussions of abortion, the various justifications of force offered by Judith Jarvis Thomson in her famous essay 'A Defence of Abortion'. Are these arguments, built as they are upon analogy, any more descriptively adequate than the

⁸ Hans Jonas, *The Imperative of Responsibility: In Search of an Ethics for the Technological Age* (1979; Chicago and London: The University of Chicago Press, 1984), 134.

theories of recognition explored in Chapter 4? My answer, again, is a negative one.

Before turning to the first chapter and my introductory sketch of the phenomenological movement, let me try to step back from the detail of these arguments and suggest in a broad-brush way two reasons why such a study may be of value at the current time. Seeking recourse to phenomenology (1) potentially holds out hope of moving beyond the impasse reached in the debate about abortion and (2) throws into sharp relief metaethical questions about the foundations of human rights. Let me unpack both of these reasons in turn.

(1) Whether in moral philosophy, contemporary politics or theological circles, many think there is little more to add to contemporary beginning-of-life ethics, particularly the question of abortion. It has become commonplace to declare the debates intractable, the discussion exhausted and the issue hopelessly polarized. Responses to abortion have been reduced to two basic positions, which in the West have fatefully come to be associated with the two dominant political options—'pro-choice' with the left, 'pro-life' with the right. Accordingly, essays on the morality of abortion, whether anti or pro, have taken on a ritualistic form, as theologian Stanley Hauerwas has observed.

Neither side seems to have much hope of convincing the other, but just as in some rituals we continue to repeat words and actions though we no longer know why, in like manner we continue to repeat arguments about why abortion is right, wrong, or indifferent.⁹

In theology, some have thought that this situation is due to Christian ethicists feeling the constraints of trying to say things about the subject in a way compelling for public policy—that is, being restricted to couching their arguments in the proceduralist terms acceptable to a 'liberal' culture. While in English-speaking moral philosophy the last decade has seen the publication of two books—McMahan's *Ethics of*

⁹ Stanley Hauerwas, 'Abortion: Why the Arguments Fail', in *A Community of Character: Towards a Constructive Christian Social Ethic*, 212–29 (Notre Dame, IN: University of Notre Dame Press, 1977), 212. This intractability, Hauerwas concludes, 'frustrates us and our frustration gives way to shrillness', with 'both sides resort(ing) to rhetoric designed to make their opponents appear stupid or immoral'.

Killing¹⁰ and Boonin's *Defense of Abortion*¹¹—which, together considered exhaustive, have been said to mount 'forceful arguments about abortion [which] substantially advance the case for a liberal position'.¹² Whatever the case, the result is an end to respectful debate and a failure of communication. In light of this impasse, this book, in seeking recourse to the wholly new discipline of phenomenology, hopes to reinvigorate debate, move beyond polemic, and even to build consensus.

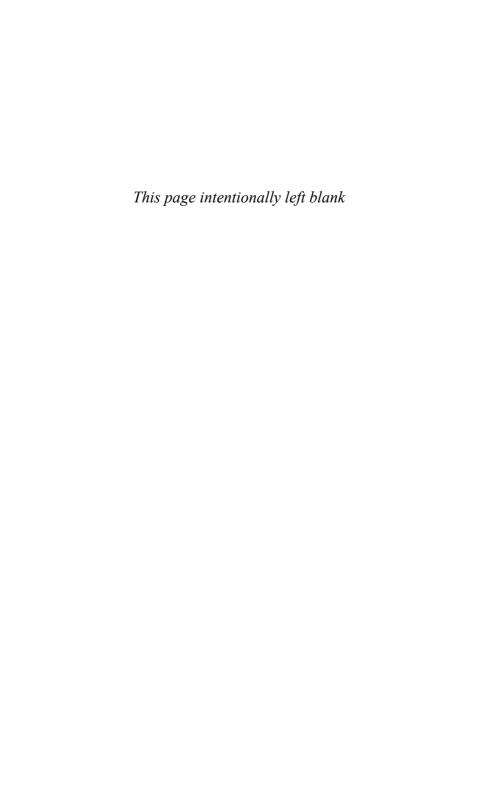
(2) Secondly, I have already suggested why phenomenology in this book plays a fundamentally critical role vis-à-vis ethics at the beginning of life. Put crudely, phenomenology helps us to get at 'nature', suggesting why certain ways of thinking about human emergence and treating nascent human life have not come to terms with the reality of the world. But what phenomenology does not suggest is which practices, which ways of thinking and acting, should stand in their stead. Indeed, when phenomenological scholars have declared that Heidegger 'had no ethics', they were simply appreciating the fact that phenomenology is a descriptive rather than an action-guiding philosophy. Devoid of ethical claims, phenomenology has never sought to issue forth policy recommendations. To that extent, in the final analysis phenomenology returns us to a metaethical debate about the foundations of ethics, about which principles are needed to sustain practices we already cherish and, if those principles are adopted, what their full implications are. It is for this reason that, in my sixth chapter I conclude the book with a brief analysis of how phenomenology relates to Nietzsche's trenchant critique of secular ethics. On what basis do we ascribe rights to those unable to defend them themselves, those on the margins of life and characterized by incapacity? This is the big question to which a phenomenological investigation of human emergence eventually leads us. And so it is at this point that, drawing upon Gregory of Nazianzus's theological anthropology, I offer an answer; an alternative basis for recognition.

¹⁰ Jeff McMahan, The Ethics of Killing: Problems at the Margins of Life (Oxford: Oxford University Press, 2002).

¹¹ David Boonin, *A Defense of Abortion* (Cambridge: Cambridge University Press, 2003).

¹² David DeGrazia, 'Identity, Killing, and the Boundaries of Our Existence', *Philosophy and Public Affairs* 31, no. 4 (Autumn 2003): 413–42, 442.

Part I



Phenomenology and Human Emergence

'Zu den Sachen selbst!' ('Back to the things themselves!') was the rallying cry of that dominant strand of twentieth-century Continental philosophy which was phenomenology. The particular phenomenon in the world to which we wish to return in this study is that of human emergence. What do human beings look like 'at first sight'? How are we brought into the world? How do we come forth? How do we make our entrances? How do we show up, start out, begin in the world? What form does our arrival take? New members of our kind, those destined to replace us, how are they introduced into our midst, admitted into our presence? How are we first available to one another's knowledge? How first is the human being, in the words of the carol, 'to human view displayed'? These variations of the same question are the ones that will occupy us in Part I of this book. In Chapters 2 and 3 we will approach these questions critically, peeling back the constructs that have hindered our seeing the phenomenon as it really is. In this chapter, though, we will begin with a brief sketch of some of the major themes of the phenomenological movement, no exhaustive treatment or definitive summary to be sure; only an account expansive enough to put us in a position to see, and secondly, look at how the phenomenological method might be applied to the phenomenon we are interested in describing.

¹ Edmund Husserl, 'Introduction' §2, *Logical Investigations*, vol. 1 (1900–1901), trans. J. N. Findlay from the 2nd German edn. of *Logische Untersuchungen* (1970; London and New York: Routledge, 2001), 168. Husserl's dictum is, significantly, cited in the second part of Heidegger's introduction to *Being and Time*, under §7, 'The Phenomenological Method of Investigation': 'Thus the term "phenomenology" expresses a maxim which can be formulated as "To the things themselves!"' (*Being and Time* [1927], trans. John Macquarrie and Edward Robinson, (Oxford: Blackwell, 1962), 50.)

WHAT IS PHENOMENOLOGY? AN OPENING SKETCH

Opening as it does with the question 'What is Phenomenology?' I will succumb to the temptation to take as the basis of my sketch Merleau-Ponty's preface to his *Phenomenology of Perception*.² Locating his seminal study 'half a century after the first works of Husserl' (p. vii)—he is writing in 1945—in this preface, Merleau-Ponty 'aims faithfully to encapsulate the ways in which phenomenological philosophers go about their business'³, a task which involves synthesizing the different methodological approaches of which German and French phenomenology had come by that time to be comprised.

The first thesis of the first page is that 'phenomenology is the study of essences' (p. vii). So Merleau-Ponty begins his treatise by aligning the phenomenological movement 'with the fundamental characteristic of traditional philosophical inquiries in general-namely, its having a concern with the questions of essence, a concern with what something, essentially, is.'4 Yet no sooner has he emphasized phenomenology's aspiration to objectivity and universality, does Merleau-Ponty posit his second thesis: 'But phenomenology is also a philosophy which puts essences back into existence, and does not expect to arrive at an understanding of man and the world from any starting point other than that of their "facticity" (p. vii). So, on the one hand, 'the search for a philosophy which shall be a "rigorous science"; on the other, phenomenology involves a radically subjective approach that seeks to offer 'an account of space, time and the world as we "live" them' (p. vii). All our activity and reflection takes place in a context, and phenomenology is 'a manner or style of thinking', which refuses to abstract from this context. It is a movement 'for

 $^{^2\,}$ Maurice Merleau-Ponty, *Phenomenology of Perception* (1945), pp. vii–xxiv, trans. Colin Smith (London: Routledge, 1962), p. vii; page references to this book hereafter cited parenthetically in text.

³ Simon Glendinning, *In the Name of Phenomenology* (London: Routledge, 2007), 20

⁴ Glendinning, In the Name of Phenomenology, 120.

⁵ Our use of the terms 'objective' and 'subjective' to describe the two aims of phenomenology is justified by Merleau-Ponty's own appropriation of those terms later in the preface: 'Probably the chief gain from phenomenology is to have united extreme subjectivism and extreme objectivism in its notion of the world or of rationality' (p. xxii).

which the world is always "already there" before reflection begins—as an inalienable presence; and all its efforts are concentrated upon re-achieving a direct and primitive contact with the world, and endowing that contact with a philosophical status' (p. vii).

The central conviction of Merleau-Ponty's preface comes straight out of these first two theses. It is this: a direct and primitive contact with the world is ineradicably personal. 'All my knowledge of the world... is gained from my own particular point of view' (p. ix). What always appears to an individual consciousness and so, as a system of thought preoccupied with how things appear in the world, phenomenology is the study of consciousness as it is experienced from the first-person point of view. Phenomenology involves 'a distinctive commitment to something like an "insider standpoint." Differently put, 'explanations are not to be imposed before the phenomena have been understood from within'.

I said the preface to *Phenomenology of Perception* is of introductory value because it tries to synthesize the various perspectives of which phenomenology had by 1945 come to consist. Given that, it is interesting Merleau-Ponty does not in his preface proceed, as it were, to 'give names to faces'. The provenance of the two opening theses— 'phenomenology is the study of essences' and 'phenomenology... puts essences back into existence'—Merleau-Ponty does not locate (i.e. he does not, as we might expect, attribute the first thesis to Husserl and the second to Heidegger.) Why is he not attracted by this option? What is the significance of his refusal to separate his sources? What it demonstrates, I think, is the unity of the phenomenological 'manner or style of thinking' at this key methodological juncture. It reveals that the thesis-statement of the preface—'all my knowledge of the world...is gained from my own particular point of view'—can be taken as a thesis-statement of the movement as a whole

Let's look at this more closely. On the one hand, 'putting essences back into *existence*' refers back to Heidegger's agenda, preoccupied as he was with the figure of being-in-the-world, with *not* bracketing out the natural attitude but instead committing himself to describe phenomena from the point-of-view of 'Dasein'—the one who is 'there,' the historicized subject or irreducibly particular finite

⁶ Glendinning, In the Name of Phenomenology, 7.

⁷ Dermot Moran, Introduction to Phenomenology (London: Routledge, 2000), 4.

individual.⁸ Yet for all that, Heidegger's *dasein-analytik* also famously evinces 'essentializing' aspirations in so far as he seeks to establish a fundamental ontology. To arrive at 'the basic concept of being' was for Heidegger always the overall aim.⁹

And with regards to Husserl, vice versa. For not only did the founder of phenomenology set himself the task of rigorously describing 'essences'; by highlighting the 'alarmingly partial' character of our apprehension of things, Husserl's various investigations of sense perception can also be characterized as properly existential. 10 First in the Logical Investigations, and more fully elaborated in the 1905–6 lectures on epistemology and 1907 lectures collected as The Thing. Husserl contends that when I see an object I only apprehend a part of it. Because I am always located in the world, because I always see from a certain place and from a definite standpoint, one side of what appears always remains hidden from view: 'What is presented here and now is not the whole thing.'11 I do not see the object 'in the round', and yet I am nevertheless right to say that what I perceive is the house (rather than just its side) for the reason that the part naturally alludes to the whole: 'Nobody is surprised, when walking around a tree, to discover that it has a backside: our experience of the tree from the front already involves a sense of its "volumninousness", the threedimensionality of visual experience.'12 Furthermore, sensation can be

⁸ In *Being and Time* the figure of Dasein is clearly intended to serve as a cipher for the famous ego of Western philosophy. But Da-sein as 'the being-there' also constitutes Heidegger's reformulation of this tradition, equated as it is with myself in all my facticity ('we *are* it, each of us, we ourselves' [§5, 36]); an entity existing in the world which is 'never to be taken ontologically as an instance or special case of some genus of entities as things that are present-at-hand' [§9, 67–8]. For the development of Dasein as the starting point taken of the early Heidegger's project see Theodore Kisiel, *The Genesis of Heidegger's* Being and Time (Berkeley, CA: University of California Press, 1993).

⁹ Heidegger, *Being and Time* §8, 63. Thus here, in the outline of his treatise found in the Introduction to *Being and Time*, Heidegger insists that 'the universality of the concept of Being is not belied by the relatively "special" character of our investigation' (i.e. the fact that we begin our investigation with a particular entity, 'a clue which is concrete' [§8, 63]). This is, *inter alia*, on account of Dasein's own pre-thematic awareness of Being ('Being is that which is an issue for every such entity' [§9, 67]).

¹⁰ Jean-Yves Lacoste, 'Perception, Transcendence and the Experience of God' in *Transcendence and Phenomenology*, eds. Peter M. Candler, Jr and Conor Cunningham (London: SCM, 2007, 1–20), 2.

¹¹ Lacoste, 'Perception, Transcendence and the experience of God', 2.

¹² Sean Kelly, 'A Large One for Me', reviewing David Woodruff Smith's *Husserl (Times Literary Supplement*, 25 April 2008, no. 5482, 8–10), 9.