

## HUMAN RIGHTS AND INDIVIDUALITY

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On 28<sup>th</sup> September 2008, Frank McGarahan was viciously attacked, receiving fatal injuries, after intervening when he saw two homeless people being attacked in Norwich city centre. He had been out with friends and relatives and was waiting to go home when the incident occurred. A relative said later: 'Frank was a fair-minded person. He wouldn't see anyone treated unfairly.' There have, tragically, been several other incidents of a similar kind in recent years. The case of Jamie Mizen springs to mind – the teenager who was fatally stabbed in the throat with a broken plate for refusing to fight outside the shop where he had gone to buy his first lottery ticket on his 16<sup>th</sup> birthday. Many of us are profoundly moved to pity and sorrow when we learn of such incidents; frequently we are horrified.

In this paper I want to talk about rights, and discuss the role that a particular conception of individuality plays (and has played) in their conception. I will argue that rights alone do not – and cannot – show us the wrong we do when we transgress them and claim that relying on them as paradigms of moral authority dangerously estranges us from the resources we need to make lucid the wrong we do when we breach them. In other words, I argue that rights in themselves cannot be relied upon to yield the moral content of their transgression. I am not saying however, that the development of rights is, by any means, a morally worthless enterprise.

In support of this argument, I will critically evaluate two established ideas of where human individuality is located, claiming that both are necessary, but neither sufficient in terms of informing the moral content of rights. The first is

the idea that human individuality is fundamentally grounded in celebration of difference; the second, established by Kant, suggests that individuality emanates from a rational legislative ability providing us with personal autonomy. Instead, I shall argue for, and try to describe, a particular conception of individuality – one which *transcends* notions of personal autonomy and celebration of difference, mediated by, among other things, recognition of each other as lucid objects of love and pity. It is a conception, I believe, that is internal to the concept of ‘fully human’ and, as such, is what establishes the moral authority of rights. I shall now, somewhat circuitously, try to explain why.

The UN Declaration of Human Rights represents fine ideals couched in wonderfully dignified language (the rhetoric is not accidental and is an aspect I touch on later).<sup>1</sup> Many in the Anglo-American West seem to think that rights are all we need in this respect. There are a number of possible reasons for this; two immediately spring to mind. Firstly, treating others in the spirit of fairness, kindness and charity is unreliable; not everyone is kind or fair towards those weaker than themselves. Secondly, there is the idea that kindness and charity represent (for example) a form of condescension that undermines dignity; something that immediately creates an ‘unequal’ relationship. Thus, the argument goes, there needs to be a system in place that bequeaths dignity on everyone, making the lowliest person the equal of the most powerful. But do rights, in themselves, bequeath anything?

Pity expressed in kindness can be a recognition of a person’s condition, but it need not be a form of condescension and, in genuine forms, does not mean we accord less dignity to those weaker than ourselves or those who suffer (as should become clear later). Indeed, in its genuine forms, it can be internal to recognition of human dignity.

In her powerful essay ‘Human Personality’ the French philosopher Simone Weil said:

[The] profound and childlike and unchanging expectation of good in the heart is not what is involved

when we agitate for our rights. The motive which prompts a little boy to watch jealously to see if his brother has a slightly larger piece of cake arises from a much more superficial level of the soul. The word justice means two very different things according to whether it refers to the one or the other level. It is only the former one that matters.<sup>2</sup>

What is striking about this passage is that it reflects two ways in which we understand justice in relation to rights. The first is an understanding of what it *means* to have wronged someone by denying them their rights. The second is based on the idea that justice relies on rights as paradigms of moral authority and demands they be acknowledged no matter what. This conception, Weil believes, 'arises from a much more superficial level of the soul'; it is the kind we encounter, often with some irritation, in response to news stories about those agitating for their rights, even if they have a legitimate complaint. That irritation, I suspect, is symptomatic of an awareness of the contrast between the superficiality of the kind Weil is referring to, and an understanding of what it genuinely means to wrong someone. Yet what does it mean to say one has a genuine understanding of what it means to wrong someone? The answer to that, I think, can be found in what we mean when we talk about seeing others as 'fully human'. And to see someone as 'fully human' is, I believe, to recognise their uniqueness and irreplaceability. In other words, it is to recognise them as profoundly individual. But what does all that amount to? What does seeing someone as 'fully human' mean?

There are many ways we construe individuality. Firstly, there are various kinds of metaphysical conceptions; for example, along with all other objects, we are spatially and temporally distinct. Through such spatial and temporal distinction we each develop a unique history (again, like any other object). This, for our purposes, is fairly uninteresting. Secondly, and more interestingly, because we are the creatures that we are, we possess a personality – distinctive

behavioural characteristics comprising a psychology – that separate us in ways that reveal startling differences in character.<sup>3</sup> Often those differences lead to remarks such as, 'Wow! – What a character!' This gives much more significance to our spatial and temporal distinctiveness; biographical possibilities develop that reveal an historically achieved individuality through which, for instance, we can talk about ourselves and/or others as 'having taken the wrong turn in life.' These differences play a definite role in our conception of humanity and individuality. In all walks of life 'characters' are sometimes persecuted, sometimes celebrated. Children are apt to torment other children who stand out from their peers through their character. Adults will frequently do it too but in more sophisticated ways. Rebukes from others often follow this behaviour – the thought behind them being that we should celebrate such differences rather than deny them. In other words, we should encourage individuality to flourish. It is an essential aspect of seeing someone's humanity that we do this, but it is incorrect to believe that rights and the moral dimensions of persecution are answerable to a conception of individuality rooted only in a celebration of difference.<sup>4</sup>

Part of what is at work in such a thought is that, in one sense (as a human collective), we are all the same and, in another sense (as individuals within that collective), quite different. The sameness is located, the thought continues, in a reliance on the things that, as human beings, we all have in common; the things that bind us together giving us an understanding of a common humanity. Much of this commonality can be found in psychological concepts and how we use them (for instance, in psychotherapy). Indeed, psychology and its attendant practices of psychiatry and psychotherapy is a substantial component of what nourishes understanding of the human community. It is, in fact, a prerequisite for that understanding; as human beings, we all have a unique psychology.<sup>5</sup>

That our psychology is a fundamental component of recognising the human community, feeds the thought that human

individuality is located in a celebration of difference – in part this is true. It is because psychology is a condition (though not the only one) of understanding our sameness as human beings, that the individual – often striking – psychological differences we display are understood as an aspect of that psychology. Thus, when we talk about rights, much emphasis is put on individuality, partly because we are able (through psychology) to empathise with peoples' differences even if we do not fully understand them. Rights *must* accommodate these differences because they are an integral part of a psychology that is a condition of understanding human commonality. Not to recognise them would be to ignore an essential part of any person's humanity. That is why individuality in terms of celebration of difference is considered to be so important, and why it is often – mistakenly – seen as the most salient feature which informs our rights. I shall call this view the 'common psychology' view. There are numerous versions of the idea but, for the sake of brevity, I have grouped them all under this term. Of course, not all differences should be celebrated, and those which should not, frequently centre on the denial by one person (or group) of another person's (or group's) individual differences or, at least, a denial of their importance.

There is also however, a definite Kantian ring to rights in terms of their rhetoric, the demands they make upon us to apply them universally and how we should observe personal autonomy.

Kant's position is, essentially, that we should act only from duty and wholly for the sake of duty; he placed ultimate importance on our ability to reason. This requires a rational being so it is *only* rational beings, Kant thought, which are answerable to the moral law. As rational beings, the rational principle that should govern duty is that which he famously formulated as the Categorical Imperative:

I should never act except in such a way that I can also will that my maxim should become a universal law.<sup>6</sup>

As such, we ought to stick to our moral duties without any qualification. Anything that has to be qualified before an end result can be achieved (a hypothetical imperative) should be dismissed as devoid of moral worth. The Categorical Imperative does not tolerate any qualification – we should stick to our duties, period. Kant also put a great deal of emphasis on personal autonomy which he believed has its roots in our ability to make rational choices; our ability to make such choices that we can also will to be universal moral laws (without contradiction), gives each of us our freedom precisely because reasoning is an individual activity. Rights also place a great deal of importance on personal autonomy, universality and our duty to uphold them without qualification. Kant contrasted rationality with inclinations (broadly speaking, emotional content); the latter, he believed, are unreliable and have no place in moral decision making.

Inclinations – for example being moved to pity, or moved to wonder by the tenderness sometimes shown by people towards one another – Kant believed are an unreliable basis for clear moral thought. Emotions are not rational – I cannot, for instance, rationalize grief when I lose a loved one; I can only specify what caused it by articulating the nature of the relationship that existed beforehand. Unreliability is often demonstrated when we see people who have, in particular situations, been genuinely moved in ways that seem inappropriate. Consider, for instance, those members of the public who seemed inconsolable following the death of Princess Diana: many explained their grief by saying they felt like they knew her; those who criticised such behaviour as inappropriate did so because they thought that it should be reserved for one's nearest and dearest. They might elaborate by asking whether one would seriously think it appropriate to mourn a public figure that one has only ever seen on television and read about in newspapers in the same way as one's own much loved grandmother. Whatever your view on this, Kant certainly seems to have a point: some people feel love or grief,

some people don't; or a single person does and doesn't at different times of the year or of his life – and yet his sense of morality and ethical responsibility may well remain. Thus, Kant argues, the ways in which we are moved cannot be employed as a sound grounding for moral understanding.

The difference between the Kantian position and the 'common psychology' view is that the Kantian moral law holds for all rational beings irrespective of whether they are humans or automatons – merely adapting to the forms of life of that being. Thus rights – assuming them to be at least similar to Kantian moral maxims – would apply to all rational beings. The 'common psychology' view, conversely, puts the emphasis on the community that is created by our common psychology, establishing distinctive *human* rights. If they are to be recognised as a universal moral authority, human rights based on a common psychology must simultaneously acknowledge that psychology is a pre-condition for a common humanity whilst accepting that each one of us is psychologically distinct. As such, they must accommodate those dimensions of our lives that Kant would call inclinations, and consider worthless. There is an obvious tension between these two conceptions, though it is not one that I shall be exploring. That said, grains of truth exist in both conceptions but neither, I think, establishes a conception of individuality that can reveal the moral terrible-ness of what was done to Frank McGarahan and Jamie Mizen. I shall now try to show why.

The notion of rights as a fundamental moral compass based on a conception of individuality with personal autonomy or a celebration of difference at its core sounds compelling, but really it is not. Those who believe that it is compelling, market such a thought as a triumph over those who argue that morality is utterly subjective – answerable only to the whims of particular individuals. Rights, it might be said, uphold benchmarks of morality against which the subjective responses of each of us can be assessed, and around which a system can be built. So, in the end, we can appeal to rights directly for moral guidance and much of

our moral certainty; rights are a form of legislation that demands we treat the most deprived as equal to the most powerful. Marvellous though this idea is, we should not unquestioningly accept rights as paradigms of moral authority; to do so would estrange us from the resources that nourish their moral substance.

To understand why, we need look no further than a parent's grief at the loss of their child. The grief for the loss of a loved one, or the pity shown towards the grieving, focuses on the human being who has lost his life and those who mourn him, as in the Jamie Mizen case. It does not just focus on any human being. Why not just any human being? After all, rights and our obligations to uphold them do not distinguish between persons. Construed this way, it means that to kill any human is morally dreadful. Indeed, when put in such terms there seems to be little wrong with such an idea. Notice however, that it does not matter who the individual is. Why should that matter? – Surely the point is that each one of us is treated with the same ideals. Furthermore, on a conception of individuality construed as celebration of difference, one can argue that it is only natural for our grief and pity to be focused on particular human beings, since our forming specific attachments is a consequence of our human psychological constitution. The 'common psychology' view would claim that this is *precisely why* we should celebrate difference and, indeed, see such differences in terms of providing a moral framework for each of us that is simultaneously applicable to all humanity. But this argument fails to notice that our conception of humanity is nourished by a great deal more than hypothesis; it is an understanding of individuality which, to borrow Raimond Gaita's phrase, transcends celebration of difference.<sup>7</sup> Another way of putting this idea is to say that we see others as unique and irreplaceable in a way defined by loving relationships (of whatever kind) rather than just a unique set of psychological properties. I shall call this conception 'fundamental individuality', since, I believe, it is vital in terms of seeing another person in their full humanity.

When parents lose their offspring, the focus of their grief is partly symptomatic of an understanding of the deceased as individual in a way that is not answerable to a set of unique psychological characteristics; as is pity for the bereaved. In their grief, the parents do not just mourn any human being, and in our pity for them as mourners we do not just pity any human beings. In the cases of Jamie Mizen and Frank McGarahan, our responses of pity and sorrow, mixed with anger at how such events could have ever taken place, are internal to an understanding of the meaning of what has been done. Nevertheless, in one sense, it would be the same had any human being been the victim of such a vicious attack; the character of our pity would have been the same for *any* family bereaved in such a way. Since our responses would have been the same no matter who was involved (at least in relevantly similar circumstances), the moral significance – the thought continues – should be placed on universality rather than a specific individual. There is truth in this, but only because of our understanding of the victim as unique and irreplaceable in a way that is conditioned by the focus of our pity and sorrow. It is not the universality of the truth that it is wrong to murder any human being which informs the moral dimensions of what occurred to Jamie Mizen and Frank McGarahan. Genuine pity and love was focused wholly on Jamie Mizen and Frank McGarahan by their relations and friends (and, in a different way, by the public at large). It would be difficult to conceive of any of this as genuine if such love, pity and sorrow were explained as the product of understanding that an example of humanity had been killed. Would we count such pity as genuine? Almost certainly not, and it is, I think, fundamentally telling that that we would not. Can one imagine saying: ‘It doesn’t matter that this particular individual has been murdered in any way beyond the fact that an example of humanity has been killed. This is why I feel pity’? Moreover, would it amount to philosophical clarification to say that the grief of Jamie Mizen’s parents is symptomatic of understanding their son

as a unique combination of psychological properties? Or that Jamie's human rights had been violated to the highest possible extent?

My argument is that such universality is only possible because it is each particular human being that matters. It is to say that the concept of fundamental individuality that I am trying to describe as the active component in understanding what it means to see others as fully human, is located in our responses and thoughts about particular individuals and, as such, integrated in our practices. Those responses and practices are what establish the concepts we use in our thinking about others.<sup>8</sup> In other words, it is *how* we think about others that establish the concepts that mark our moral thought, rather than such thinking merely providing support for those concepts. If that were not so, then the love, pity, and anger we focus irreducibly on particular individuals would be extraneous to our understanding of their moral significance (as human beings) whether we adopted the Kantian or common psychology view. That we understand the possibility of loving relationships (for example) in part, serves to mark out definite ways we conceive of a person's reality. That is why rights, by themselves, divorced from accents of pity, love, charity and kindness cannot show us what it is (and means) to be wronged. The universality of these rights is only conceivable because it is each particular human in his full individuality – seen as an intelligible object of love, vulnerable to misfortune with the ever present possibility that his life might be torn apart by the death of a loved one – that matters. In other words, we only understand that it is wrong to treat *any* human being in the way Jamie Mizzen or Frank MaGarahan were treated because, internal to our understanding of their humanity, is recognition of the fundamental significance of a conception of individuality as it is defined by, for instance, loving relationships (rather than celebration of difference or personal autonomy).

Increasingly in Anglo-American culture there is a tendency to look no further than rights for our moral compass.

How often does one hear remarks such as, 'You can't touch me, I know my rights'. Assertions of this kind are redolent of the kind of justice Simone Weil thought did not matter. She remarks:

Rights are always asserted in a tone of contention; and when this tone is adopted, it must rely upon force in the background, or else it will be laughed at.<sup>9</sup>

They are full of dispute yet devoid of any plea for human kindness and an understanding of the individuality which nourishes them; because of that they are vulnerable to doubt and exploitation. The wrong we commit when we do someone an injustice is not (as I've tried to show) of a kind whose moral authority can be established in a system of rights. Neither is it the case that we *should* attempt to establish it there. Simone Weil's belief that there are two levels of justice – one profound, one superficial – is established in an appreciation of what it *means* to wrong someone and the fundamental independence of that from the concept of rights.

The language of rights – expressed so nobly in the UN Universal Declaration of Human Rights – is far removed from accents of pity or love. The nobility is not accidental, neither is the absence of such accents. They intentionally express the dignity and nobility of every human being with a neutrality of description that admits of no bias towards the strong or weak. Yet they do nothing in themselves to reveal the moral content of their transgression, unless they are nourished by an understanding of the practices that condition the concepts in our moral landscape.

There are a couple of further points I wish to make. The first is in relation to Kant; the second is in relation to empathy.

I have, thus far, talked mainly about the relationship between rights and the various ideas about the nature of humanity that are believed to provide the framework for their development. I want now to look briefly at the

character of our moral responsiveness and, from this perspective, suggest that rights, construed as moral paradigms, are 'intrinsically inadequate to fulfil the role assigned to [them]'.<sup>10</sup>

Jamie Mizen's parents forgave their son's killer. We often wonder at those who show such forgiveness and compassion; some of us think it is miraculous (I am invoking nothing religious here). Many marvelled at what their forgiveness revealed about, not only them, but what they illustrated through such forgiveness. In such cases, forgiveness and pity are not forms of condescension but, rather, expressions of a form of understanding that is interdependent with the moral dimensions of what has happened. None of that meant that they did not judge their son's killer in a morally severe light; what it did mean however, is that they pitied him for what he had become – namely, a murderer. Nevertheless, there is something irrational – one might even say crazy – about the idea that one can treat someone who has murdered one's own flesh and blood as fully one's equal. Yet, it is in this kind of compassion that a conception of individuality that transcends celebration of difference is located; a conception that conditions our sense of the independent reality of the other in a way that can never be adequately accounted for by personal autonomy or celebration of difference.

Kant believed that, through duty, one can act morally even if our capacity to be compassionate has dropped away completely, perhaps through bitterness (that is Kant's example).<sup>11</sup> However, can one say, without distortion, that Frank McGarahan's compassion towards the homeless man, or Jamie Mizen's parents' forgiveness of their son's killer, is consistent with the kind of wholesale emotional detachment that Kant demanded if we are to respond properly? Is it philosophical clarification to suggest that Frank McGarahan responded to the homeless man as a rational, autonomous creature? Or as someone in a shared psychological community characterized by specific emotional attachments? Or, again, as someone who has had their

human rights violated to the greatest possible extent? Would it not be more truthful to say that Frank McGarahan and Jamie Mizen's parents responded in their respective ways because their understanding of humanity was transformed by their compassion towards other human beings?

Some may argue that our seeing someone as unique and irreplaceable can be explained by empathy. Our feelings of loss when specific attachments to others are broken by death, for example, can be said to nourish our understanding of 'what others are going through' when it happens to them. That is the nature of empathy, and one might be persuaded to think that it is through such empathy that we see the wrong of what was done to the families of Jamie Mizen and Frank McGarahan.

Yet, did Jamie Mizen's parents respond to their son's killer because they felt what it was like – or must be like – for him to have killed their son? Similarly, did Frank McGarahan respond to the homeless man because he felt what it must be like to be isolated, to have lost so many of the things that gave his life meaning and dignity? Both responses were very different in kind but, I would argue that neither was motivated by a focus on what it must *feel* like. In both cases, the responses were certainly responses to particular conditions but – and this is the fundamental aspect of what I am saying here – both men responded to what it *means* for a human being to have fallen into that condition rather than what it felt like subjectively. Nonetheless, that is not to say that there is something from which empathy needs to be separated if we are to understand what it means to have fallen into such a condition. More exactly, it is the possibility of non-condescending relationships between human beings living radically different forms of life that can reveal to us *what* it means for a human being to suffer in such ways or (in the case of Jamie Mizen's killer) to have become a murderer. Neither the common psychology view nor Kantian conceptions of personal autonomy (or a tense combination of both) can make such meaning fully lucid.

Part of the difficulty, I think, is that expressions of pity, love and compassion are so much part of our everyday life that we have become deadened to the ways in which they are fundamental to an understanding of what it means to be human. They become merely psychological dimensions peculiar to a particular character that are, apart from such a character's participation in a psychological community, extraneous to moral significance. Similarly, to understand rights as based on a kind of duty-based thesis, treats such responses as irrelevant; as *merely* psychological and, as such, extraneous to moral content; something to be separated out from our thinking when striving for moral clarity. The appeal of this latter view is, of course, that it allows us to put aside strong and, sometimes, misleading emotional responses.

I have tried to show that ideas relating to personal autonomy and ideas about celebration of difference are necessary but insufficient in terms of establishing a system of rights. The multifarious kinds of relationships that we have with one another reveal a kind of individuality that neither celebration of difference nor personal autonomy can adequately elucidate. It is only by sincerely acknowledging the role that expressions in accents of pity, forgiveness and love play in terms of our understanding of one another as 'fully human' that we can authentically recognise another human being's dignity and moral claim on us.<sup>12</sup> Only then will we be able to understand what provides the grounds for the development and application of a tractable system of rights, making the lowliest person the equal of the most powerful.

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## Notes

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<sup>2</sup> Weil, S. 'Human Personality' in *Simone Weil: An Anthology* (London: Penguin Classics, 2005), 72

<sup>3</sup> Gaita, R. *The Philosopher's Dog*. (London: Routledge. 2003), 76

<sup>4</sup> Ibid.

<sup>5</sup> Gaita, R. *Good and Evil: An Absolute Conception*. (Second edition Routledge. Oxford. 2004), 49

<sup>6</sup> Kant, I. ['GWk'] *Grounding for the Metaphysics of Morals*. (Trans) Ellington, J.W. (Indianapolis/Cambridge: Hackett Publishing Company, 1993), 14 (402)

<sup>7</sup> Gaita, R. *The Philosopher's Dog*. (London. Routledge. 2003)

<sup>8</sup> Wittgenstein, L. *Philosophical Investigations*, third edition (Oxford Blackwell Publishing Ltd., 2001)

<sup>9</sup> Weil, S. 'Human Personality' in *Simone Weil: An Anthology* (London: Penguin Classics, 2005), 81

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<sup>11</sup> Kant, I. ['GWk'] *Grounding for the Metaphysics of Morals*. (Trans) Ellington, J.W. (Indianapolis/Cambridge: Hackett Publishing Company, 1993), 7

<sup>12</sup> Rhees, R. 'Religion and Language' in *Without Answers* (London: Routledge and Kegan Paul Ltd., 1969), 123