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Festschrift for Ian Macdonald

Edited by Marius Vermaak
Introduction
Marius Vermaak

A Festschrift, according to the Oxford English Dictionary, is 'a collection of writings forming a volume presented to a scholar or savant on the occasion of his attaining a certain age or period in his career.' Ian Macdonald will confess to having attained a certain age and will probably decline the labels 'scholar' and 'savant'. This volume shows clearly that he is a remarkable thinker and was an influential teacher. I have tried (and failed) to capture some of the range of his interests.

Simon Beck writes on personal identity, an issue first encountered in a course on Derek Parfit with Mac. The problem of dirty hands has remained with Stephen de Wijze since Mac introduced him to political ethics. Barry du Toit tries to rethink the notion of financial risk using a way of conceptual thinking he learned from Mac. I can add that Mac has taken an abiding interest in the Rhodes University Pension Fund (an interest that will deepen no doubt on his retirement) and has been a longstanding trustee. Ian Jennings and Douglas Farland tackle the thorny issue of affirmative action. Mac had a major influence on the University Equity Policy. His love and knowledge of sport is legendary. Mervyn Frost, a former colleague, takes up themes from political philosophy: democracy and human rights in the context of global governance. Ward Jones enters into a debate about the responsibilities of philosophers, a debate to which Mac contributed in the early 90's. Simon May again shows the influence Mac had on his students by revisiting moral disagreement, a topic from a 1994 seminar. Seumas Miller, also a former colleague, engages Mac's thoughts on group rights. Steve Olivier pays tribute to Mac in his discussion of the ethics of extreme sports. Finally, Samantha Vice, writes on autonomy, a topic central to Mac's own—lived—political liberalism.
There are gaps in this collection. There is nothing about the workings of politics—university politics—about the strategy and tactics of committees. As a consolation I point him to F.M. Cornford’s authoritative *Microcosmographia Academica* (1908) to read and enjoy at his leisure. I also recommend C.P. Snow’s *The Masters* (1959) and W.H. Riker’s commentary in *The Art of Political Manipulation* (1986). There is also nothing about obsession in this Festschrift. Mac craves the *aha-erlebnis* that attends solving a clever intellectual puzzle with the intensity of a drug addict looking for her fix. Unfortunately the philosophical literature on crossword puzzles is very limited.

I trust that this volume shows Ian Macdonald’s stature as a thinker and the affection in which his students and colleagues hold him. I also hope that this Festschrift, this *liber amicorum*, inspires him not to retire from philosophy.

*Rhodes University*

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http://www.uq.edu.au/philosophy/microcosm/

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Our Identity, Responsibility and Biology

Simon Beck

Derek Parfit opens *Reasons and Persons* with the memory that ‘Seventeen years ago, I drove to Andalusia with Gareth Evans ... and put to him my fledgling ideas’, and records how much his philosophy owes to that episode. Seventeen years ago I read *Reasons and Persons* with Ian Macdonald, and that experience has been as influential on my work as a philosopher as was Parfit’s with Evans. Mac’s interest may have focused more on the ‘reasons’ while my fascination was with the ‘persons’, but the philosophical insight and wisdom that I saw at work were deeply impressive, and have ensured that my fascination has not waned since then. In this paper I will argue against a currently popular rival to Parfit’s views on personal identity, opposing its attempt to turn Parfit’s ideas against his own theory. And, as will emerge, reasons will play a role as well.

Section 1: The psychological view of identity and its support

The view espoused by Derek Parfit that personal identity is a matter of psychological continuity has come as close as any view to being the standard account of personal identity. The standard account holds that what is most important to your persisting over time are overlapping chains formed by (apparent) memories, continuing beliefs, desires, projects, emotional attachments, and so on (Parfit 1984: 205ff, 222). While Parfit’s may be the standard view, it has faced a fair amount of opposition. In the 1960s and 1970s Bernard Williams and Sydney Shoemaker argued instead that your persistence is a matter of some degree of physical continuity. The opposition I wish to consider has emerged in sustained criticism over the last ten years—most notably from Eric Olson—as part of an attempt to replace the standard view with
Group Rights Revisited
Seumas Miller

In this paper I explore the notion of group rights, and especially an issue raised by Ian Macdonald in his attack on the notion of group rights, namely the relationship between group rights and individual identity.¹ More specifically, I address the question of whether there might be group rights to things that are both inherently morally valuable and constitutive of selfhood. I do so in the following context.

First, like Macdonald, I am an individualist; I want to ascribe moral rights only to individual human beings, as opposed to groups. On the other hand, I do want to insist on a distinction between individually possessed joint moral rights and non-joint individual rights.²

Second, I agree with Macdonald that there are no group rights in the narrow sense of minority moral rights; rights which one group has but other groups do not have.³

Before turning directly to the issue of group rights as constitutive of selfhood, I need first to elaborate a set of distinctions in relation to the general concept of a moral right, and second to outline my own account of what are alleged to be group rights, in so doing comparing and contrasting it with Macdonald's account.

Moral Rights
In relation to moral rights, two sets of distinctions are often made.

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¹ Ian Macdonald 'Group Rights in South Africa: A Philosophical Exploration' Polity vol.15 no.2 December 1988.
Human rights are distinguished from institutional rights, and negative rights are distinguished from positive rights. Human rights, as opposed to institutional rights, are rights possessed by virtue of properties one has qua human being. So the right to life is a human right. By contrast, the moral (and legal) right a police officer might have to arrest an offender is an institutional right. Negative rights are rights one has not to be interfered with by others. So the rights not to be killed or not to have one's freedom restricted are negative rights. By contrast, the right to have sufficient food to keep one alive is a positive right; it is a right to assistance from others, if such assistance is required.

As is well known, both of these sets of distinctions are problematic in various ways. Indeed, the very notion of a moral right is itself problematic. Nevertheless, for the purposes of this paper, I am going to assume that there are human rights, and that these rights include at least some of the ones typically referred to as positive rights. In particular, I am going to assume that human rights are, or at least include, some or all of those rights that Henry Shue refers to as basic rights. Basic rights include the right to physical security and the right to a subsistence level of food.

Moreover, I am also assuming the following properties of human rights. Human rights generate concomitant duties on others, e.g., A's right to life generates a duty on the part of B not to kill A; and human rights are justifiably enforceable e.g., A has a right not to be killed by B, and if B attempts to kill A, then B can legitimately be prevented from killing A by means of coercive force, including, if necessary, by the use of deadly force.

Let me now draw a further distinction, the distinction between rights to things constitutive of a functioning human being—rights to selfhood—and rights to things not so constitutive. What are some of the rights to things which are not constitutive of the self? I suggest that they include many institutional rights, such as the right to property, and perhaps the right to a fair trial and the right to hold offices of various kinds.

I suggest that there is a justification for the use of deadly force to protect rights to things constitutive of being a human being, including the right to life. In particular, there is a justification for killing in what is quite literally self-defence—the defence of the self—and a justification for killing to protect other selves.

It might be argued in response to this that there is no acceptable distinction to be made between rights to things constitutive of the self and rights to things not constitutive of the self.

But surely some such distinction is necessary. For we need to be able to distinguish between, say, a right to life and a right to property. If I defend myself against someone trying to kill me it is defence of the self; it is literally the destruction of myself that is in question. Similarly, if I defend myself against someone trying to irreparably damage those parts of my brain in virtue of which I have the capacity to perform intellectual tasks, then it is defence of myself. Such capacities are constitutive of selfhood. However, if I defend my property—say, my car or an intrusion by an unarmed trespasser in my home—then I am not necessarily defending myself. Neither my car nor my home are constitutive elements of myself. If my car is wrecked, or I sell my house, I am still intact.

Moreover, it is important not to assimilate all the various rights to defend freedoms, to the right to self-defence or the defence of others. For example, locking someone in a room is a violation of their freedom of movement. This freedom is essentially freedom of movement of one's body. Here we need to invoke a distinction between on the one hand the capacity of the agent in himself to freely move, and on the other the existence of external impediments to his exercise of that capacity. The former but not the latter is constitutive (in part) of selfhood. To see this, consider first the resistance of a person A to an attempt by another person B to inject A with a drug that would permanently and irreversibly

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5 So I am asserting a normative (conceptual) connection between human rights and enforceability. This is not to be identified with the claim that for someone to possess a right it must be de facto enforceable.
paralyse A. Here A's capacity to move is destroyed. Contrast this with the case where A is locked in a five star hotel room for two days—with full service. Here no constitutive element of A's self-hood is destroyed. (This is not to say that prolonged imprisonment may not ultimately cause destruction of elements of the self, e.g., the capacity for autonomous decision-making. But this is a different matter. To cause x is not to be x.)

Finally, it is important to recognise that some rights to things not constitutive of self-hood have violation thresholds such that at points beyond the threshold violations threaten things which are constitutive of self-hood. For example, if someone is incarcerated and suffers severe and longstanding limitations of their freedom of expression, privacy and freedom of movement this may over time undermine that person's capacity to think and act independently. Such a loss of agency may come to constitute a partial destruction of self-hood. Again an act of rape or assault may reach a threshold where it threatens to destroy aspects of self-hood, including the capacity to relate sexually or socially with other people.

I do not claim to have precisely drawn the distinction between elements of self-hood and other sorts of thing to which one has rights. I do not even claim that the distinction can be precisely drawn. I merely claim that it is evident that there is some such distinction to be drawn.

Group Rights

The issue of group—sometimes called 'collective'—moral rights raises a number of important issues. 6 One such issue is the claimed existence of supra-individual entities, such as nations and ethnic groups that possess moral properties, including moral rights, above and beyond the moral properties that the individual persons that compose them possess.

Another issue is the possibility that fundamental human rights possessed by individuals might be justifiably overridden by group rights. A third issue is the moral claims of minority cultural groups. Such claims are typically couched in terms of group rights.

Elsewhere I have argued that that many group moral rights are best understood as joint rights of individual persons. 7 Specifically, I have argued that many group rights are joint rights to collective goods possessed in part in virtue of membership of a social group. Here, the category of collective goods includes collective harm avoidance as well as certain sorts of assistance to collectives. Further, the notion of a social group involves at least shared social norms, shared knowledge, and mechanisms for group decision-making.

Moreover, pace Ian Macdonald, I have argued that there are probably no minority moral rights, at least in the sense of what Kymlicka terms 'special', as opposed to universal, rights. 8 Special rights are rights that one community has that another does not. Rights claimed to be minority rights, such as the land rights and hunting rights of indigenous peoples, and the political and language rights of some minority cultures in semi-autonomous states, turn out to be either moral rights which are not minority moral rights, or else to be merely morally justified legal minority rights.

Given an individualist analysis of group rights—whether of the kind that Macdonald advocates or my own conception of group rights as joint rights of individual persons—there is no evident need to postulate supra

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7 Social Action op.cit. Chapter 7. Much of the following discussion in this section of the paper is drawn from that chapter, and prior to that from my 'Collective Rights' Public Affairs Quarterly vol.1 no.4 1999.

8 Will Kymlicka 'Individual and Community Rights' in Baker op.cit. at p.19. See also his 'Liberalism, Individualism and Group Rights' in (ed.) A. Hutchinson and L. Green Law and the Community (Toronto: Carswell, 1989), Liberalism, Community and Culture (Oxford: Oxford University Press, 1989) and Multicultural Citizenship: A Liberal Theory of Minority Rights op.cit. Kymlicka also contrasts his special rights with group rights. The latter are rights a group has against its members individual rights. The former are rights a minority community has against the larger community to which it belongs. See Kymlicka 'Individual and Community Rights' in (ed.) Shapiro and Kymlicka op.cit. at p.19.
individual entities with moral rights above and beyond those possessed by individuals. On the other hand, there might well be a need to go beyond a conception of individuals which conceives of them as having rights—and moral value—only in virtue of properties they possess as individuals, such as the capacity for self-interested rational choice.

Ian Macdonald has argued that group rights are rights that individuals have in virtue of membership of some community or social group, and individual rights are rights individuals possess simply in virtue of some property or properties they possess as individuals. For example, French language rights are collective rights because they are possessed by members of the French speaking community, and possessed by these individuals in virtue of their being members of that community. On the other hand the right to life is an individual right possessed by all humans.

No doubt there is some such distinction to be made along these lines. Moreover it is plausible that there are individual human rights of the latter sort. Such rights evidently include not only the right to life, but also the right to personal security, the right not to be arbitrarily detained and the right to freedom of movement and of thought.

However, there seem to be counter-examples to this way of drawing the distinction between group rights and individual rights. In the first place, there are some paradigmatic collective rights that do not fit this definition of group rights. In the second place, there are some rights typically regarded as individual rights that are nevertheless rights individuals possess partly in virtue of membership of some social group. Let us look first at some paradigmatic group rights that would turn out to be individual rights on this account.

9 In this paper my primary concern is with the collective rights of social groups, as opposed to the (alleged) collective rights of organisations such as corporations, governments and the like. I have elsewhere argued against the ascription of collective rights to organisations, institutions and the like. See Seumas Miller 'Corporate Crime, the Excesses of the 80's and Collective Responsibility' Australian Journal of Corporate Law vol.5 no.2 1995 pp.39-51, and Social Action op.cit. Chapter 5.

10 Ian Macdonald op.cit.

Consider the Australian national or community right to exclude others from its territory, or the right of the Kurds to secede from Iraq. These are not rights that any or each single individual member of the communities in question have. Joe Ocker of Balmain in Sydney, Australia, does not have a right to exclude would-be immigrants to Australia. An individual Kurd does not have a right to secede. So the view that collective rights are simply individual rights—even ones possessed by virtue of membership of a social group—cannot be correct.

But now let us consider some rights considered to be individual rights and see how they fare on this account. Consider the right to vote. (If it is thought that the right to vote is a legal but not a moral right, substitute some more general right such as the right to political participation.) This is often regarded as an individual right. Certainly, it is a right which individual persons possess. Moreover, it is a (apparently) a universal right.

The sense of the term 'universal' in use in relation to moral rights can be confusing. Sometimes it means simply that it is a right possessed by all human beings. At other times it means it is a right possessed in conformity to the so-called principle of formal equality—treat all cases the same unless there is a relevant difference. If used in this sense perhaps all moral rights are universal, since to legitimately ascribe a moral right to some individual or group, and not a second individual or second group, would seem to depend conceptually on the provision of some difference between the first and the second individual, or the first and the second group. It is sometimes claimed that individuals, but not groups, have a moral right to be treated with formal equality. But in fact neither individuals nor groups have such a (non-trivial) moral right. Rather, if an individual or group x has a moral right to, say, good G, then, according to the principle of formal equality, individual or group y also has a right to G, unless there is a relevant difference between x and
y. In that case it is not a matter of having a right to be treated with formal equality. It is simply a matter of having your individual or group right to G respected.

At any rate, in many past societies slaves and women were excluded from voting; evidently there was a failure to recognise a universal moral right. Surely, the right to vote is a paradigmatic individual right, to be contrasted with, for example, special language rights claimed by minorities.

However, a necessary condition for having a right to vote in, say, the UK, is membership of a social group, namely, the community consisting of UK residents. Chinese living in China do not have a moral right to vote in the UK. So according to the membership of a social group criterion, the right to vote must be a collective right.

Nor does it help to move to a higher level of abstraction and hold that everyone has a right to vote in some social group or other. For in the first place, this under-describes the situation. Britons do not simply have a right to vote in some social group or other; rather they have a right to vote in the UK, and not elsewhere. In the second place, it may well be false. Presumably lone individuals choosing to operate outside all political communities do not have a moral right to vote in any political community.

Perhaps the best response to this apparent counter-example is to bite the bullet and claim that the right to vote is—notwithstanding appearances—a collective right. After all—as we have just seen—there is arguably no universal right to vote as such, but rather only a right to vote in the French elections, or a right to vote in the UK elections, or a right to vote in some other election. Of course, it is not membership of any old social group that grounds the right to vote, it is membership of certain specific kinds of social groups, and especially membership of political communities. But this consideration does not count against claiming the right to vote as a collective right; it merely compels us to be more precise in our definition of voting rights. The main consideration against counting the right to vote as a collective right is fairly weak. This is the consideration that it is not simply membership of particular kinds of social group that grounds the right; the right to vote also in part depends on the possession of an individual property or right, namely, individual autonomy (or some cognate notion). I conclude that, if the right to vote is a moral right, it is a species of collective right, albeit a pervasive one. It is pervasive because most people belong to political communities.

The discussion thus far has shown that the distinction between individual and collective rights is not simply a distinction between individual rights possessed in virtue of membership of a social group, and individual rights not so possessed. Matters are more complex than this.

However, it does not follow from this that we need to abandon individualist accounts and return to the unwanted view of collective rights as supra-individual rights. Nor does it follow that we need to abandon as one criterion of a collective right that it be possessed in part in virtue of membership of a social group. Rather we need to focus on some more specific species of individual right. I have suggested that we take seriously the notion of a joint right.

Joint rights are rights that attach to individual persons, but do so jointly. On this view Joe, together with the other members of the Australian community, have a joint right to exclude would-be immigrants to Australia.

Take another example, the right to secession. Arguably the Kurds in Iraq have a right to secede. But, if this is a right, it is not a right which some Kurdish person has as an individual, even an individual qua member of the Kurdish people. After all, an individual person cannot secede. The right of the Kurds to secede—if it exists—is a right which attaches to the individual members of the Kurdish social group, but does so jointly.

12 On secession and the right thereof see Allen Buchanan Secession: The Morality of Political Divorce from Fort Sumter to Lithuania and Quebec (Boulder, Col.: Westview, 1991)
Roughly speaking, two or more agents have a joint moral right to some good, if they each have an individual moral right to that good, if no-one else has a moral right to that good, and if the individual right of each is dependent on the individual rights of the others. Let us assume that political participation in Canada is a good. Let us further assume that each Canadian citizen has a moral right to political participation in Canada, non-Canadians do not have a right to political participation in Canada, and the right to political participation of each Canadian is dependent on the possession of the right to political participation in Canada of all the other Canadians. In that case Canadians have a joint moral right.

Such joint rights need to be distinguished from universal individual rights. Take the right to life as an example of a universal individual right. Each human being has an individual right to life. However, since my possession of the right to life is wholly dependent on properties I possess as an individual, it is not the case that my possession of the right to life is dependent on your possession of that right. Joint rights also need to be distinguished from conditional individual rights. By mutual consent I might have a right to fish in your river on condition that you have a right to hunt in my woods. However, neither I nor you have a joint right; rather we each have a conditional individual right. For one thing, the content of my right brings with it no essential reference to the content of yours. For another, I can unilaterally extinguish your right, as you can mine.

However, notice that joint rights can be based in part on properties individuals possess as individuals. The right to political participation is based in part on membership of a political community, and in part on possession of the property or right of autonomy. This also raises the question whether or not joint rights are necessarily possessed in part on the basis of membership of a social group. Elsewhere I have argued that they are not, and that therefore the way is open to define group rights as joint rights possessed in part on the basis of membership of a social group.13

**Group Rights as Constitutive of Self-hood**

Thus far I have introduced a number of distinctions in relation to the concept of a moral right—especially the distinction between rights to things constitutive of selfhood and rights to things not constitutive of selfhood—and elaborated my individualist account of moral rights according to which there are jointly held individual rights as well as non-joint individual rights. I now turn to the claim that there are group rights that are constitutive of selfhood.

Liberal theorists, including Ian Macdonald—at least implicitly—typically place individual autonomy centre-stage in their account of rights; the point of rights is in large part to protect individual autonomy, and the conditions for autonomy, such as life itself. As Macdonald points out, most traditional liberal rights are negative rights, 'they are elbow room' or 'breathing space' rights'.14 As such, these rights are not positive rights, and they are rights that involve liberties and not duties on the part of the rights holders.

In response to this, I would make two points. Firstly, if the point of rights is to protect individual autonomy and its preconditions, notably life, then it is evident that there must be some positive rights.

Consider the following action movie scenario. James Bond is in a whirlpool and about to drown. Suppose that Bond could easily be saved by one or other of three bystanders in a helicopter hovering above. Any one of the bystanders simply needs to throw him a rope-ladder secured to the chopper, and Bond will climb out of harm's way. Surely Bond has a positive right to assistance. At any rate, each of the bystanders refuses to assist—perhaps they have never seen someone drawn in a whirlpool before and curiosity is getting the better of them. In any case, as it

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13 Thus the distinction between joint and collective rights is important. See my Social Action op.cit. Chapter 7.
14 Macdonald op.cit. p.23.
happens Bond has been scuba-diving and still has his multi-headed spear-gun which he threatens to fire at one of the bystanders, if either he or one of the other bystanders does not throw him the rope-ladder. They call his bluff and Bond fires a spear at one of the bystanders maiming him and causing him to fall to his death in the whirlpool. In fear of his life, a second bystander then throws down the rope-ladder, and Bond survives yet again.

My intuitions tell me that Bond's action is morally justified, given his action was the only way to preserve this life; in short Bond has a positive right to be rescued in circumstances in which he will lose his life if he is not assisted immediately, and his rescuers can rescue him with little or no cost to themselves, and they are the only ones who can do so. Here I am assuming that if Bond is entitled—as I am suggesting that he is—to use deadly force to preserve his life, then the duty to assist must be based on a positive right to assistance. For moral rights, especially human rights, generate rights to enforce, but most other moral considerations do not, or at least do not in contexts in which the outcomes of the available courses of actions are more or less morally balanced.

Moreover, a similar argument is available to Bond in an analogous scenario in which Bond, although innocent of any wrongdoing, has been locked in a remote cave in the jungle by some psychopath. The psychopath wants to deprive Bond of his liberty, but not his life. Accordingly, Bond has access to sources of food and water sufficient to enable him to live for decades. By a remarkable piece of luck—given the remoteness of the location—two jungle explorers happen to come across Bond, and there is a one-off possibility of Bond gaining his freedom. Unfortunately, despite Bond's appeals, the explorers are refusing to unlock the cage, and doing so notwithstanding the fact that they can easily unlock it, given the key is immediately outside the cave. They refuse to assist Bond in part because they are uncaring people, and in part because they are jealous of Bond's success with women, and therefore very happy if he is deprived of female company for the rest of his life. Bond threatens to shoot dead one of the explorers, if he is not released. The fellow calls his bluff, and is shot dead. The second explorer releases Bond. Once again, it seems to me that Bond has a positive right to assistance in order to ensure his individual liberty, and this right is enforceable.

I conclude that there are at least some enforceable positive rights that a liberal ought to accede to, namely positive rights the point of which is to protect either individual life or individual liberty.

I now want to turn my attention to the notion of individual identity, and the possibility that the point of at least some rights might be the protection of identity, as opposed to individual life or individual autonomy. Note that I am here speaking of the identity of individual persons; I am not speaking of group identity.¹⁵

Liberals and individualists—including myself—are wary of notions of group or collective identity. This is especially so when collective identity is ascribed moral importance, and—even if only potentially—greater moral importance than the individual.

According to the morality of collective identity the members of groups have group moral rights and collective moral responsibilities not reducible to the moral rights and responsibilities of individual human persons. Accordingly, the way is open for (say) some oppressor or enemy group to be guilty purely by virtue of membership of some national, racial, ethnic or religious group. So a white South African who opposed apartheid might nevertheless be held to be guilty in the eyes of extremist anti-apartheid groups simply by virtue of being white. Or perhaps all Americans might be alleged by extremist muslims, such as members of al-Qaeda, to be guilty of oppressing muslims simply by virtue of being American citizens.

The morality of collective identity potentially elevates the category of membership of racial, religious, ethnic, and national groups above the category of human moral personhood; morally speaking, allegedly, a

¹⁵ A recent liberal and individualist account of what group identity might reasonably mean in a modern democracy is that of Amy Gutman Identity in Democracy (Princeton University Press, 2009) Chapter 1.
person is first and foremost (say) a white or black or Jew, and only secondly a human being. Liberals rightly reject such notions as the morality of collective ethnic, racial, national or religious identity. Moreover, in so doing they reject attendant notions of groups rights and collective responsibilities that are based upon the ascription of intrinsic and weighty (even overriding) moral worth to groups and collectivities per se.

Notwithstanding my rejection of such normative conceptions of collective identity, I want to argue for a notion of individual identity that: (a) underpins certain human rights, and; (b) that is not reducible to individual liberty or autonomy.

According to the so-called ‘Stolen Children Report’ commissioned by the Australian Government thousands of aboriginal children were taken from their families by Australian state welfare officials and placed in white Australian families or non-indigenous institutions in the 19th and 20th centuries. The official reasons given included that these children were at risk or neglected, and that these white families or institutions could provide better care for the children. The Report disputes these reasons.

Subsequently, many of these children who are now adults have come forward and expressed moral outrage at what happened to them; evidently, the experience profoundly harmed them. It is now widely accepted that this policy was a violation of human rights. Let us accept that this is the case. The question that now arises is: By virtue of what property of parents and their children does this human right exist?

Presumably, the right exists by virtue of an acknowledged deep relationship between parents and their children, and between siblings. To simplify, I will focus on the relationship between a mother and her young—say, five year old—child, a relationship which has both a biological and an emotional dimension. If we focus on the children, as opposed to their mothers, this relationship is in fact so central as to in part constitute the identity of the child. Small wonder, then, that removing a young child from its mother would generate the degree of trauma that it in fact did.

However, the basis of the child’s human right not to be removed from its mother can hardly be the child’s autonomy. It is not the autonomy of the child that has been violated, since young children are not possessed of autonomy.

This suggests that we need to distinguish between individual autonomy and individual identity. Perhaps the term ‘autonomy’ is sometimes used so as to embrace the notion of individual identity. If so, then we should distinguish between a thick and a thin sense of autonomy. An autonomous agent in the thin sense means something like a rational chooser; an autonomous agent in the thick sense means something like a rational chooser possessed of an individual identity which identity the rational chooser takes into account in making his or her rational choices. (Hereafter I will use the term ‘autonomy’ to refer to autonomy in the thin sense.)

Earlier I distinguished between rights to things constitutive of selfhood and rights to things not so constitutive. I further suggested that self-hood—or what it is to be a functioning individual human being—consisted in part in life, and in part in individual autonomy. In the light of the distinction between individual autonomy and individual identity, we can now see that self-hood consists in part in life, in part in individual autonomy, and in part in individual identity.

Having argued for a distinction between individual autonomy and individual identity, we need now to offer a brief outline of some of the constitutive features of the individual identity of a human person. Such features would include the following ones: an individual body, including

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16 Bringing them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families (Commonwealth of Australia, 1997).
17 I am assuming that five year olds are old enough to have established a very strong particular interpersonal relationship—indeed an identity conferring interpersonal relationship—with their mothers, but too young to be autonomous in any meaningful sense.
a unique face; a highly specific and integrated set of mental, social and physical skills; a highly specific set of relationships with other individuals, including family members, friends and peers; and an individual history (including memories thereof). Doubtless, an individual person would not necessarily lose their identity if they lost an arm or a leg, if they gained a new set of friends, if they switched professions, if they immigrated to a new country, learnt a new language and were converted to a new religion, and if they suffered a loss of hearing or a minor loss of memory. However, if in respect of these constituent elements of individual identity the changes were multiple, central and immediate then individual identity might well come under threat. Here one can imagine science-fiction examples such as the following one. Suppose a gifted mono-lingual English-speaking—except for a smattering of rudimentary Chinese—contemporary middle aged woman whose life revolves around her work as a mathematician at Oxford University and her nuclear family simultaneously underwent operations which erased her memory and her capacity to speak English, in large part removed her mathematical ability, and gave her the body and sexual proclivities of a heterosexual adolescent man.

It is not part of my brief here to precisely delineate the defining features of the individual identity of human persons, but merely to acknowledge its existence, gesture at some of its elements and assert that at least some elements of it have an intrinsic moral importance worthy of protection by recourse to rights. Here I offer again the example of the aboriginal children taken from their parents. This is a violation of human rights, and I take it the point of the rights in question is in large part to protect at least one morally important element of individual human identity, specifically a child’s relationship to its mother.

Thus far I have argued that there are at least some elements of the individual identity—as opposed to individual autonomy—of a human person that have such intrinsic moral importance as to be worthy of protection by rights. However, the critical question that now needs to be asked is whether or not any such morally valuable elements of the individual identity of a human person are inherently familial, communal, cultural or otherwise inherently group-centred.

Here we need to be careful to avoid at least four confusions. Certainly, some elements of individual identity are relational. Specifically, these elements consist of deep interpersonal relations that might obtain between, say, a mother and her child, or between very close friends, or perhaps between a husband and wife who have been married for most of their lives. However, interpersonal relations in this sense should not be confused with membership of a group, including a family group. Secondly, from the fact that some characteristic is a constitutive element of the identity of a human person it does not follow that this characteristic has any moral value, let alone such intrinsic moral value as to be worthy of protection by a right or rights. Thirdly, many intrinsically morally valuable and identity conferring features of human beings are dependent on membership of familial, communal and cultural groups, e.g., being able to engage in moral reasoning is dependent on at least past membership of a cultural group. But from this it does not follow that the group membership itself is both: (a) a constitutive element of individual identity; and (b) intrinsically morally valuable. Fourth, from the fact that membership of a familial, communal, cultural or other group might have some intrinsic, i.e., non-instrumental value, it would not follow that it had moral value of an order of importance as to be worthy of protection by a right or rights.

The question raised at the outset of this paper was whether or not there are group rights to things that are: (a) intrinsically morally valuable; (b) constitutive of selfhood, and; (c) as a consequence of (a) and (b), able to underpin a moral right or rights (viz. a group right). In the context of our discussion, the answer to this question turned on the issue

18 I am not suggesting that moral rights do not sometimes protect things that are merely valuable as instruments for protecting things that are intrinsically morally valuable. Perhaps rights to group membership are of this sort. However, if the commitment to group membership is to have any real bite then group membership itself would have to be both: (a) a constitutive element of individual identity; and (b) intrinsically morally valuable.

19 This point is in effect made by Macdonald op cit. p.22.
of whether there are any intrinsically morally valuable, indeed rights-generating, elements of the individual identity of a human person that are inherently familial, communal, cultural or otherwise inherently group-centred. So we are not speaking of elements of individual identity that merely in part depend on, or are heavily influenced by, membership of the person's family, community or culture.

At this point, I must confess to failure; I cannot think of any such inherently group-centred elements. All the candidates on offer turn out to be either: (1) identity-conferring interpersonal relationships between individual human beings, e.g., deep friendships, child-parent relationships, longstanding spousal relationships, or; (2) identity-conferring properties that are not intrinsically morally valuable, or not sufficiently morally valuable to ground moral rights. The latter include such identity-conferring group-centred properties as membership of the Roman or English upper class, membership of the community of believers in a Christian or Hindu or Muslim God, and membership of the group of persons who happen to speak the Afrikaans language. Contra some political ideologies, mere membership of a particular socio-economic class is not in itself of sufficient moral value to ground a moral right; so much ought to be at this late stage of human history obvious. What of membership of a religious group?

As 9/11 reminded us, there are extremist religious groups whose beliefs are false and whose religiously inspired actions are evil. So religiosity of itself does not equate to moral value. Moreover, in the cases in which membership of a given religious group is highly conducive to moral rectitude, such membership is presumably merely instrumentally morally valuable. Now consider religions in which formal membership of the relevant religious group is a necessary condition for an individual exercising his or her individual right to worship; perhaps access to the deity is believed to be mediated by the class of priests. Even in these cases membership of a religious group is not intrinsically morally valuable, or at least not sufficiently intrinsically morally valuable to justify the moral right to worship; rather membership of a religious group simply provides a necessary condition for the exercise of an individual's right to worship.

Our final example is membership of a linguistic group. Membership of some linguistic group or other is a necessary condition for human agency; action requires thought and thought requires language. However, as we have just seen in the case of membership of a religious group, from the fact that membership of a group is a necessary condition for some morally desirable activity or condition it does not follow that such group membership provides the ground or moral justification of that activity or condition.

Consider the salient moral right in this area; the individual moral right to free speech. This right presupposes moral agency, and therefore both agency per se and language. However, membership of a linguistic community does not provide a moral justification for the individual moral right to free speech. Rather the reverse is the case. The ability to communicate thoughts is an intrinsically morally valuable, indeed rights-generating, element of the individual identity of a human person. Hence, children have an individual moral right to be inducted into some human language or other. Moreover, the ability to speak freely is an intrinsically morally valuable, rights-generating, element of the individual autonomy of a human person. Hence, adults have an individual moral right to free speech in whatever language they speak.

Membership of the Afrikaans speaking linguistic group, in particular, enables access to the creative thought, imaginings, history, moral values and so on of the Afrikaner people. So membership of this particular linguistic group has great instrumental moral value. Moreover, it also has great instrumental, and perhaps intrinsic, aesthetic value; I say 'intrinsic aesthetic value' since it is often suggested that speaking Afrikaans is itself an aesthetically pleasing activity. (This point is not often made in relation to, for example, speaking Australian English.) However, membership of a linguistic group may equally confer moral or aesthetic disvalue. As is the case with most cultures, there is much in the history of Afrikaner thinking to be despised. Indeed, membership of
some linguistic groups may confer little or no moral value. For example, there is little, if anything, to be gained morally—or for that matter, aesthetically—from learning the artificial language, Esperanto. In short, while membership of a particular linguistic group typically has very great instrumental moral value by virtue of providing access to a morally rich tradition of thought, nevertheless, mere membership of a particular linguistic group is evidently not an intrinsically highly morally valuable and rights-generating property.

I conclude pace Ian Macdonald that there are no group rights to things that are: (a) intrinsically morally valuable; (b) constitutive of selfhood, and; (c) as a consequence of (a) and (b), able to underpin a moral right or rights (viz. a group right).

Naturally, it does not follow from this that there are no group rights. In the second section of this paper I outlined my favoured conception of group rights as joint rights possessed in part on the basis of membership of a social group. Moreover, some of these group or collective rights are cultural and linguistic rights, e.g., the joint right of members of a community to produce their own culturally specific films or the joint moral right to promote the Afrikaans language. Elsewhere I have elaborated my account of such rights. 20 Here I simply reiterate the view that the existence of such joint rights is entirely consistent with individualism, albeit not exactly the form of individualism adumbrated by Ian Macdonald in his 1988 paper.

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Sometime in the mid-1980s, while on a rugby tour with Ian Macdonald in his capacity as President of the Rhodes Rugby Club, I did a bungee jump at the Bloukrans gorge. I was the only one in the team who participated in this then fledgling activity, and, perhaps because I wasn’t married and had no children, paid no thought to the possible costs of an accident in what was generally, at the time, perceived to be a potentially hazardous activity. Subsequent contact with Mac, in rugby and social contexts, as well as in the Philosophy Department, educated me to consider (both personally and academically) issues of duty, consequence, and virtue. It is the former two that form the subject matter of this essay, along with considerations of autonomy and paternalism.

Twenty years on, bungee jumping is now probably considered a relatively ‘tame’ and safe activity, particularly relative to the vast array of so-called ‘extreme’ sports that seem to have expanded exponentially into the public consciousness. Partly through media exposure, activities such as mountain biking, parachuting, surfing, and scuba diving, have seen an enormous increase in participation levels. The loosely attached (and loosely understood) ‘extreme’ label is broadly applied. It is not however these relatively safe activities that I wish to examine. Rather, it is those pursuits that can with little argument be described as ‘dangerous’. In particular, I will consider big wave surfing, high altitude mountaineering, free solo climbing, freediving, and BASE jumping. The reason for referring to these so-called dangerous activities is that the nature of the potential costs involved (determined by the very nature of the activities) raises the more interesting moral questions. For instance, can a participant in these sports justify the benefits (e.g., psychological wellbeing) against potential costs such as injury, death and bereavement?