

INDIVIDUALISM  
AND DEMOCRATIC  
CULTURE



GEORGE KATEB

THE  
INNER  
Ocean

C O N T E N T S

# The Inner Ocean

*Individualism and Democratic Culture*

George Kateb

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## Preface

This book deals with individualism sympathetically. Yet I have tried in the Introduction and recurrently in the chapters to look at a few of the criticisms made of individualism, especially of its core, the doctrine of individual rights. I hope to suggest that when the theory of individualism is associated with democracy, individualism does not promote what its critics say it does—self-seeking and deracination—but instead furthers an aspiration toward a self and a society that stand for something good and that may even enhance existence.

Related matters are explored in some other work not collected here, especially in “On the ‘Legitimation Crisis,’” *Social Research* 46 (Winter 1979), 695–727; “Democratic Individuality and the Meaning of Rights,” in Nancy L. Rosenblum, ed., *Liberalism and the Moral Life* (Cambridge: Harvard University Press, 1989), 183–206; and “Hobbes and the Irrationality of Politics,” *Political Theory* 17 (August 1989), 355–91.

I thank persons for their help in particular chapters, but I have other acknowledgments to make. I owe a special debt to William Connolly for the example of his work, and also for suggesting that these essays be collected and then providing advice on those that are published here for the first time. Chapters 4, 5, and 6 are the revised texts of lectures given at the Christian Gauss Seminars in Criticism, Princeton University, under the title “Human Extinction and Moral Philosophy,” in the spring of 1985. I thank Victor Brombert and the Gauss committee for their invitation, and the members of the seminar for their challenging criticisms. My thanks for their steady responses and questions go to David Bromwich, Thomas Dumm, Jean Elshtain, Amy Gutmann, John Hollander, Leo Marx, Donald Moon, Barry O’Connell, Richard Poirier,

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## Individual Rights and Democratic Individuality

The moral basis of this book is the belief that respect for individual rights is the best way of honoring human dignity, by which I mean the equal dignity of every individual. The core of these rights is explicit in the U.S. Bill of Rights (and in articles of the original Constitution), generously construed—as construed by the Warren Court, not by its successors. Such rights are rights against government—against the state, as we now commonly say. (The theory of individual rights assumes that government as such, government in any form, has its own power interest which inclines it to deny that rights exist or to encroach on those it recognizes.) Perhaps there are rights against other social concentrations of power, especially when implicated in governance or financially dependent on government; but on that matter, I think, one must proceed cautiously. In any case, someone with an individualist commitment has the state most in mind, the state as the formally vested agency of coercive power. (To be sure, sometimes government does the worst things as an agent of private interests or sentiments. Private persons, not governments, owned most slaves in the United States. Also, there was no governmental interest in the disfranchisement of women.) Even in its best modern form—constitutional representative democracy—government is always under suspicion for those who believe in individual rights. It is the best modern form because it is the form that suspicion politically takes. This kind of suspicion is memorably concentrated by John Stuart Mill in *On Liberty* and *Considerations on Representative Government*,<sup>1</sup> even though he tries to avoid talk of rights. (Rights are thus claims to certain kinds of actions or abstentions by the state, whatever its form.)

<sup>1</sup> See especially the closing section of chap. 5 of *On Liberty* and of chap. 4 of *Considerations on Representative Government*.

The background assumption is that most people in a society of rights are disposed to be law-abiding and that government's mere existence sustains their disposition. But because some persons inevitably transgress against their fellow citizens, government can never lose the status of protector; in particular, protector of life and property, the usual objects of transgression. If, then, rights are rights against the state, the theory of rights does not ignore the obvious fact that the state exists to prevent, deter, or punish crime or mayhem. (I prefer to see crime not as a denial of the victim's rights but, instead, as legally culpable immorality; nevertheless, it is sometimes sensible to speak of individuals violating one another's rights.) Government exists to preserve individuals. The point is that it must do this work, and its other work, in a way that does not violate rights, including the rights of transgressors and those accused of transgression.

If the Bill of Rights is the core, its silences and deliberate omissions required that it be supplemented over time. Freedom of speech, press, religion, and association; due-process rights for suspects, defendants, and the legally guilty; and respect for a person's freedom from arbitrary invasions of security and privacy—all go far in protecting the dignity (or integrity) of individuals. But their dignity needs more—above all, three further rights: first, the right to vote and take part in politics; second, the right to be spared from utter degradation or to be saved from material misery; and third, the right to equal protection of the laws (in the language of the Fourteenth Amendment). The two last-named rights do not call for mere governmental abstention, as do the rights of speech, press, religion, association, security, and privacy. Nor do they call for only procedural justice, as do some other main rights in the Bill of Rights. Rather, the right to be free of degradation and misery answers to a minimal samaritanism as morally obligatory on society and looks to government to carry it out. It is a right to be given something, to be enabled to begin to live a life. Samaritanism is obligatory on society, and obligatory samaritanism would be the foundation of a right to life which was expanded beyond its present constitutional interpretation in the United States. I believe that this right, more than any other, stands in need of expansion through positive governmental action, despite all the serious risks involved in charging governments with the task of fostering life. And the equal protection of the laws may necessitate governmental action against, say, official or social racial discrimination. (Naturally, in saying that the state, which must always be kept under suspicion, must also be entrusted not only with the fundamental task of preserving individuals against transgressors but also with the positive function of

promoting some of the rights that are indispensable to human dignity, one admits that there will be an inevitable ambivalence toward the state. It is an enemy, the worst enemy, but it is not the only enemy and it is not only an enemy. My emphasis, however, is on the antagonism that government shows to rights by its initiatives rather than by its neglect. Throughout this book I rarely refer to rights that need government's positive contribution. The latter rights, no matter how fundamental, cannot be the norm in a society devoted to individual rights.

Different individuals may use or need the several rights variably, but when government refuses to respect rights, it not only makes people suffer, it injures everyone's human dignity.

My main reason for beginning with the Bill of Rights rather than with some other charter of equal individual rights is that it makes rights against government the norm. Another reason is that the Bill has been in effect continuously for two centuries. If its protections have sometimes been violated systematically or in episodes, and if they have been narrowly construed too frequently, still the mere existence of the Bill has both symbolized and energized a country's formal and long-standing commitment to individual rights. The words have been lived, though with a lamentable imperfection. Furthermore, there have been two centuries of judicial interpretations of these rights. I do not think that there is another literature on individual rights which is comparable in richness, subtlety, and ingenuity. When we then add the political effort to realize the three other rights I just mentioned, and the political and judicial reasoning that has aided their realization, we find a unique contribution to the meaning of human dignity.

Especially noteworthy in American life is the way judicial review allows individuals to take on the government and sometimes win; and, by winning, establish an enhanced understanding of a right for any, which is then confirmed by the government's compliance with the authority of the courts. Judicial supremacy is, ideally, the individual's supremacy: the rights of one person (or class of persons) prevailing over the policy of the state or society.

These facts (an old Bill, judicial review, and a constant struggle for rights) do not, in themselves, mean that the United States is the country in which human dignity is best achieved. I am not even sure that a calculation could ever be properly made which ranked various constitutional democracies: the same right receives different degrees of protection in different countries and some rights are not recognized by all countries. We can say that the right to life, the right not to be enslaved, and the right to be free of degradation or material misery are the most

basic rights: they pertain to the prevention or remedy of great pain and the utter diminishment of human dignity. Equally basic are the rights of free speech and press because they are the key to defending all rights. By disregarding these basic rights government does not show even a minimal respect for human dignity. Other rights are not secondary, but have less meaning, or are compromised, unless the more fundamental ones are respected. These other rights are also less uniform in their presence. The presence of one such right cannot be weighed against the absence of another. We could be reduced to comparing the number of these other rights present in various countries. Nevertheless, whatever may be shown about the actuality of rights in the United States and elsewhere, the historical record of theoretical interpretation in the United States is uniquely valuable. I say all this to explain why the arguments I have tried to present in this book are guided by the American experience of rights, even though the theory of rights is now universal, or nearly so.

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Why make so much of individual personal and political rights? The answer, as I have said, is that respect for rights is the best way of honoring human dignity. Why make so much of human dignity? I do not find much to say. I am not even sure that much should be said. Suppose we carry on at length about why governments should treat people in certain ways (by actions and abstentions), and in these ways unconditionally and as a matter of course, and should do so because people deserve and are entitled to such treatment, rather than because governments may find it prudent to treat people in these ways in the spirit of extending revocable privileges. I am afraid that we may jeopardize human dignity by laboring to defend it. What sort of attack would merit an answer? Is a long and elaborate theory needed to establish the point that people should not be treated by the state as if they were masses, or obstacles or instruments to higher purposes, or subjects for experiments, or pieces in a game, or wayward children in need of protection against themselves, or patients in need of perpetual care, or beasts in need of the stick? With what right does anyone maintain that people may be regarded or used in these nonhuman or subhuman ways? With what truth? Unabused and undegraded, people have always shown that they deserve better. They deserve guaranteed rights. When their rights are respected, all that their dignity, their human status, requires is achieved. People are

enabled to lead lives that are free, modest, and decent—provided, of course, socioeconomic circumstances are not hopeless.

To tie dignity to rights is therefore to say that governments have the absolute duty to treat people (by actions and abstentions) in certain ways, and in certain ways only. The state's characteristic domination and insouciance are to be curbed for the sake of rights. Public and formal respect for rights registers and strengthens awareness of three constitutive facts of being human: (every person is a creature capable of feeling pain, and is a free agent capable of having a free being, of living a life that is one's own and not somebody else's idea of how a life should be lived, and is a moral agent capable of acknowledging that what one claims for oneself as a right one can claim only as an equal to everyone else (and relatedly that what one wants done to oneself one should do to others)). Respect for rights recognizes these capacities and thus honors human dignity.

I know that adequate recognition of these human capabilities does not *entail* respect for rights as the sole and necessary conclusion. This respect is not a matter of logical inference. Rather, given initial sentiments—say, fellow feeling or special sensitivity to pain or dislike of power—recognition can lead to or add up to a theoretical affirmation of rights. The most important sentiment by far is for the idea that (every individual is equally a world, an infinity, a being who is irreplaceable.) *respect here*

At the same time, there are other theories that seem to affirm human dignity yet give rights only a lesser or probationary or instrumental role. Examples are utilitarianism, recent communitarianism, recent republicanism, and radical egalitarianism. The first and last I will return to shortly; my response to the others appears here and there in this volume. All I wish to say now is that unless rights come first they are not rights. They will tend to be sacrificed to some purpose deemed higher than the equal dignity of every individual. There will be little if any concept of the integrity or inviolability of each individual. The group or the majority or the good or the sacred or the vague future will be preferred. The beneficiaries will be victimized along with the victims because no one is being treated as a person who is irreplaceable and beyond value. To make rights anything but primary, even though in the name of human dignity, is to injure human dignity.

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I do not wish to say much, then, in defending the idea of human dignity and in defending universal personal and political rights as the political

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acknowledgment of human dignity. The idea is simple enough. From it flows the assertion that even when people are the moral and actual source of the power and authority of government they ideally retain an adversarial stance toward it. Their moral identity consists, in part, in making claims against it, expecting those claims to be honored, yet also expecting that these claims, these rights, will tend to suffer periodic erosion and an almost constant probing for weakness, so to speak, at the hands of the state.

Yet I know that John Rawls, in the great work on rights-based individualism in the twentieth century, makes a tremendous and continuously illuminating attempt to justify personal and political rights (or "liberties," as he usually calls them) against theories that challenge them. He wants to show that devising them (together with certain economic and opportunity rules) would be the necessary result of impartial reasoning among imaginary equals who are ignorant of all their future cultural, social, and economic traits and hence are self-interestedly constrained to fairness. Actual people, on the other hand, would arrive at the same result if they had a cultivated sense of fairness, of justice as fairness; if they could adopt "the perspective of eternity . . . within the world" and attain "purity of heart."<sup>2</sup>

I admire Rawls's war on utilitarianism, and the keen sense animating his work that to demand that rights serve some social purposes valued apart from and as more worthy than the equal human dignity of every individual is systematically unfair and hence unacceptable. But I do not absorb Rawls's method into these essays; I prefer to think that I can keep the matter brief and plain. I worry that even when philosophical argument in behalf of rights is powerfully anti-utilitarian and anti-perfectionist the mere implication that rights need an elaborate defense can jeopardize them. This worry is continuous with the one that pertains to the defense of human dignity itself. Respect for the equal rights and hence the human dignity of every individual may therefore tend to appear only optional or properly amenable to dispute or skepticism. As it is, Rawls's

<sup>2</sup> John Rawls, *A Theory of Justice* (Cambridge: Harvard University Press, 1971), 587. Also of great importance for the understanding of rights and their justification is the work of Ronald Dworkin; see his *Taking Rights Seriously* (Cambridge: Harvard University Press, 1978), especially chaps. 7, 12; and *A Matter of Principle* (Cambridge: Harvard University Press, 1985), especially pt. 6. See also Richard Flathman, *The Practice of Rights* (Cambridge: Cambridge University Press, 1976), especially chap. 7. A valuable critique of rights has been mounted by John Gray and is concentrated in his review of Joel Feinberg's book *The Moral Limits of the Criminal Law* in the TLS, January 12–18, 1990, 31–32.

theoretical work becomes most distinctive and most controversial when it deals with the second principle of justice, which comprises rules relating to economic conditions and career opportunities, not when it deals with the first principle, personal and political rights. I do not want criticisms of the second principle to have an easy contagious effect on the first principle.

Though I am given pause by what Rawls says in the very last section of his book, I am not persuaded. He takes up the charge that he should have derived his two principles of justice from a view of human dignity (or respect for persons and their inherent worth). He says, "I believe, however, that while the principles of justice will be effective only if men have a sense of justice and do therefore respect one another, the notion of respect or of the inherent worth of persons is not a suitable basis for arriving at these principles. . . . The theory of justice provides a rendering of these ideas but we cannot start out from them."<sup>3</sup> It may be that a philosopher as scrupulous as Rawls must take little for granted, must start almost without presuppositions, even a minimal one like human dignity. In initiating his theory, he allows "ethical constraints" but not "any ethical motivation."<sup>4</sup> He wants to build a political theory, step by step, starting from something like a state of nature. I choose, instead, to start inside a mode of thinking in which individuals and their rights are assumed as primary because all competing matters urged as primary can be seen as lesser, even when not fictional or unreal. The reasons for caring about human dignity lie partly in sentiments, especially a sense of every individual's irreplaceability; but also in facts. As I have said, the especially relevant facts are that each person is a creature and is capable of being a free agent and a moral agent.) What could matter more than a society or a world in which these facts (enriched by sentiments) are suitably accommodated by a political system of individual rights? The human dignity of each is the rock.

In some of the pages that follow, I do make conceptual use of a state of nature as a hypothetical condition in which no government exists, but not as a literally or historically prepolitical or presocial condition. My main use of the notion, however, is to theorize it as a recurrent reality in a stable society. I mean, as one example, that a state of nature exists in society whenever government compels persons to risk or sacrifice their lives for some purpose other than resisting their own threatened death or

<sup>3</sup> Rawls, 586.

<sup>4</sup> Rawls, 584.

slavery or utter degradation or misery. The theory of rights, as I have interpreted it, would suggest that these persons are being subjected to illegitimate force and hence may rightly assert a prudential wish not to be sacrificed. The theorist—that is, anyone committed to rights, in a thoughtful moment—will see that rights are a special kind of self-interest. When rights are under attack, they become claims that one makes, first of all, in one's own behalf. But when anyone insists on rights against the state, those of everyone else are also being demanded. In exigent circumstances brought on by the state, an individual's universalizable prudence can promote a moral end.

Nevertheless, anyone committed to rights in a thoughtful moment will also know, as Rawls says, that universal prudence is not the normal sentiment in a rights-based society because "the principles of justice will be effective only if men have a sense of justice and do therefore respect one another."<sup>5</sup> A person does not believe in rights who thinks that he or she alone (or some few like oneself) have them. (The sentiment of equal human dignity must be widely shared, not felt only by the observer, if rights are to be sustained against the state, even as the state is pressed to sustain them. Whoever believes in rights must also be interested in how one's government affects the rights of those in other societies. Rights are universal. The protector of them at home must be condemned and resisted for violating them abroad.

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A brief and unrigorous defense of individual rights, then, can perhaps suffice. The protection of personal and political rights is the only true protection of everybody's human dignity. But a religious rejection of human dignity as the highest standard in favor of the superior dignity of the more-than-human is always possible. Undeniably, the theory of rights with which I work issued from religious people in England. Yet they were heterodox and they were intent on freeing society from religious superintendence and making unsectarian political morality the rule for society. They were politically secular, even if their political theory had some religious inspiration. The framers of American rights were even more heterodox, if they were religious at all. These days, if religious views are politically introduced, debate becomes impossible

<sup>5</sup> Rawls, 586.



after a while. Everyday reasoning runs up against belief or faith and becomes futile. The advocate of rights cannot persist in discussion but must try to blunt any religiously inspired attack on individual rights.

In sum, there seems to be no generally credible foundation for a critique of rights. Rights emerge as the only or best way of protecting human dignity, and human dignity remains the highest standard. This is not to deny that there will be strenuous differences of interpretation of various rights and quarrels over the comparative importance of various rights. But by now even some anti-individualists, whether secular or religious, accept the idea of rights as useful or even as an indispensable ingredient in their own thinking about politics and society.

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To say it again: the theory of equal individual rights (personal and political) is now almost universally professed. We should remember, however, that it did not crystallize until the seventeenth century. Though fed from many earlier sources, the theory together with the heightened sentiments that had to inspire and accompany it may be said to have got its start in England among radical Protestants. Within the Independents (also named Congregationalists) a certain group, derisively called Levelers, practically originated the modern theory of rights in almost its entirety.<sup>6</sup> Though the theory is now nearly universal, it had a temporally identifiable beginning, and a recent one at that; and those who formulated it and tried to promote it in their own country were a small, marginal, and unsuccessful band of dissenters. To mention these considerations is to deny that the theory has always existed or that it had to exist. Its origins are obscure and perfectly contingent. Yet, owing to a large extent to American experience and its overpowering influence, the theory, in some form or other, is now everywhere an official doctrine or a common aspiration.

We might say that once the theory appeared it was likely to spread. A drastic eruption in imagination was needed to create it; but once it was manifest its good sense was seen after a while, and people may have wondered why so much time passed without it. The feeling deepened that, of course, all persons deserve to be treated in ways adequate to their

<sup>6</sup> For speeches and writings of the Levellers, see A. S. P. Woodhouse, ed., *Puritanism and Liberty* (Chicago: University of Chicago Press, 1951).