



ETHICS AND FREEDOM: BETWEEN THE NECESSITY OF DUTY AND THE RATIONALISM OF DEMOCRATIC INTERCOMMUNICATION (FROM KANT TO HABERMAS)

Ezziddin al Khattābī ●

Whatever their particular school of thought, philosophers have always regarded “right” as the noblest expression of human freedom and dignity. The English philosopher Thomas Hobbes maintained that right depended upon “freedom, and (that) what is meant by human freedom is that a man should act as he wishes or refrain from acting”¹. The German philosopher Immanuel Kant stated that right was “a set of conditions which enable the individual will of each one of us to be in harmony within its framework and in accordance with universal laws”².

This would imply that consideration of the question of right requires the activation of ethical intention within a political context. That is the direct opposite of the popular Machiavellian view, which divests politics of any

1 Thomas Hobbes: *Leviathan (Leviathan)*, Sirey 1971, P. 128.

2 Immanuel Kant: *Doctrine du Droit (Doctrine of Right)*, Vrin, 1971, P. 106.



ethical content. Freedom and commitment cannot be seen in isolation from government, legitimacy, legality, laws, democracy and human rights as long as they are related to man as a being with a will who aspires to activate the principles of justice, equality, tolerance, citizenship - principles that provide the framework within which the realms of morality and politics intersect.

The basic problem we need to consider here is: How can we define the relationship between moral and social imperatives, duties and freedom as the basis of every right?

We suggest the following steps may help to resolve the question:

- Taking Kant's duty ethics as a starting point for considering moral law vis-a-vis freedom.
- Considering, with an open mind, an important problem raised by the contemporary German philosopher Jurgen Habermas– that is, the relationship between right and morality and the issues they entail which have a bearing on the interaction between individuals and democratic debate in the public space.
- Defining the relationship between the law as an instrument for imposing imperatives, and rights as freedoms; this will enable us to move on from discussing right as a general concept to a discussion of human rights, while raising the question of the relationship between the universal and the particular in that context. (By this we mean human rights from the Islamic or Arab point of view, for example).

1 – From right to duty

Where human behaviour is concerned, how is it possible to reconcile freedom and necessity or move between the will and the imperative as a duty? In his book *The Metaphysical Elements of Ethics* Immanuel Kant says that human behaviour only has a moral value if it has its origin in duty. This can be seen in the fact that every action entails the person who performs it acting in accordance with the maxim which applies to it; according to this, duty is the necessity of performing an action on the basis of respect for the



law¹. And while a moral action does not derive its value from its designated purpose, respect for the law must be independent of the substance of that action, because a moral maxim does not aspire to any pragmatic purpose; it responds solely to the promptings of the conscience. Accordingly, Kant states that moral duty is not an empirical concept, because moral value is not defined by actions that we see, but rather by the principles underlying those perceived actions². We cannot therefore deduce the concept of duty on the basis of experience, because experience is unable to endow it with those qualities of necessity and universality that make it a purely rational imperative. Loyalty in friendship, for example, must be imperative, even if a person has no friend.

Duty, then, is an *a priori* matter which originates in reason; this means that morality must have a metaphysical basis – i.e. it must be based upon an *a priori* study which sets out the conditions required to enable morality to exist. Hence reason-based rules appear to be in the recommendations and imperatives class; in other words, they are duties.

In this connection Kant says: “All imperatives are expressed by the verb ‘shall’ (‘sollen’). This is a reference to the relationship that exists between the objective law of reason and the will, which is by necessity undefined by that law since it is generated within the self”³. Since duty is not based on either experience or pragmatism – that is, since it is independent of any concrete purpose – it must necessarily have a universal quality, and this is what enables it to be expressed in the following formulation: “Act only according to that maxim whereby you can at the same time will that it should become a universal law”⁴. All other moral imperatives may be derived from this maxim.

While the universality of moral law which has its origin in reason exists in nature, the universal imperative of duty can be expressed in the following

¹ Immanuel Kant: *Fondements de la Métaphysique des Moeurs (Groundwork for the Metaphysics of Morals)*, Ceres Editions, Tunis, 1994, P. 71.

² Ibid. P. 82.

³ Ibid. P. 21.

⁴ Ibid. P. 103.



formulation: “Act as if the rule governing your action were established by your will as a universal law of nature”¹. Hence a moral maxim based on reason is the true “legislator” of our actions; so to be richly endowed with reason and an exceptional will is an end in itself for any human being.

Any person, according to Kant, exists as an end in himself, not as a means to be used by one will or another as it sees fit, because value cannot be estimated in terms of price. If the only way *things* or *objects* can have a value is on the basis of our own subjective judgement, the value of *rational beings* or *people* is absolute and categorical. That is the basis of the following categorical imperative: “Act in such a way that you treat humanity, whether in your own person or in the person of any other, never merely as a means to an end, but always at the same time as an end”². Since man must not be treated as a means to an end, he will never be merely the object of universal legislation decreed by moral law. Instead, he will himself be the legislator, because he cannot receive or accept the law relating to him from outside himself. Here the basic principle is that it is the human will which has established universal legislation on the basis of its moral maxims, which are based upon reason. This is known as the principle of the “independence of the will”.

This principle enables us to understand how our compliance with the law is devoid of any pragmatic element. We obey the law because it is we who enacted it. While the will has given itself its moral law, it is independent.

This raises the question of freedom as an embodiment of the independence of the will - an issue that defines the moment of transition from the metaphysics of morals to the critique of practical reason.³

2 – From duty to freedom

The individual’s independence is closely linked to the question of dignity. This is why Kant regards independence as being the underlying

¹ Ibid. Pp. 103-104.

² Ibid. Pp. 114-115.

³ Ibid. Pp. 120-121.



principle of natural human dignity and every natural rational entity. Independence of the will is the highest principle of morality, because it enshrines the will to universal legislation and respect for the human being whose dignity is based on and inspired by that independence. And since freedom is linked to the principle of independence, it offers the only practical means of enabling us to be guided by reason in our behaviour. Hence the most meticulous and profound philosophers find it impossible to harbour doubts on human freedom. Human freedom is linked to a morality which elevates “what must be” to a higher level at the expense of “what is” and decrees that “what must be” is achievable.

Freedom is that “possible” that can be achieved through action. That means that human behaviour is an embodiment of freedom on the basis that “the independence of the will is the only principle underlying all moral laws and the duties that correspond to them”¹. It is in this sense that we can speak about necessity and freedom in relation to mankind, since man is subject to laws in his capacity as a being who belongs to the world of phenomena; at the same time, he is aware of his existence as a free being within a rational system of things². Freedom is basically surrender to reason; Kant calls it the rational system and in this context he defines freedom as “independence of the will vis-à-vis every law, with the exception of moral law”³. Therefore, freedom is both a condition and a cause of the existence of moral law, while the latter is both the path to freedom and a condition for recognising it. Thus a person’s freedom allows him to transform an imperative, or obligation, into commitment, or compliance, in response to the requirements of reason and the moral conscience. In essence, freedom is compliance with universal laws, which have their origin in reason.

This Kantian view of freedom and its relationship to moral duty as an imperative coincides (despite its strictly nominal character) with Jean-Jacques Rousseau’s statements about the independent will which sets its

¹ Immanuel Kant; *Critique de la Raison Pratique (Critique of Practical Reason)*, P.U.F. 9th edition, 1985, P. 23.

² Ibid. P. 77.

³ Ibid. P. 100.



own laws, which he cites in “*Du Contrat Social*” (“*Of the Social Contract*”). Man’s transition from a state of nature to a state of civilization leads to an important change in his situation in that an instinct for justice is replaced by behaviour that has become subject to the dictates of moral principles. Accordingly, the voice of duty becomes louder than mere inclination and the voice of right becomes louder than covetousness and greed, with the result that man only submits to the rational principles which he has himself established. Moral freedom, which makes man master of himself, is one of the benefits of civilization, while compliance with the law that man has devised for himself is at the same time an expression of his freedom¹. Rousseau makes this point in his book, in the chapter on laws and their relationship to rights; in his view, laws are a condition of civil participation and the people who are subject to them must themselves devise them². These laws, of course, have their origin in reason because nothing happens under the law of reason without a cause; this also applies to the law of nature³.

It goes without saying that it was this view that directed Kant’s attention to freedom vis-a-vis its relationship to moral law and to necessity vis-à-vis its relationship to the law of nature. In fact, in this connection Kant uses an expression similar to Rousseau’s when he says: “The notion of freedom is closely linked to the concept of independence, which is linked to the universal principle of morality. This principle is used as the basis for all the actions of rational beings and applies to the law of nature in its relationship with all phenomena”⁴. The problem tackled by Rousseau and Kant, which deals with the relationship between freedom and the law (moral and natural) was destined to be of interest to Jurgen Habermas in the context of what he was to call the relationship between rights and morality. He deals with this subject in several of his numerous publications, including: *Right and Democracy*, *Discourse Ethics* and *Communicative Ethics*.

According to Habermas the relationship can be defined by asking the

¹ Jean-Jacques Rousseau: *Du Contrat Social*, Union Generale d’Editions 10/18, 1973, Pp. 77-78.

² Ibid. P. 99.

³ Ibid. P. 89.

⁴ Immanuel Kant: *Fondements de la Metaphysique des Moeurs (Groundwork for the Metaphysics of Morals)*, Ceres Editions, Tunis, 1994, P. 149.



following question: What concessions are made by freedoms that have their origins in active individuals, in the face of the commitments demanded by social communication and a desire to ensure mutual understanding and an adherence to the ethics of discourse?¹

3 – The relationship between right and ethics

According to Habermas, communication – as a voluntary act- can only exist between two active individuals who wish to understand each other on a specific question, on the basis of a particular illocutionary situation and within a context that both parties regard as being appropriate. That freedom, then, is centred on interaction between two individuals and linked to the commitments entailed by the “illocutionary acts”. By “interaction between individuals” he means a relationship linking two or more people in the world in which they live - insofar as members of a particular society relate to that world since it is ‘one world for all’ - and interact with each other as individuals with mutual ties and commitments which they themselves affirm.

However, this raises the question: How are interactive partners engaged in a common activity and in an intersubjective relationship linked to each other? The answer is that the links exist through the power of implicit rationality within the competence of the discourse, which Habermas calls “communicative reason” The power of communicative reason comes from two basic elements of human interaction. They are:

- Illocutionary knowledge, and
- “Assumption” in discourse

This means that intersubjective recognition is based upon the appropriateness and universality of the criteria, which must be acceptable to all the people concerned. Habermas affirms this point when he says: “It cannot be claimed that a criterion is appropriate unless all the people concerned agree, or are able to agree, as participants in a practical discourse about the appropriateness of that criterion”².

1 Jurgén Habermas: *Droit et Démocratie (Right and Democracy)*, Gallimard, Paris, 1997, P. 148.

2 Jurgén Habermas: *Morale et Communication (Moral Consciousness and Communicative Action)*, Flammarion, Paris, 1986, P. 87.



The imperatives associated with illocutionary acts entail mutual concessions with regard to the level of the discourse. The ethics of discourse require rational criteria which conform to proper standards of reasonableness, authenticity, truthfulness and correctness, as well as equality for all prospective participants in the discourse (particularly with regard to communicative verbal acts), so that they can all enjoy the same opportunities to express their views. Here no pressure may be exerted apart from the pressure of the best argument, since the arguments we put forward are always hypothetical.

The only reasonable response to a particular argument is not dogmatism and inflexibility, but a readiness to listen to and consider the views of others. On this basis, debate becomes associated with freedom, rational incentives and motivation, and discourse in the public space becomes inextricably linked to political rationality and democratic legitimacy. In this connection Habermas states that democracy cannot exist unless people listen to each other, recognise each other and seek to establish a universal value that they will apply to individual expressions of particular preferences. Thus he asserts that communication is the sphere in which reason manifests itself, while appropriate discourse has the symbolic effect of promoting social cohesion. It is impossible to imagine a communicative act taking place unless there is interaction between members of society as individuals with mutual ties and commitments arising from common criteria of the world in which they live.

When Habermas resorts to the model of the rationalised world in which we live, he is in fact criticising the instrumental rationality which dominates the realms of the economic, administrative and political systems. In his view true democracy needs to change this trend and prevent instrumental rationality from subjecting communicative acts to its control, particularly in the political sphere. This can only be achieved by establishing interaction between individuals, in which they engage in the process of intercommunication based on the reasonable grounds each adopts in order to support the claim that what each of them says and does is appropriate; this is called rationally justified engagement. The distinctive feature of this type of engagement is that agreement is based on a kind of responsibility



towards other parties. Everyone has confidence in each other's ability and will to commit himself to the assumption that what he does and what he says is appropriate.

According to this view, rationality is embodied in discourses through the medium of interlocution and discussion. Here the need for knowledge is implicit in the interaction that takes place between individuals. The more this interaction is based upon argument, the more authentic it is, in the sense that it enables all members of a particular group to recognise and acknowledge each other. Thus democratic necessity can be seen as a necessity that entails knowledge and enables co-operation to exist through mutual recognition between individuals, based upon the appropriateness and universality of the criteria, which will be accepted by all the people engaged in the interactive process. It will not be possible to assume that any criterion is appropriate unless the people concerned agree on its appropriateness in their practical discourse. This raises the question of the ethics of discourse within the public space, which is based on the principle of justifying normative assumptions of appropriateness through discussion and debate. In the view of this moral position, no criterion can be assumed to be appropriate unless it can be tested rationally.

Thus it is possible to speak of rational mutual consent in the intercommunication process. This mutual consent is based partly on rational argument and partly on the democratic practice of pluralism, independence and respect for the rules of decision-making. Hence democratic discourse within the public space will have three dimensions: conflict which puts the conflicting sides in confrontation with each other, mutual consent which allows the parties in conflict to coexist, and consensus, which is related to the common cultural tendencies shared by all the parties. These features enable democracy to acquire the condition it basically needs (within the context of intercommunicative discourse as a rational activity), which will be defined precisely by the criteria agreed upon between the people who interact with each other as citizens. Unless the citizen plays an active part in open democratic discourse, daily life will be subjected to relationships characterised by chronic coercion and control.



In this connection Habermas observes that the principle of democracy is the “beating heart” of the rights system – a system which comprises all the rights that citizens are recognised as needing in order to run their lives in a manner compatible with legality. These rights – which may be described as “basic rights” - can be classified in five categories, starting with these three:

- The right to the greatest possible measure of individual liberties, which must be held equally by all.
- The right to enjoy the status of a voluntary association of consociates under the law and the right to set up associations.
- The right of legal protection for the individual¹.

These three categories of rights define relations between citizens as free and voluntary participants. The right to intellectual freedom is a morally established right, on the basis of the principle of democratic debate, which includes the notion of citizens producing their own legislation by and for themselves².

The other two categories are:

- The right to free participation and equal opportunities in forming views within which citizens can exercise their political independence.
- The ability to benefit from all guarantees granted by the right of citizenship in every sphere (social, cultural, environmental) without distinction or discrimination between citizens³.

The rights system we have outlined above will in itself have an imperative legal force. It covers individual activity, allows equal freedom of action and sets out constitutional principles which ensure that all citizens share the same goals. This in turn ensures that – in the words of Rousseau⁴ –the

¹ Jurgen Habermas: *Droit et Democratie (Right and Democracy)*, Gallimard, Paris, 1997, Pp. 139-140.

² Ibid. P. 138.

³ Ibid. P. 140.

⁴ Jean-Jacques Rousseau: *Du Contrat Social*, Union Generale d’Editions 10/18, 1973, p. 103.



private will and the general can coexist harmoniously within a state framework known as a State of Right, which is subject to the rule of law that guarantees the rights and freedoms of its citizens.

Within the context of that state, how should one define the relationship between the law as an imperative and rights as freedoms?

4 – From discourse on right to discourse on rights

The essence of the State of Right may be summed up as respect for the laws that are in force and respect for the person as a human being. In her book “*Les Theories du Pouvoir*” (“*Theories of Power*”) the French academic and writer Jacqueline Russ describes it as “a state in which there is law and right linked to respect for the person. It is a legal framework which guarantees individual freedoms and defends human dignity against all forms of violence and despotism”¹.

A State of Right has these three features:

- Law that guarantees freedoms.
- Right that guarantees any citizen respect for his person as a human being.
- Separation of powers which allows the legislative, executive and judicial authorities to exist and function independently of each other.

These conditions provide protection against the totalitarian or police state model which gives the government and administrative authorities free rein to act as they please. It also strengthens the alternative forces such as opposition political parties, trade unions and civil society bodies that seek to resist opinions imposed from above and safeguard citizens’ rights. We can describe this situation as upholding human dignity and rights within the framework of the State of Right.

So how do those rights manifest themselves? What is the philosophical principle upon which they are based?

¹ Jacqueline Russ: *Les Theories du Pouvoir*, Librairie Generale Francaise, 1994, P. 90.



The concept of human rights entails demands that must be met for all individuals without exception, regardless of class, gender, colour, creed, racial origin or any other factor. Those rights, or the satisfaction of those demands, must be guaranteed for all individuals by virtue of the fact that they are human beings. According to this definition, which may be found in the relevant United Nations documents, human rights “are rights that are fundamental to our nature, without which we cannot live our lives as human beings”. As we are all aware, the philosophers of Natural Right in the seventeenth and eighteenth centuries (such as Hobbes, Locke, Rousseau etc.) based their vision of human rights on two rights – freedom and equality - which formed the roots of all other rights. Accordingly, the human rights declarations in the West (the American Declaration of 1776, the French Declaration of 1789 and the United Nations Declaration of 1948) have acquired a global character that transcends borders and cultures.

The global nature of those rights raises two important questions – the cultural and philosophical basis of those declarations, and the status of human rights as seen from the point of view of their universality or specific applicability.

Principles of human rights; the philosophical and cultural background

The Universal Declaration of Human Rights (1948) is a blend of philosophical ideas on Natural Right and civil right. Seen from one angle it is a philosophical view of the “universal human being” and equal rights for all mankind, yet at the same time it also defines the principles of justice and the rules for regulating society. It can therefore be interpreted according to the theory of Natural Right; for example, Article One of the Declaration says: “All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood”. However, because of its social, cultural and legal values, it can also be understood along the lines of the theory of positive (or “man-made”) rights. This is borne out by several of its articles; Article Six, for example, says: “Everyone has the right to recognition everywhere as a person before the law”. In this connection, therefore, we



can speak of the dialectic of unity and plurality within the context of the Declaration, since human rights appear as a single whole derived from the idea of the Universal Man, while they also exist as a plurality in view of the wide range of rights which the state guarantees.

For example, it includes natural rights such as the right to life, liberty and security of person (Article Three), which is binding on the state, groups and individuals (Article Thirty). This imperative also has a moral dimension which reinforces those rights.

It should be noted that there are also some possible objections to the principles of the Declaration. They are general and superficial, in that they are applicable to Man in general, regardless of his particular cultural situation or actual position in society. This raises the question of the extent to which the Universal Declaration of Human Rights applies to the particular cultural circumstances of different societies and the degree to which it is able to cater for the universal and the specific¹.

Human rights: universal and specific

Some people have no hesitation in criticizing the Western model of human rights as set out in the Universal Declaration of 1948. In their view it is formulated on the basis of Western cultural values and does not take account of other, different, cultural circumstances. The universality of those rights has been challenged and there have been calls for its articles to be revised to recognize the different societies and cultures in the world; these include Arab and Islamic societies.

In this regard, there have been several initiatives aimed at producing Islamic or Arab-oriented human rights charters. They include the Universal Islamic Declaration of Human Rights issued by the Islamic Council of Europe in London in 1981, the Cairo Declaration of Human Rights in Islam of 1990 and the Arab Charter on Human Rights issued by the Council of the League of Arab States in 1994. Although these declarations focus on the specific cultural circumstances of Arab and Islamic societies and their

¹ Ibid. P. 93.



principles are founded on the Shariah of Islam – particularly the values of brotherhood, peace, justice, tolerance and equality between mankind – the concepts they embody are universal concepts that apply to the whole of humanity, including the right to life and freedom, the right to protection from torture, etc. It is on this basis that the Moroccan thinker Mohammed Abed al Jaberri maintains that the declarations’ theoretical foundations, which have their origin in our Arab and Islamic culture, do not differ essentially from the basic principles of human rights in Western culture.

We should like to ask our scholars and intellectuals to highlight the universality of human rights in both Western and Arab Islamic culture. To do this they will need to promote awareness of the fact that the rights which are part of our culture are indeed universal, by pointing to the universality of the theoretical basis upon which they are grounded. This will also demonstrate the universal nature of human rights within the specific context of a specific culture and “once again reaffirm that the specific and the universal are not two opposites; on the contrary, they are interdependent and mutually supportive, since every ‘specific’ contains something that is ‘general’ in terms of its applicability, just as the ‘general’ is only general insofar as it includes what is ‘general’ in every type of ‘specific’”¹.

Finally, everything we have said shows that the relationship between right and ethics is based upon two basic principles – freedom and justice. Taken together, they provide contemporary political philosophy with material for extensive research and debate - one good example of this being the debate between Jurgen Habermas and the American philosopher John Rawls². Accepting the notion of individual freedom raises the question of equal rights between individuals, and this in turn gives rise to the question of social justice and the relationship between the individual and the state. This means that the issue of right is intimately linked to politics and morality, because rights, of whatever kind, can only find expression in an active and dynamic political context within a civil society that recognises

1 Mohammed Abed al Jaberri: *Al Dimoqratiyyah wa Huququ’l Insan*, Arab Unity Studies Centre, Beirut, 1994, P. 144.

2 Jurgen Habermas and John Rawls: *Debat sur la Justice Politique (Debate on Political Justice)*, Les Editions du Cerf, Paris, 1997.



the concepts of citizenship, democracy, justice, tolerance and difference. With regard to the last of these points – i.e. difference, or disagreement – let me quote the French philosopher Paul Ricoeur’s observation on the intersection between right, politics and morality: “A State of Right is a state in which there is free, orderly debate. This model of free debate endorses party political pluralism. In advanced industrial societies it is regarded as the most appropriate way of resolving conflicts. In order for this free debate to be effective, everyone must be aware of the fact that political discourse is not a science. Rather, it is at best a ‘pertinent view’...I consider that democracy is the system which enables the greatest possible number of citizens to take part in the decision-making process. This means that it is a system that narrows the gap between subject and ruler. Kant described this Utopia in his portrayal of the idea of ‘the primacy of final goals’ in the context of moral commitment – i.e. the primacy of a system in which everyone is simultaneously subject and ruler”¹.

¹ Paul Ricoeur: *Du Texte a l’Action: Essias d’Hermeneutique II*, Editions du Seuil, November 1986, P. 403.