What Ethics Has to Do with Ethics by Design: From Ethics by Design to Morality by Design and the Risk of Normative Closure

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Abstract

This paper asks whether Ethics by Design (EbD) can properly be regarded as ethics rather than as a form of normative governance. It argues that EbD tends to collapse ethical, legal, political, and technical statements by translating contestable values into operational requirements. Drawing on the tension between Kantian critical justification and Hegelian institutional embodiment, and on B. Williams's critique of the morality system, the paper identifies the risk of reducing ethical reflection to compliance. Such reduction may privilege existing norms and reproduce the normative status quo through technical design. A genuinely ethical EbD must therefore preserve what R. M. Hare called the critical level, at which its own normative premises remain open to justification, contestation, and revision.

Keywords

Ethics by Design, Normative Governance, Ethical Justification, Normative Closure, Critical level.

1. Introduction

The question I want to raise deliberately echoes Tina Turner's famous cover: what has ethics got to do with Ethics by Design? More precisely, when we say that ethics should be built into an artificial intelligence system, a platform, or a digital infrastructure, in what sense are we still speaking about ethics?

I want to make clear at the outset that my argument is not a rejection of Ethics by Design. It is entirely reasonable to translate certain values, prohibitions, safeguards, and procedures into the architecture of a system. Legal systems already perform a comparable operation by translating normative commitments into rules, prohibitions, permissions, procedures, and institutional safeguards. Technical systems can likewise be designed to protect privacy, reduce discriminatory outcomes, preserve human oversight, document decisions, or enable appeal. These are important achievements.

My claim is narrower, but also more unsettling: once ethical judgments are translated into specifications, constraints, standards, and procedures, they do not remain unchanged. Ethics by Design is therefore a legitimate practice of normative governance, but it is not self-evidently ethics in the strict sense.

This is not merely a semantic objection. Names matter here because the name "ethics" can confer authority. It can make a political choice look like a moral truth, a legal requirement look like a complete ethical answer, or a technical standard look like the neutral embodiment of the good. My concern is with the architecture of rationality created by Ethics by Design: what kinds

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of statement it brings together, what differences it suppresses, and what space it leaves for criticism after values have been embedded in a system.

2. Ethics and morality

Let me begin with a distinction between ethics and morality. In ordinary language the two words are often interchangeable. For my purpose, however, the distinction is analytically useful. By morality I mean the norms, expectations, duties, permissions, prohibitions, and ideals through which a particular society or community regulates conduct. Morality is lived, inherited, institutionalized, and historically situated. By ethics I mean the reflective activity through which we ask whether those norms are justified, coherent, fair, or worthy of obedience.

Morality tells us what is treated as right or wrong. Ethics asks whether what is treated as right or wrong ought to be treated in that way. Morality provides the normative input; Ethics by Design operationalises that input; ethics, in the critical sense, examines the input itself. Ethical reflection always necessarily begins somewhere inside a language and a form of life. Yet without some distance, criticism becomes impossible. If ethics merely repeats the morality already embedded in our institutions, then ethics loses precisely the function for which we need it.

British philosopher Bernard Williams [1] helps us locate the problem. Williams uses "ethics" in a broad sense, for the Socratic question of how one should live, while criticising what he calls the "morality system": a narrower structure organised around obligation, blame, voluntariness, and a demand for a purified moral standpoint. I do not need to accept every aspect of Williams's genealogy in order to use the contrast. What matters is that ethical life is richer than a catalogue of obligations, and that the language of obligation can become detached from the historical and institutional conditions in which people actually act.

This gives us two poles, which I will identify schematically with Kant and Hegel. They are poles, not caricatures and not mutually exclusive boxes. At the Kantian pole, the authority of a norm depends on whether it can be justified by reason and universalised, rather than merely on the fact that it is accepted. At the Hegelian pole, ethical life is not an abstract code standing outside society. It is embodied in practices and institutions—in family, civil society, law, and the state—and acquires meaning through that embodiment. Williams's work shows why neither pole can simply absorb the other. Pure abstraction risks losing the texture of ethical life; pure immanence risks identifying the rational with whatever happens to be historically actual.

3. The tension between Kant and Hegel

Prussian critical philosopher Immanuel Kant [2] gives us the critical question that no design process should be allowed to silence: can the principle on which we act be justified to rational agents as a general principle? This Kantian requirement is reformulated in British analytic philosopher Richard M. Hare's [3] account of universalizability, according to which moral prescriptions commit the speaker to making the same judgement in relevantly similar cases. In this sense, universalisation here does not mean that every valid norm must be culturally empty or mechanically identical in every context. It is a test of the kind of claim being made. It forces us to move beyond "this is what we do" or "this is what our organisation prefers." But the test

does not by itself exhaust ethical judgment. It does not automatically settle conflicts among rights, consequences, relationships, histories, and forms of vulnerability.

German idealist philosopher Georg W.F. Hegel [4], on the other hand, reminds us that norms become real only through institutions and practices. Freedom is not exercised in a vacuum. A right without procedures, offices, recognition, remedies, and social conditions may remain merely formal. This is a vital insight for technology. Values do not enter technical systems as disembodied propositions. They pass through organisations, budgets, professional roles, regulatory environments, datasets, interfaces, and divisions of labour. In this respect, Ethics by Design has a strongly Hegelian intuition: ethical commitments must be made objective in the designed world.

Yet that strength produces the central danger. If objectification is treated as justification, the norms that have successfully entered institutions can appear superior simply because they are already there. The actual begins to masquerade as the rational. A norm may be widespread, legally recognised, technically implementable, and politically convenient—and still be unjust. The existence of a social practice explains how a norm operates; it does not prove that the norm deserves our allegiance.

The Kantian moment of critical distance and the Hegelian moment of institutional embodiment must therefore remain in tension. Ethics by Design needs both, but it tends to privilege the second. It is very good at asking how values can be made operational. It is much less well equipped to ask whether the values selected for operationalisation are the right ones, who selected them, which alternatives were excluded, and whether the resulting arrangement could be challenged by those who bear its costs.

4. Four different kinds of statement

The problem becomes clearer if we distinguish four kinds of statement that are often compressed under the label of Ethics by Design.

First, there are ethical statements: for example, “persons should not be treated merely as instruments,” or “a decision that seriously affects a person should be open to justification.” These claims offer reasons for action and invite critical argument. Their validity does not depend simply on whether a government has enacted them or an engineering body has standardised them.

Second, there are legal statements: “the controller must provide the data subject with specified information,” or “this processing is prohibited unless a lawful basis applies.” Legal statements belong to institutions of authority, interpretation, enforcement, and remedy. Law can embody moral reasons, but legal validity and ethical justification are not identical. The law may say that I ought to obey the law; ethics can still ask whether that law is just.

Third, there are technical norms: “the system shall retain an audit log,” “the error rate must remain below a specified threshold,” or “access must require two-factor authentication.” These norms define properties, procedures, and performance requirements. They can serve ethical or legal aims, but the technical requirement does not contain within itself the justification of the aim. An audit log may support accountability; its mere existence does not establish that the system is accountable.

Fourth, there are political statements: “public safety should take priority over anonymity,” “innovation must not be slowed,” or “automated public services should be expanded.” Such

statements concern collective priorities, distributions of benefits and burdens, and contests among interests. They may be defended ethically and implemented legally or technically, but they remain political choices. Calling them ethical does not remove their political character.

These four classes interact continuously. Ethical reasons influence legislation; legislation creates technical duties; technical possibilities reshape political agendas; political decisions select which ethical values receive attention. The mistake is not to connect them. The mistake is to collapse them. Translation is necessary, but translation is not identity. Every passage from one register to another changes the claim. "Respect human dignity" cannot be converted into a design requirement without interpretation, selection, and loss. Someone must decide what counts as dignity in this context, how it will be measured, what trade-offs are acceptable, and what happens when values conflict.

5. How Ethics by Design collapses the registers

Ethics by Design often begins with a list of principles—fairness, transparency, privacy, autonomy, accountability—and then seeks methods by which these can be embedded in a system [5]. During this movement, an ethical principle becomes a governance objective; the objective becomes a legal or organisational requirement; the requirement becomes a technical specification; and compliance with the specification is then presented as evidence that the original ethical principle has been satisfied.

Consider fairness. An ethical demand to treat persons fairly may become a legal prohibition of discrimination. That prohibition may become a statistical criterion imposed on a model. The model may satisfy the criterion. But it does not follow that the decision-making practice is fair. The chosen metric may conceal structural disadvantage, the categories may be inappropriate, the decision itself may be one that should not be automated, or the distribution of power created by the system may remain indefensible. Technical satisfaction can demonstrate conformity to a specification. It cannot, without further argument, close the ethical question.

The same is true of transparency. A system may produce an explanation that meets a regulatory template. The explanation may be technically accurate and legally sufficient, yet practically useless to the person affected. Or it may reveal how a decision was produced while leaving untouched the prior political question of why that decision was delegated to an automated system at all. Here again, legal compliance, technical performance, political legitimacy, and ethical justification are related but distinct.

The danger is normative closure. Once a contestable value has been embedded in a requirement and implemented in code, the resulting choice can appear neutral, inevitable, and even non-falsifiable. Criticism is answered with evidence of compliance: the checklist was completed, the standard was followed, the threshold was met. Ethics is transformed from the activity of giving and testing reasons into proof that a procedure has been correctly executed. Governance then begins to claim that it has replaced deliberation.

6. Descriptive reductionism and the status quo

This brings me to the final part of the argument. Ethics by Design risks a descriptive reductionism of normative statements. By this I mean that the meaning of an ethical claim is reduced to the observable rule, preference, procedure, or institutional practice through which

it is currently expressed. “Fairness” becomes whatever the approved fairness metric measures. “Privacy” becomes whatever the applicable regulation protects. “Accountability” becomes the presence of documentation, an officer, or an audit mechanism. The ought is reconstructed from the institutionalised is.

This does not usually occur through an explicit philosophical claim that facts generate values. It occurs operationally. Designers need determinate requirements. Organisations need auditable processes. Regulators need evidence. Procurement needs boxes that can be ticked. Under these pressures, what can be described and measured acquires normative privilege. What resists measurement—dignity, domination, humiliation, historical injustice, the quality of a human relationship—becomes secondary or disappears from view.

The resulting framework tends towards a preference for the status quo. Existing law, professional codes, organisational policies, stakeholder surveys, and socially accepted practices provide the most accessible materials for design. But these materials tell us, at least in the first instance, what a society currently recognises, enforces, or prefers. They do not tell us whether it ought to do so. If Ethics by Design lacks a distinct critical level [6], it can reproduce inherited injustice with greater consistency and technical efficiency.

History makes the point obvious. Racial hierarchy, the legal subordination of women, criminalisation of homosexuality, and exclusion of persons with disabilities were not merely private prejudices. They were embodied in law, institutions, technical classifications, administrative forms, and ordinary moral expectations. An Ethics by Design process that took the prevailing normative environment as its ethical ground would have encoded those arrangements. It might even have made them more reliable. The fact that a norm is socially embedded is precisely why it can be designed into a system; it is not a reason to regard it as ethically justified.

This is where a critical distinction between morality and ethics becomes indispensable. Social morality supplies norms that guide ordinary action. Ethics must be able to examine them from a critical level [6]: to test their consistency, impartiality, consequences, and capacity for universal justification, while also asking who has standing, who is excluded, and who can contest the decision. Universalisation is part of this test, but it is not a culturally neutral algorithm and it is not the whole of ethical reasoning.

A genuinely critical Ethics by Design would therefore treat every embedded norm as provisional. It would disclose which values were selected, how they were interpreted, whose interests shaped them, which alternatives were rejected, and what trade-offs were made. It would create opportunities for affected people to challenge both outcomes and underlying rules. It would provide independent review, monitoring, appeal, remedy, and, where necessary, redesign, suspension, or withdrawal. Most importantly, it would preserve the possibility that the system is wrong even when it works exactly as designed.

7. Conclusion

So, is Ethics by Design really ethics? My answer is: not by virtue of design alone. It is a necessary and potentially valuable form of normative and institutional translation. It can turn commitments into safeguards and make responsibility more concrete. But it becomes ethics only if it keeps open the space in which its own normative premises can be questioned.

I. Kant reminds us that acceptance is not justification. G.W.F. Hegel reminds us that justification without institutional embodiment remains abstract. B. Williams reminds us that ethical life is wider than a system of codified obligations. Ethics by Design needs all three insights. It must embody values without pretending that embodiment settles their validity. It must formulate requirements without reducing ethical life to obligation and compliance. And it must universalise reasons without erasing history, culture, vulnerability, or political conflict.

My concern, then, is not that Ethics by Design introduces too much ethics into technology. It is that, by merging ethical, legal, technical, and political statements, it may introduce too little: a reduced ethics that describes and stabilises the norms already available. Without a critical level [6], Ethics by Design risks becoming morality by design—the efficient reproduction of the present normative order.

The decisive ethical question comes after the system has met its requirements: are these the requirements we ought to have? If that question remains genuinely open—open to reasons, contestation, revision, and institutional remedy—then Ethics by Design can participate in ethical reflection. If it is closed by the fact of implementation, ethics has not been designed into the system. It has been designed out of it.

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Declaration on Generative AI

During the preparation of this work, the author used ChatGPT to assist with the organisation and structuring of the argument, including the development of the paper's outline and sections. Grammarly and DeepL were used in order to check grammar, spelling and linguistic accuracy.

After using these tools, the author reviewed and edited the content as needed and takes full responsibility for the publication's content.