

Debating Ethics and Digital Life

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Cornerstones of civilisation, our ethics are our values. More precisely, they are the values that define virtue, obligation, responsibility and well-being. The modern English word ‘ethics’ derives from an ancient Greek word—*ethika*—sometimes translated as moral ‘character.’ However, the word ‘ethics’ is used broadly today to refer to concerns about conduct as well as character. A uniquely human capacity, ethics combine conduct and character in practical understandings of what is required if we are to live well, both for our own sakes and for the sake of others in whose fates we must share.

The subject matter of ethics extends to the entirety of moral life, personal and public. I will speak of it in that broad aspect here. In some familiar contexts, however, the term ‘ethics’ is used more narrowly as a synonym for personal or religious ‘morality.’ Ethics is also used more narrowly at times to refer to a branch of formal academic philosophy. Finally, there is a popular narrow use of ‘ethics’ referring to responsibilities of specific professions or roles, such as legal ethics for lawyers, medical ethics for physicians, or engineering ethics for software developers.

Living well requires responsible choices and adherence to the common virtues. Trustworthiness, for example, is vital to every facet of just and humane lives. Every person and professional relationship, every financial transaction and every democratic institution thrives on trust. Openly embracing ethical standards and consistently living up to them, remain the most reliable way for individuals and business to earn the respect on which all else depends.

Ethics matter. In both their secular and religious aspects, ethics are practical guides to moral virtue and vice, to moral right and wrong, to moral good and bad, and to justice and injustice. The law is a practical guide, too. Ethics and law are distinguishable but often convergent guidelines. They converge, philosophers have explained, because in distant times they were not distinct; and in modern times they coexist as mechanisms—one official and politically authoritative, one not—for addressing the same human limitations and problems. Obviously law and ethics differ as to sanction. The sanctions that flow from purely ethical breaches are shame and ostracisation. The sanction of legal breaches can be official punishment such as monetary fines, compensation, restitution, or prison.

DOI: 10.21552/edpl/2019/1/4

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Is ethics a criterion for the legitimacy of law? The natural law tradition of jurisprudence identifies laws as rules of reason not requiring specific positive acts of legislation or judgment. This conception of law is criticised as conflating law with morality and potentially undercutting the efficacy of law. The opposing, positive law tradition, which asserts that laws have authority because they are product of legitimate sovereigns even if they are unjust, is criticised as potentially dignifying tyranny.

We cannot dive deeply into legal philosophy in this setting, exploring the relationship between law and ethics in detail. Suffice it to say that we are here to discuss digital ethics not to challenge the validity of impressively updated data protection law. We are here to better understand the values which society can and should promote.

Digital ethics is emerging as a field of practical or applied ethics. Digital ethics are an occasion for exploring how, in relation to digital technology, the lives, interests and welfare of others make claims on us. How can we reconcile the claims of others on us with the aim of pursuing our own goals? What should be our goals be in relation to technology and innovation? How should we live our lives in the world shaped by social media, the Internet of Things, and AI?

Let me then, say a bit more about the nature of ethics in general, the topic I was asked to address.

In our private lives, ethics bear on the special loyalties and commitments we feel towards our families, friends and neighbours. In our public lives, we trust that our ethics are respected as the ideal foundations of law, public policy and professional standards.

We need ethics. As human communities confront the realities of limited resources and naked self-interest, our ethics inspire us to be better, to care for ourselves and others. Ethical principles that tell us not to lie, cheat, or break promises function constructively to make group life more predictable and peaceful. As we confront the realities of illness, suffering and death, ethics can point to sources of genuine meaning in our inevitably finite life spans: such as achievement or generosity.

Where do ethics come from and how are they learned? Everyday ethics arise from everyday life, and may live for ages, like the ethical principles countermanding various forms of dishonesty. We are taught ethics directly and indirectly in families, schools, churches, synagogues, temples and mosques. Professional ethics arise from organised professional groups, establishing guidelines for conduct in their respective fields of practice. Professional ethics may be more specific than, and even at odds with, everyday ethics. Philosophical ethics arise among the debates and exchanges among intellectuals in universities and other cultural institutions.

European cultures have produced a plentitude of compelling philosophical ethical thought. Most obviously, the Greeks produced the philosopher Plato, and the originator of virtue ethics, Aristotle. The Germans gave us Immanuel Kant. Kant's famous cat-

egorical imperative demands that we treat rational, free, autonomous persons with respect, as ends in themselves, never merely as means. The English contributed Jeremy Bentham and John Stuart Mill, both moral utilitarians who focused on the path to improved human welfare through maximisation of happiness and pleasure. More recently, the French contributed Emmanuel Levinas for whom ethics was the ‘first philosophy’, a confrontation with the Other; and Sartre who insisted we boldly confront our existential freedom and responsibility. Finally, because I can only give a few examples, and even more recently, Spaniard Jose Ferrater Mora sought an inclusive ethics that situated animal as well as the human life in the moral domain.

After World War II, the peoples of Europe and the world were offered Declarations and Charters elegantly and simply stating human rights principles that affirmed their worth. These formulations have come to pervade legal and political culture around the globe. They encompass fundamental principles of dignity, respect, freedom, security, self-determination, democracy, privacy, identity, community, fairness and equality that are virtually universal. To say this is not to deny that important details of moral life can differ from one community or country to the next. But it is to say that many general values are shared and can be a basis of collective reflection about how to respond to changed occurring in the data driven society. There is something vital at stake for us—whether we are from Asia, the Americans, Africa or Australia—in having this conversation.

There are those who see moral subjectivity and relativism as defeating any international body from identifying general or universal normative ethical standards. We live in a diverse, multicultural world—there are competing interests and ideals—individual, social, economic, political and religious. This diversity challenges the very idea of a single ‘moral community’ universal and objective values shared by all. We can describe our ethics as a community and we can theorize, metaethically as a community, but there any basis for objective consensus on normative issues? So—whose rules? whose standards? who decides? The problems of relativism and subjectivity will lead some—not me—to conclude that ethics is just another name for the requirements imposed by those with religious authority or political power to push their agendas and give them cover.

However rich, the ethical resources of the past are not enough. They are not all we need to live ethically well in the future. We must realistically confront the challenges that ethics pose for us today. We still have the old challenges—moral weakness of will, impulsivity and rationalisation. We know that people will set aside the ethical point of view and deliberately pursue self-interest when doing so seems smart and profitable. People will be opportunistic, selfish, discriminatory and cruel. But the 21st century has added complexity to ethical life beyond those problems and challenges.

Science is transforming the kinds of lives we can expect to live. Technology has presented new options for the food we eat the cars we drive, how we communicate. Our options give us a bigger say in the design of our lives and the future of the planet, and

hence more ethical responsibility. In unfamiliar situations brought on by science and technology ordinary people are understandably uncertain. We can be baffled, confused, underinformed about the facts we would need to live well and responsibly with technology. We can sometimes even fail to recognise that the options with which we are presented have ethical dimensions.

Ethical or moral 'disruption' is moral uncertainty in the face of innovation and change. As society changes, what seems right and wrong may change or seem unfathomable. Ethical novelty introduced by technological innovations leaves us uncertain about how best to live. Moral reasoning cannot easily keep up with the pace of technological change—cell phones, computers, Internet, search engines, social media, drones, AI, Big Data, autonomous cars—you name it. Life is not what it used to be.

Two hundred years ago the central ethical challenge was coping well with social disadvantages and biological perils. Ethics primarily required taking the high road called for by virtue, good and right. The correct path was generally clear. I believe today the biggest challenge today is choosing well. We are ethical trailblazers bound to traverse perilous terrain, some mapped, a good deal unmapped. If we are to live ethically, we need to prepare ourselves for the novel challenges of the new ethical landscape, including the digital ethical landscape.

In recent years as the globally significant General Data Protection Regulation (GDPR) was moving towards implementation, European Union Data Protection Supervisor Giovanni Buttarelli began urging greater attention to ethics.

An Ethics Advisory Group convened by the Supervisor and chaired by J Peter Burgess, issued a report early in 2018, 'Towards a Digital Ethics,' proposing that traditional European values of dignity, personhood and democracy can be carefully rethought and applied in support of data protection in the digital age. The 2018 Conference of the Data Protection and Privacy Commissioners in Brussels has as its theme 'Debating Ethics: Dignity and Respect in Data Driven Life.' The conference was a unique opportunity for leaders and experts to come together to explore the ethical implications of how technology is reshaping social, political and commercial life. A question of fundamental importance for the European conferees was whether traditional European values—presumed to undergird the law, corporate best practices, professional ethics, and individual rights and responsibilities—still define human excellence and serve human welfare in a digital age. Yet, because core Enlightenment and Post-World War II ethical traditions are widely shared and human beings experience the digital world and are vulnerable to it in similar ways, there is something vital at stake in the debates prompted by developments in EU law for us all.

The focus on ethics in relation to digital life—including applications of artificial intelligence, Big Data, the Internet of Things and social media—could be a sign of trouble in the world. Deep trouble. Often when a group of nations, a single nation, or an organization of professionals begins to focus on *ethics*, it is a sign of a serious problem.

It can be a sign of crisis—a sign that something very bad has happened, requiring urgent practical steps to minimise harm and the risk of recurrence. In my own country, for example, demand for the promulgation of ethical principles, policy and education have followed major political scandals; widespread fraud and self-dealing in the financial sector; misconduct or cruelty by health professionals and medical researchers; and dishonesty by the very judges and lawyers entrusted to fairly oversee institutions of justice.

So, I have to ask: what is happening (or not happening) in the field of data protection and privacy to explain the call for attention to ethics? Is it concerns about data breaches, interference with elections, spying on world leaders, nonconsensual data collection, Big Data analytics, profiling or discrimination? Is the call for attention to ethics the result of grave general concerns about the kind of people or societies we are becoming due to applications of AI, Big Data, the Internet of Things and social media?

Or, is the call proactive—a call to explore in advance of ethical disaster the ‘deeper questions as to the impact of trends in data driven society on dignity, individual freedom and the functioning of democracy’?¹ I hope—and prefer to think—that the call is, mostly, a proactive response to technology innovation. And yet I know we can all cite examples of missteps by governments, businesses and individuals that suggest the ethical challenge is one of correction and not mere prevention.

The Ethics Advisory Group refers in its 2018 report to a set of ‘crises’ of trust in individuals, social groups and organisations. They might be read to say that the call to ethics is a sign of trouble—serious crises brought on by digital transformation. Could the trouble we are in be a crisis of trust stemming from, for example, lack of trust in organisations in possession of data about us without adequate accountability and transparency?

Whether the call to discuss ethics is mostly reactive or mostly proactive, I applaud the EU authorities for the bold move to focus in the year of the GDPR on ethics. As a global community, we cannot afford to go mindlessly where ever technology innovators and adapters may choose to drag us.

For many, rights of privacy and to data protection are best explained from an ethical point of view as individual rights demanded by human dignity. Privacy relates to freedom of choice affecting personal life, home, family and communications. The guidepost of dignity mandates that people be treated as ends in themselves, not simply as means, tools or instrument of other’s aims. Respect for dignity in this sense is at the very foundation of human rights and justice. We may have ethical obligation in the content of family, friendship, employment more demanding than the minimum of dignity. But with respect to the relationships among peoples and government and commerce, rights and dignity rule supreme.

¹ European Data Protection Supervisor, ‘Opinion 4/2015 Towards a new digital ethics. Data, dignity and technology’ (11 September 2015) <https://edps.europa.eu/sites/edp/files/publication/15-09-11_data_ethics_en.pdf> accessed 15 February 2019.

Rather, with skill, knowledge and resources we must strive to be *both* intentional about the design and use of technologies; and creative in exploiting technology's powers to advance human good, including the basic welfare, dignity and freedom for all peoples.

Identifying and doing what is ethical in the digital society will require deep, honest, selfless thinking. We are drawn to technology like moths to a flame. We risk hurting ourselves. We also empower ourselves to hurt others. The Myth of Gyges' Ring from Plato's philosophy tells the story of a poor shepherd who finds a magic ring that can make him invisible. Rather than using the ring for good he uses it to spy, steal and murder and seize political power. More than 2000 years old, Plato's story reminds us that the person who discovers a technological marvel of secrecy and surveillance—a magic ring or an iPhone or an algorithm—may be unable to resist using it unethically. So maybe old ethical ideals do still have a place in the digital age.

One of my greatest fears, and this is my closing observation, is that the conversations ahead in Brussels will take on the aspect of a negotiation of sorts between ardent defenders of privacy and data protection, and entities with the strongest interests in profiting from the abandonment of consent and accountability norms. Ethics cannot entirely escape the dynamics of politics and power. But we should be slow to agree that ascribing dignity and privacy rights to individuals is unworkable simply because it constrains market or government entities who stand to profit from their abrogation. Ethics is more than a bargain among self-interested parties, though practical ethics may call for compromises.

To paraphrase Giovanni Buttarelli², the benefits of technology must not be gained at the cost of the integrity of values. 'The dignity of the person remains inviolable in the digital age.' I believe law, and ethics should both be marshalled as systems of value to address the philosophical transformations in contemporary life. Government, the business sector and individuals must see themselves as responsible partners: cooperative responsible partners for good.

2 Editor's Note: you can read the full transcript of Giovanni Buttarelli's opening speech at the 2018 Conference of the Data Protection and Privacy Commissioners 'Debating Ethics: Dignity and Respect in Data Driven Life' in the previous issue of this journal, see Giovanni Buttarelli, 'Choose Humanity: Putting Dignity Back into Digital' (2018) 4(4) EDPL VII-X <<https://edpl.lexxion.eu/article/EDPL/2018/4/25>> accessed 15 February 2019.