

Tracking people: controversies and challenges

Tagging and the issue of consent

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What gives consent its moral magic? Why is it that when person consents to something we are able to do to them acts which otherwise would be unacceptable?

The issue of consent, or more properly informed consent, has been raised at all of our workshops on tagging. Granted, it is not a panacea to all ethical concerns: just because a person gives consent to something does not mean that it is right for that thing to occur. Think, for instance, of consensual acts of cannibalism, or duelling.

There are at least two different accounts as to why consent is important. One, which was a motivating factor at the Nuremberg trials after World War II, is to limit the wrongs that can be visited on a person through the use of contracts. The feeling is that if we enter into a contract, then I have the ability to prevent you from wronging me in some way. By the same token, if I freely entered into a contract with you then this allows for you to do things to me which otherwise would be unacceptable. Think here of the difference between you taking a video recording of me with or without my permission. That permission is tantamount to a contract between us.

The second account as to why consent is important is enshrined in the principles underlying the Declaration of Helsinki. In this case, the key issue is the autonomy of the person who will be affected. By seeking the informed consent of the person in question, we recognise their dignity and give them the ability to make a free decision as to what they would do with their lives.

I have already mentioned some areas where consent would not be sufficient, except in the most libertarian of societies, to permit certain acts. However, there are other cases where consent may be relevant but by itself insufficient. Think, for instance, of cases of exploitation. I may give you the information that you need to consent to a particular occurrence happening, but if your circumstances are such that you cannot reasonably say no (imagine that you are starving, and I offer you a sandwich in exchange for 1 of your kidneys) then it is highly likely that I may be exploiting you. All imagine that a child gives consent for something to happen. Certainly the child's opinion should be sought, but given that the child may lack a full awareness of the consequences of the action, or that the child may lack full competent reasoning capacities, the fact that they have given consent is not sufficient. Similarly, when consent is sought from a person who is incarcerated, that person's restricted situation means that they might consent to things they otherwise would not. In essence, they are being exploited. We may go further, and imagine that I am not offering you anything, but I am threatening you with force or some form of violence if you do not consent to what I am proposing. In this case, coercion, just like the exploitation, would render any consent invalid.

So how do these philosophical reflections impact thoughts on the ethics of tagging people? There seem to be at least two areas that have come up in discussion at the workshops where this might be a relevant consideration. Firstly, we might want to ask how valid the consent is in cases where criminal offenders have been offered the opportunity of being tagged rather than being incarcerated. How much choice did they really have? Was this a case of exploiting someone who would otherwise face a jail term, in order to experiment on a new technology? What choice did the person really have? We could ask very similar questions about people who have dementia and are tagged. If their consent is sought, what choice have they really been given? If the alternative is for them to be housebound, then the freedom offered to them by wearing a wearable tracking device may prove irresistible. This of course is not to say that such offers are necessarily wrong, merely that the consent of the person needs to be sought but also thought about very carefully.



Secondly, do we want a society in which people are tagged? In this case, the consent is not so much that of the individual being tagged as the rest of society which is affected by the presence of tagging technology. There is ample evidence of stigma being associated with a person wearing a tag, of families being stigmatised because one member has been seen wearing a tag, and of people wearing tags being attacked because other members of the public thought that they were paedophiles.

There are of course further issues that arise in relation to consent. What happens, especially in the case of a person with dementia, when the individual to be tagged lacks the capacity to make an autonomous decision? Or, when a person gives consent in the first instance, but then changes their mind later in the process. Are there safeguards built in which would allow a person to remove the tag and revert to any alternative that might have been offered initially?

As noted at the outset, then, consent is of central importance in the ethics of tagging but it is not a panacea, and it leaves many questions unanswered. As we move forward, we need to be addressing these precise questions.