

Informed Consent and the Suitcase Trolley Problem

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Abstract: Hare¹ introduces the Suitcase Trolley Problem, a situation where an agent must decide whether to push a suitcase containing her friend to stop a trolley from running over five other friends of the agent. This decision must be made despite the agent not knowing which of the six friends is in the suitcase that would be pushed. Hare argues that, if asked, everyone would consent to pushing the suitcase since it is more likely than not that they are on the trolley track. This situation highlights a subtlety about what constitutes informed consent. Specifically, for consent to be informed, an agent must not only tell the person from whom they are requesting consent the relevant information but also to choose a method of asking consent that gives the most information. I argue that informed consent must satisfy the above requirement, and, therefore, the presumed consent argument to push the suitcase made in Hare is flawed because the consent given is not informed.

The Trolley Problem is a moral dilemma studied by many philosophers, yet it still generates disagreements between them. The Trolley Problem involves a situation where, to save multiple people from an incoming trolley, the person involved must kill someone. I will discuss a variant of the trolley problem which is proposed in “Should We Wish Well to All?”. In this variant, which I will call the Suitcase Trolley Problem, there are six people put into a suitcase, all of which the agent knows well and cares about. One of those people is on the ledge with the agent and the remaining five are on trolley track, although no one knows who is in which suitcase. A trolley is coming and the only way to prevent the death of the five on the track is for the agent to push the person on the bridge to their death, which would cause the trolley to stop before hitting the other five. What should the agent do? According to Hare, the agent should push the suitcase on the bridge. One of Hare’s arguments focuses on presumed consent. Hare remarks that, if asked, each of the six people in suitcases would tell the agent to push, as it seems to increase their odds of living. Therefore, he concludes that the agent should push the suitcase. I will argue for a new requirement of informed consent and show that, in light of this requirement, the argument of presumed consent fails, as the consent given is not informed.

First, I will present the presumed consent argument from Hare² in more detail. Imagine the Suitcase Trolley Problem but where the agent can talk to each of the six people in suitcases over the phone, although still neither the agent nor the people in suitcases knows who is in the briefcase on the bridge. In this case, the agent calls all six people in suitcases, explains the situation, and asks whether to push the suitcase on the bridge. I will call this the ‘Calling method’ of obtaining consent. Hare argues that because none of them know where they are, given the information they have, pushing will reduce

¹ Caspar Hare, “Should We Wish to All?,” *Philosophical Review* 125, no.4 (2016):415-472.

² Caspar Hare, “Should We Wish to All?,” *Philosophical Review* 125, no.4 (2016):415-472.

their chance of death from $5/6$ to $1/6$ and therefore everyone will tell the agent to push the suitcase. The agent would have consent from everyone to push, which includes the person on the bridge, and therefore the agent should push the suitcase.

Now, I will discuss what informed consent is and why it is important. Informed consent is given when a subject gives explicit permission to do an action involving them to an agent who has, to the extent of their knowledge, fully informed them of the situation. If consent is something that is important to any degree in a moral theory, then it should be held to the standard of informed consent. After all, consent should not hold much weight if is given as a result of being told incomplete information or outright lies by the agent requesting it. One explanation for why consent is important is that it respects the autonomy, or ability of an agent to think about a situation and decide what to do, of the people involved in a situation. Clearly, if a person asking for consent chooses to misrepresent the situation in order to influence the reply, then they are disrespecting the autonomy of the person asked. One subtlety of informed consent that I wish to expose in this paper is that if the agent can choose between two methods of requesting consent where they truthfully tell the agent all they know but one method gives the person being asked consent more information, then it can only be considered informed consent if they choose the method that gives the person asked more information.

The reader may be concerned about whether the proposed additional requirement of informed consent is correct, so I will justify it here. Informed consent involves telling the person who would be affected as much as possible, so they can decide for herself. One cannot be truly said to be respecting the decision-making faculties of the affected person unless the agent tells that person all the relevant information she knows. Regardless of whether information the agent has is left out due to neglecting to tell the person or choosing a method that gives the agent a way to leave it out without withholding information directly, the agent is still hiding information from the affected person. Therefore, as proposed earlier, this additional constraint of informed consent must hold. An example may make this clearer. Consider a doctor who has five patients who need the same surgery or will die within a year. The surgery is very safe generally, it is always successful except when the patient has a genetic disorder, in which case the probability of success is 75%. The doctor knows one of the five patients has the genetic disorder but does not remember which one. All patients have told the doctor that they are willing to undergo surgery if the probability of success is at least 95%. Since the doctor thinks it is in the best interest of everyone, even the patient with the genetic disorder, to get the surgery, he decides to tell the five people that one of them has the disorder, but he does not remember which. Each patient does the calculation and, from what both they and the doctor know, the surgery has a 95% chance of success and therefore automatically give consent to the surgery. The doctor could have checked the records and then could better inform the person with the disease, which would affect their decision. The choice of going about it without checking the records makes it very clear that the consent is not informed and even seems morally questionable. The topic of how the principle of choosing the method of informing that gives the most information applies when multiple people need to give consent (in a way where we do not have all but one person consent either way like in this case) deserves further study. The extension of this principle is not applicable to the Suitcase Trolley Problem, so it will not be discussed any further. But it should be clear that, in the case where only one person needs to give consent, choosing a method that gives the affected person less information is a form of deception.

Returning to the Suitcase Trolley Problem, I will explore an alternative situation of receiving consent. Solely for ease of reference, the person in the suitcase on the bridge will be referred to as Bridgey. The agent tells Bridgey the same information that he would have told on the phone but instead by talking through the suitcase so only Bridgey can hear. To keep the situation from changing, suppose that the agent can hear Bridgey's answer but Bridgey's voice is muffled so, although the response is heard, the agent still cannot identify who Bridgey is. I will call this the 'Talk to Bridgey' method of obtaining consent. If Hare is right, then, in the Calling method of consent, Bridgey will give consent for the agent to push. But the consent given is not informed consent as the agent is neglecting to tell Bridgey an important piece of information: that, even if the agent does not know who Bridgey is, the person being asked for consent is the person who is on the bridge. Therefore, in order to obtain informed consent, the agent must tell Bridgey that they are on the bridge. If the agent simply cares about reducing their chance of death as supposed in Hare³, then they will not give the agent consent to push. That said, it is conceivable that Bridgey may decide that pushing is the best course of action, and only in that case is it okay for the agent to push the suitcase.

Here I will be more explicit about the differences between the Talk to Bridgey and Calling methods of obtaining consent. It should be clear that the only person whose consent matters is Bridgey as she is the one that the agent kills if the agent decides to push. In both cases, Bridgey may give consent. Whether or not the consent is informed in the Calling method deserves further explanation. In the Calling method, Bridgey is told everything the agent knows but, by the setup of the method, is not told that she is on the bridge. The fact that she is on the bridge is incredibly relevant information to the decision, and she would know that if the agent chose the Talk to Bridgey method. If an agent can choose between methods of asking consent, then it can only be considered informed consent if the agent chooses the method that gives the person in question more information. Therefore, by using the Calling method, although the agent is telling Bridgey (and everyone else) everything he knows, he is choosing a method of obtaining consent that hides from Bridgey the information that she is the person on the bridge. Therefore, the Calling method cannot be used to obtain informed consent to push Bridgey.

The reader may be suspicious of whether the conclusion drawn in the surgery example applies to the Suitcase Trolley Problem. The concern might be that the sick person would want to know whether or not they were sick, but Bridgey may not want to be asked consent via the Talk to Bridgey method over the Calling method. I would like to point out that Bridgey not giving consent to use Talk to Bridgey method depends on the method the agent uses to ask. If the agent asks Bridgey via the Calling method about how to ask Bridgey about pushing, she will prefer the Calling method. On the other hand, if the agent asks Bridgey via the Talking to Bridgey method, she will prefer the Talking to Bridgey method. This casts some doubt on the concern but does not resolve it in itself. The second response is that with respect to whether consent is informed, it does not matter whether the agent wants to hear the information. Suppose Alice asks Ben for a favor, and he asks for time to think about it. By the time Ben decides to accept the favor, Alice tells him that she just thought of something relevant to making the decision. Ben, having spent enough time thinking about it, tells Alice to not tell him this information. If Alice tells

³ Caspar Hare, "Should We Wish to All?," *Philosophical Review* 125, no.4 (2016):415-472.

Ben anyways and he chooses to ignore it, then it can be considered informed consent. But, even if Alice does not tell Ben this information because he does not want to hear it, she is still withholding information and therefore any consent he gives is not informed. After all, by not telling Ben the relevant information, she deprives him of knowing something that may very well be a deciding factor in his decision. Therefore, for consent to be informed, the agent must give the other person all relevant information, regardless of whether they want the information. This means, the difference in whether or not the agent wanted the information should not cause a difference in treatment between the surgery example and the Suitcase Trolley Problem.

In the problem originally posed by Hare, the agent cannot talk to his friends in the suitcases and therefore requesting actual consent is not possible. In his argument, Hare is not considering a situation where the agent can actually ask the people in suitcases for consent, but instead using hypothetical consent, where the agent considers what would happen if the agent asked. If receiving consent is to be seen as important, then the agent should seek informed consent from Bridgey before pushing if possible. The agent should seek informed consent because the agent's best guess regarding Bridgey's answer about being pushed may be incorrect. Therefore, the agent should only settle for hypothetical consent if the situation makes actual consent not possible. If asking for consent is not possible, for example if everyone in the suitcases was unconscious, only then should the agent resort to hypothetical consent. So, if only one of the Talk to Bridgey method or Calling method are possible, then in that case the consent received is informed by using whichever method can be used. If the agent has to resort to hypothetical consent, then he should use hypothetical informed consent for the same reasons as using informed consent when actual consent is possible. Hypothetical informed consent is done when the agent imagines how each person in a suitcase would respond if they were Bridgey and informed of the situation and that they are Bridgey. If the agent thinks they all would still consent, then he should push and if he thinks they all would not consent then he should not push. The case for what the agent should do if he thinks some, but not all would consent is complicated and would require further study. But leaving this case aside, hypothetical informed consent is the standard the agent should use when asking the people in suitcases is impossible.

I have argued that the presumed consent argument, as stated in Hare⁴, cannot be used to argue for pushing in the Suitcase Trolley Problem as the consent (hypothetical or not) is not informed. Informed consent is important if consent is relevant in a moral theory as it is the only way of fully respecting the autonomy of the individual directly affected. Since telling Bridgey directly both about the general situation and that she is on the bridge gives Bridgey more information, the method used in the presumed consent argument cannot be considered informed consent even though the agent technically tells Bridgey everything she can given the method in use. Then I mention why actual consent should be used, regardless of what was intended in Hare and how to apply hypothetical informed consent to the situation if obtaining actual consent is not possible. As a consequence, the only case where the Calling method can yield informed consent is when the Calling method is possible but the Talk to Bridgey method is not. Meaning, in all other cases, Bridgey's consent in the Calling case is not grounds to push Bridgey. While this may not

⁴ Caspar Hare, "Should We Wish to All?," *Philosophical Review* 125, no.4 (2016):415-472.

undermine the main argument presented in “Should We Wish Well to All?,” it does show that the presumed consent argument mentioned is flawed as well as the various appeals to intuition based on it. Regardless, one cannot find a definite answer from examining the Suitcase Trolley Problem; rather, one can come to a better understanding of what is required for consent to be informed.

References

Hare, Caspar. 2017. “Should We Wish Well to All?” *Philosophical Review* 125 (4): 451-472.