ABSTRACT. Several attempts have been made to transfer the concept of informed consent from medical and research ethics to dealing with affected groups in other areas such as engineering, land use planning, and business management. It is argued that these attempts are unsuccessful since the concept of informed consent is inadequate for situations in which groups of affected persons are dealt with collectively (rather than individually, as in clinical medicine). There are several reasons for this. The affected groups from which informed consent is sought cannot be identified with sufficient precision. Informed consent is associated with individual veto power, but it does not appear realistic to give veto power to all individuals who are affected for instance by an engineering project. Most importantly, the concept of informed consent puts focus on the public’s acceptance of ready-made proposals rather than on its participation in the decision-making process as a whole, which includes the development of alternatives for the decision. Therefore, the concept of informed consent is not applicable to a company’s relations with groups and collectives. It may, however, be applicable to a company’s relations with individual persons such as customers and employees.

KEY WORDS: informed consent, stakeholder, veto, engineering ethics, planning, democracy, participation

Introduction

In the second half of the 20th century, medical ethics was transformed from an older paternalistic tradition to a new way of thinking with a strong emphasis on patient autonomy and self-determination. This development was largely triggered by disclosures from the Nuremberg trials and elsewhere of grave misuses of human subjects. In the new medical ethics, informed consent became a central concept (Faden and Beauchamp, 1986). The World Medical Association’s declaration on Ethical Principles for Medical Research Involving Human Subjects (the Helsinki Declaration) is the most authoritative statement of medical research ethics. Its central paragraph on informed consent reads as follows:

“In any research on human beings, each potential subject must be adequately informed of the aims, methods, sources of funding, any possible conflicts of interest, institutional affiliations of the researcher, the anticipated benefits and potential risks of the study and the discomfort it may entail. The subject should be informed of the right to abstain from participation in the study or to withdraw consent to participate at any time without reprisal. After ensuring that the subject has understood the information, the physician should then obtain the subject’s freely given informed consent, preferably in writing. If the consent cannot be obtained in writing, the non-written consent must be formally documented and witnessed.” (http://www.wma.net/e/policy/b3.htm)

It is important to observe that in medical ethics and research ethics, informed consent is considered to be a necessary but not a sufficient condition for an intervention to be acceptable. According to the Helsinki declaration, the physician who takes part in medical research always has a duty to “protect the life, health, privacy, and dignity of the human subject.” Informed consent does not absolve her from that duty.

Proposals have been made to extend the application of informed consent to at least three areas outside of medicine and research, namely engineering, land use planning, and business management.
Already in the first edition of their now-classic textbook in engineering ethics, Mike Martin and Roland Schinzinger claimed that the practice of engineering should make use of the concept of informed consent. Their major argument for this approach is that the outcome of engineering projects is uncertain. Therefore, such projects can in their view be seen as “experiments” using human subjects (Martin and Schinzinger, 1983). They recommend us to “think of engineering corporations as conducting society-wide experiments on the ‘subjects’ affected by their risky ventures.” (Schinzinger and Martin, 1983, p. 67)

Obviously, the word ‘experiment’ is not used here in the same sense as in research ethics. In science, an experiment is a fact-finding activity that gains its legitimacy from being so constructed that it contributes to the systematic development of new knowledge. Medical experiments that do not satisfy this criterion are not accepted in the medical ethics community, irrespective of how informed and consenting the subjects are. Most engineering projects are not experiments in this sense.

The second new area for informed consent is land use planning. Simmons (1987) proposed that “one way of looking at the moral position of the professional planner” is to see it as “similar in certain important respects to the moral position of the physician.” (p. 6) Just as a physician needs the informed consent of the patient, a professional planner needs the consent of those affected by the plans under consideration. To be at all valid, such consent has to be informed; thus the planner should seek to “obtain the same kind of informed consent a physician needs to justifiably treat a patient.” (p. 8) Likewise, Shrader-Frechette (1993) has argued for the use of informed consent as a criterion in the siting of nuclear waste facilities (Cf. English, 1991).

The third area is business management. According to stakeholder theory, business managers are responsible not only to the owners of their respective companies, but also to various stakeholders, viz. groups and individuals who are affected by the activities of the firm. This includes employees, customers, neighbours, environmental groups, etc. (Freeman, 1984) Rowan (1998) maintains that, since stakeholder theory treats all stakeholder relations as contractual, and a contract is only valid if the conditions of informed consent are satisfied, informed consent is an inherent feature of stakeholder theory. Other attempts to integrate consent in stakeholder theory have been made by Cohen (1995) and Van Buren (2001).

But can the concept of informed consent be successfully transferred from its specific context in medical ethics and the ethics of research to quite different settings for decision-making such as engineering, land use planning, and business management? It is the purpose of the present contribution to show that this is in fact not possible. More specifically, my claim is that the concept of informed consent is not serviceable when agreement is sought with a collective of affected persons rather than individually with each person. This applies to all the three proposed extensions mentioned above. An engineering company that introduces new technology with society-wide implications strives for wide social acceptance of the innovation but it has no need for signed informed consent forms from each and every affected person. A similar form of wide public acceptance is desired by managers of land planning projects (but in addition they also have individual, contractual dealings for instance with landowners). Stakeholder theory is explicitly concerned with a company’s relations with affected groups and their representatives, rather than with each affected individual. In what follows, I will refer to these situations as collective arrangements, to distinguish them from the individual arrangements that are exemplified by the physician’s relations to a patient and the experimenter’s relations to an experimental subject.

Several authors have already pointed out practical problems that are encountered when the concept of informed consent is transferred to new areas. In Section “Practical problems” I will show that two major such arguments apply in general to collective arrangements. In Section “Consent or full participation in decision-making?” I will show that informed consent is also a too restricted ideal for such applications, since it puts focus on the acceptance of ready-made proposals rather than on participation in the decision-making process as a whole, which includes the development of alternatives for the decision. In Section “Individual arrangements,” I will argue that the concept of informed consent can be meaningfully applied to a company’s individual arrangements with buyers and employees.