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儒家傳統、知情同意 與公正原則

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儒家傳統、知情同意與公正原則
Confucian Tradition, Informed Consent and Justice Principle

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家庭成員共同決定——儒家家庭本位思想在臨床決定中的體現

徐漢輝

摘要

儒家家庭本位思想對於中國傳統社會有著極其深刻的影響，而這種影響直到今天仍然發揮著巨大的作用，並由此形成了中國特有的社會結構和家庭觀念。在中國家庭中，家庭成員之間的關係更加密切，遇到重大事情，往往會由家庭成員共同做出決定。由於這種特殊的文化氛圍，在臨床決定的時候，應該用家庭共同決定代替個人自主決定，這種模式既能保障個人權利，維護個人利益，同時也是尊重家庭決定，營造和諧的家庭關係。

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臨床知情同意在中國的一些實踐及反思

趙文清

摘要

“患者利益至上”知情同意是當代西方生命倫理學的一個核心概念，在規範臨床醫療實踐中的應用十分廣泛，相關的法規和指引更是層出不窮。隨著自由主義理論和權利觀念在全世界範圍內的流行，中國也開始注意到知情同意原則在臨床實踐中的重要意義，並逐步引入西方的相關規範。然而，大部分規範的制定缺乏對知情同意倫理基礎的考察，對臨床知情同意在中國的實踐也沒有足夠的關注。本文分析作為知情同意的道德基礎，並通過對一線醫務工作人員的訪談，了解臨床知情在中國實踐情況及限制，希望能為相關規範的制定提供一些思路。

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基於儒家家庭本位思想的知情同意原則的思考

孔祥金、趙明杰

摘要

在具有家庭主義特徵的中國社會文化語境下，儒家家庭本位思想對病人知情同意權的影響是客觀實在。以自由主義和個人主義為理論基礎的個人自主知情同意原則要想在中國本土的醫療實踐中發揮應有作用，突顯家庭在知情同意過程中的主導地位是重要前提。在中國的醫療實踐中，知情同意的模式必須融入中國儒家家庭本位思想，才能更好地發揮其作用。

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摘要

正義是一個歷史範疇，任何具有實踐品格的正義理論都只能是與特定道德共同體特殊的善的規定相聯繫的正義論，從這一意義上說，儒家當然也有自己的正義論。儒家正義論是以天道性命的邏輯關係為起點，通過仁、禮、義三維一體的倫理結構而表現的正義論。這種正義論將社會正義與個人正義統一起來，總體上體現為一種“厚生”的思想意識和行動。由於“生”具有不同的實踐領域和境界層次，從而使儒家正義論具有多維的展現向度。把這種正義論應用於醫療公正領域，儒家主張醫療保健政策必須以維護國民的生命意義和完整實現為前提，主張政府應提供一種基礎性的全民性的醫療保障和保健制度。但儒家不認同單級的平等主義的分配制度，而是強調資源的差等分配，但資源差等分配的前提不在於每個人實際的貧富狀態，而取決於人的修德程度或者說後天努力與貢獻的程度。個體對自我生命的完整實現負有天定的義務，因此儒家主張在醫療保健領域應當賦予個體和家庭以更多的自主權。

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中國醫療保障代際公平的實現策略：論基於“愛有差等”的儒家家庭醫療儲蓄帳戶**曹永福****摘要**

不同於發達國家以及其他發展中國家，中國大陸的人口老齡化及其趨勢有著自己獨特的背景：一方面是在實施人口控制政策的過程中形成的，另一方面具有“未富先老”的顯著特徵。這樣，中國的人口老齡化就帶來了“代際公平”的嚴重挑戰：人們如果不在年輕時期為自己年老的時期儲蓄和積累必要的財富，就從一定意義上構成了對現時年輕一代的不公平：年輕一代為此要為年老一代付出過多的負擔和責任！但令人遺憾的是，中國大陸目前的醫療保健制度設計並沒有充分考慮到“代際公平”問題。因為考慮代際公平的醫療保障制度設計，至少應該以“家庭”為本位和含有“儲蓄”元素。為此，筆者提出“家庭醫療儲蓄帳戶”的設想，認為家庭醫療儲蓄帳戶有利於實現醫療保障的代際公平，即縱向公平。家庭醫療儲蓄帳戶的儒家倫理基礎符合儒家的“仁者愛人”價值，符合儒家的“愛有差等”的家庭價值觀。

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摘要

在中國古典知識論當中，醫學（以及所有的技藝之學）與先王之法、諸子之藝本為一體，後世所謂“醫儒相通”、“醫易相通”之說源起於此。但知識論上的共同起源並不能保證醫學在歷史流變中能夠保持其地位，經過春秋時期諸子興起、學術分裂，和《漢書·藝文志》對古典知識體系進行的分類排列，醫學的知識論地位及醫者的社會地位便一路下行，諸子，尤其是儒學與技藝之學的高下、先後、體用次第關係逐漸被固定下來。到宋代援儒入醫，以“仁術”統攝之，在某種意義上進一步貶低了醫學作為技藝之學這一維度，將其落實為幫助儒家實現“仁”之價值目標的工具。經過這一知識論分裂和儒學反身侵入的知識學改造，醫學知識內部的“目的之善”與“技藝之善”的割裂也隨之加劇，再也不能回歸到原始醫家熔融自在的自然純樸狀態。所以，想要超越今天西方因為天人二分、醫學技術與道德分離等問題而形成的倫理難題與道德困境，建構一種有效的“中國醫學倫理學”，恐怕不能用“天人合一”、“醫儒相通”等大而化之的概念輕易穿越，還有大量艱苦的工作需要一步步的來完成。

Family Co-Determination: Confucian Familism and its Contemporary Application to Informed Consent

Xu Hanhui

Abstract

Family involvement in medical decision making is a common practice in China due to the influence of Confucianism, which emphasizes the family as an organic unit. Instead of speaking of the individual's right to choose and make a decision, the Confucian model for "informed consent" calls for "family co-decision making" or "co-determination." The essay argues that China has long-standing moral traditions such as Confucianism, with its inherent ethical views toward family values that are still pertinent to a person's daily life in general and bio-medical issues in particular.

The author points out that those who acknowledge the role of the family in medical decision making feel much more satisfied. Sometimes both medical and non-medical burdens related to family roles and relationships are taken into consideration, but a patient who has good family relationships would rather family members be actively involved in the decision making. In addition, as young people are becoming increasingly individualistic under the influence of Western culture, family medical co-decision making can promote the Confucian values of family, family responsibility, and the well-being of individuals.

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Informed Consent in China: A Reflection from the Practitioner's Perspective

Zhao Wenqing

Abstract

Informed consent is considered to be one of the most important conceptual developments in contemporary bioethics, and is strongly implicated in the regulation of clinical practices in the West. Over the past decade, the growing prevalence of both liberal arguments supporting individual autonomy and rights-based debates focusing on equality has brought the concept of informed consent into the purview of Chinese legislation pertaining to healthcare and clinical practice. However, most of the laws and regulations are made by Chinese authorities in ignorance of the concept's ethical groundings. In addition, lawmakers have not taken into account the empirical reality and specific situations of clinical practice in contemporary China. This essay contends that the history of informed consent legislation in China since 1994, exemplified by the recently adopted Article 55 of the Tort Law of the People's Republic of China, reveals conflicting understandings of the ethical foundation of the notion of informed consent. The essay also presents extensive interviews conducted by the author with four frontline medical practitioners in first-tier cities that demonstrate how their experiences with informed consent are largely shaped by current institutional settings and influenced by traditional Confucian ethical norms, (e.g., an emphasis on interdependence among family members, which requires the doctor to consult with the family rather than the patient). The essay concludes that we must take into serious consideration the Chinese ethical tradition and its unique application in practice when cross-fertilizing the concept of informed consent.

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Abstract

Opinion polls released recently show that the majority of people in China today think that informed consent in medical practice is necessary, with more than half favoring family decision making over individual, autonomous patient decision making. Based on these opinion polls, this essay argues that the liberalism and liberal individualism that emphasize individual autonomy do not square with the Confucian tradition.

The essay submits that the “family decision” model is designed to embody Confucian family ethics and maximize the benefit of family involvement in medical decision making. The family model includes both the patient and his or her close family members in the decision making process. The Confucian ethics of humanness (*ren*) – the highest moral virtue – and filial piety (*xiao*) – the foundation of all moral virtue – support family as the most appropriate authority for medical decisions. Further, the essay explores how the family as a unit is better positioned to work with the physician at critical moments to protect the interests of the patient. This means that the family, not the patient, is in authority, and that in some cases, it is acceptable for family members to hide “medical information” from the patient with the cooperation of the physician. The essay concludes that the family is, and should be treated as, a significant moral participant in medical decision making.

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Abstract

In the West, “justice” is a complex ethical principle, with meanings that range from the fair treatment of individuals to the equitable allocation of healthcare resources. Justice in bioethics is perhaps the most contested and controversial principle. This paper argues that the Confucian notion of justice is neither rights-based nor distributive; rather, it is based on the virtues of humanness and benevolence (*ren*), correct behavior and propriety (*li*), and uprightness and appropriateness (*yi*). Those virtues cherished in the Confucian tradition constitute what can be called a Confucian concept of justice, the primary principle of which is to respect human life. This means that in the healthcare system, the Confucian idea of justice is approached from the perspective of equality and fairness. On the one hand, the government should provide basic care for all persons according to the virtue of humanness/benevolence; on the other hand, the government should allow for diversity and differences in medical treatment and healthcare resource allocation according to the virtues of propriety and appropriateness, given that medical resources are limited and China supports a huge population. In other words, the government has the responsibility of providing public health care to those who cannot afford to pay for their own basic healthcare needs. At the same time, the government should allow for alternatives and should permit people to choose between ways of dealing with their medical issues.

Clearly, the language of “rights” is absent from the Confucian tradition. However, this essay argues that because the Western notion of justice, particularly in the legal sense, does not take into account what is good, the Confucian virtue-based justice better fits the cultural milieu of medical practice in China. From the standpoint of Confucianism, healthcare and bio-medical ethics should be more concerned about what is good for society, family, and the individual than about absolute equality or the principle of fair equality, which engender both moral and economic hazards.

Inter-Generational Equity in Healthcare: Family Savings Accounts Based on the Confucian Idea of “Love with Distinction”

Cao Yongfu

Abstract

Healthcare resource allocation, which has medical, ethical, and economic dimensions, has sparked recent controversy in China. However, neither the concept of equality nor the concept of rights addresses the real problem of healthcare allocation that China is facing as its aging population increases. Given the real crises of the growing elderly population and the increased demands on the limited resources of the healthcare system, the author contends that a Confucian model that favors family management in the form of family savings accounts is more a feasible method for China than state management. Moreover, the family savings account model represents traditional Confucian family values and the Confucian concept of “love with distinction.”

The argument in support of the family savings account model is reinforced by the problem of the aging population and the idea of “inter-generation equity.” From an investment perspective, inter-generational equity follows the principle that an endowed institution’s spending rate must not exceed its after-inflation rate of compound return, so that investment gains are spent equally on the current and future constituents of the endowed assets. This idea also works well with the family-oriented health savings accounts, because the family as “a saving institution” is accountable for safeguarding against the unnecessary medical spending that often occurs when the money belongs to a public account or when savings are not allowed to be passed along to the next generation.

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Medicine in the Hands of Celestial Offices: Medical Epistemology in Ancient China and its Relation to Morality

Cheng Guobin

Abstract

This essay offers a genealogy of medical epistemology in ancient China, which, unfortunately, lost its independent status after the Song Dynasty, when Confucian morality became the dominant discourse in all disciplines, including medicine. The author challenges the common view held by Confucian scholars that medicine does not constitute a self-contained domain of activity with its own morality and ethics, because it is seen as a realm of “applied ethics.” This view makes medicine, medical techniques, and medical ethics instruments for the embodiment and actualization of the Confucian virtue of benevolence (*ren*), but undermines the complexity of medicine and medical practice.

It is concluded that the moralization of medicine can be a dangerous practice. It is equally dangerous when ancient Chinese ideas such as “the unity of heaven and humanity” (*tianren heyi*) and “mutual identification between medicine and Confucianism” (*yiru xiangtong*) are used to explain and resolve contemporary problems without qualification.

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