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安樂死 Euthanasia

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摘要:

在本文筆者要逐一檢討在西方四個常見的贊成安樂死的論據(仁慈、生命質素、尊嚴、自決)，並且指出這四個論據分別與中國儒家的價值觀(仁、所卻有甚於生、士可殺不可辱、泰山與鴻毛)有不同程度的共鳴及相通之處。由於這些共鳴及相通之處只是在某程度上，而非徹底相通，所以透過中國古代的價值觀的相對照，也可以更清楚看出這四個西方論據之性質及其可能限制。筆者的結論是，從儒家的價值觀來看，除了在某些極端的情況中，一般來說這四個支持安樂死的論據都是說服力不足。

目錄

摘要:

戀生懼死是人之常情。對於一個瀕臨死亡的人來說，其最大的悲觀莫過於沉浸於對死亡的心理焦慮之中。因此，臨終關懷的重要價值指向應是最大限度地減輕瀕死者的心理痛苦。人生的態度與死亡的觀點息息相關，瀕死者的悲哀正在於死亡焦慮中的生死困惑。道家文化倡導出生入死、道法自然、無為處世。它以低音悠揚但可震撼現代人心曲的生死吟唱，可以引導臨終者走出死亡焦慮的心理誤區，消解悲苦於無形。

安樂死是臨終關懷的應有之意。道家生死論尚自然，法自然，主張人為要與自然之序相協調，不應違反自然而強做妄為。道家反對用過枉之舉去擾亂人的生死變化，認為在死亡來臨時，順其自然，享其“安樂”，尊嚴而歸是不失為善終的。因此，在道家生死觀下，“被動安樂死”(即放棄治療)實為良策，而各種形式的“主動安樂死”(包括醫助致死)均與道家生死論主旨相悖。

目錄

利他主義和醫生協助死亡

Martin Gunderson, David J. Mayo

摘要:

我們假定一項允許醫生協助死亡的法律獲得通過。我們指出，使這項法律獲得通過的基本理由在於對個人自主性的尊重、避免遭受痛苦以及尊嚴地死去的可能性。我們還將探討一旦法律通過將引發的兩個道德問題。首先，我們論證通過協助死亡法律的基本理由可以為協助出於利他主義理由動機和出於自我利益理由動機的病人死去辯護；其次，我們論證通過醫生協助死亡法律的理由可以為將該法律擴展到既包括臨終病人又包括非臨終病人辯護。

目錄

中國人有關安樂死的價值選擇

郭清風、靳風林、耿洪剛

摘要:

針對在中國長期爭論的安樂死問題，作者採用發放封閉式調查問卷的方法，對中國河北省保定市南市區和郊區的 400 名工人、農民、幹部和醫務工作者進行了調查，通過對調查結果的全面分析可以看出，主張安樂死的人以農民所佔比例最小，以醫務人員所佔比例最大；文化程度越高，對安樂死的支持比例越大；多數人主張由醫生、家屬共同決定安樂死的實施；而安樂死的執行大部分人認為應由醫生或第三者進行；而且多數人主張實施安樂死必須立法。

本文以該調查結果為基礎，進一步對中國大陸人對於安樂死的態度、看法及價值選擇情況進行了分析與探討，說明了中國傳統文化對大陸人安樂死態度的深刻影響。

目錄

摘要:

諸如醫生協助自殺這樣的實踐，即使合法，也會引起一系列經常為人們所忽略的道德衝突。最近一項關於醫生協助死亡的建議就是這方面的一個例子，該建議呼籲那些反對自殺的醫生將病人轉移給另外更富有同情的醫生。然而這項建議沒有考慮那些在道義上反對這麼做的醫生們的道德憂慮。

目錄

從典型案例及民意調查看安樂死在中國立法之必要性

喻林、石大璞

摘要:

中國大陸已發生多起爭議大、影響面廣的典型主動安樂死案例。醫學界內外多形式、大範圍、多層次的民意調查充分顯示了各界、各階層民眾對安樂死的普遍關注。從典型案例引起的民眾反映以及各種調查數據結果分析可以看出，中國大陸的安樂死實踐亟待法律的保護和規範。

本文還通過《中國醫學倫理學》雜誌6年間主動安樂死案數的統計及多次有關主動安樂死調查問卷的統計分析得出結論：

1. 在中國大陸主動安樂死的實踐已走在理論研究之前，如不及時求諸法律保護和規範，將出現許多連鎖性問題，波及整個社會的方方面面。
2. “故意殺人罪”是經常被冠以“主動安樂死案”的罪名，如不及時具體立法，不僅會阻礙醫務人員實施必要的安樂死從而踐行符合自己道德良心的決策，而且會出現一些別有目的的失範行為，從而殃及醫患雙方的利益。
3. 安樂死的立法可根據具體的國情、民情、依秩序，依範圍、多層次逐步實施。

目錄

Abstract

This paper attempts to analyze four major arguments in favor of the moral acceptability of voluntary euthanasia (including physician assisted-suicide) as found in the West, and tries to assess these arguments through Chinese Confucian ethics and its perspectives on life and death. Through such a cross-cultural dialogue the author concludes that there is some similarity as well as difference in Chinese and western values. The western moral values appealed to in advocating voluntary euthanasia, to a certain extent, can strike an echoing chord in Confucian ethics. In other words, though the debate on euthanasia is a contemporary phenomenon, the arguments and their underlying values in favor of its moral acceptability are not entirely foreign to premodern Confucian ethics. This resonance notwithstanding, the Confucian echoes are also limited. Behind some general agreements are some significant disagreements as well. Hence this cross-cultural dialogue can reveal in a clearer manner the salient traits and possible flaws of the western moral arguments in favor of euthanasia, and can contribute to a multicultural reflection on some contemporary moral controversies.

This paper begins by clarifying the etymological meaning of "*anle si*," the phrase for "euthanasia" in Chinese as well as in Japanese. The root of the phrase can be traced to either *Mencius* or Pure Land Buddhism. The latter possibility seems more probable, and "*anle si*" then means a death or dying free of suffering. In this paper, I shall restrict the term "*anle si*" or "euthanasia" to voluntary, active euthanasia and physician-assisted-suicide:

The first common western argument in favor of euthanasia is the argument of mercy. For some patients the dying process is accompanied by such excruciating pain that euthanasia is a good way of release from suffering. Since the patient is on the way to die anyway, such suffering is pointless and is not worth-enduring. Euthanasia for such dying patients is to spare them from such pointless suffering and is therefore a manifestation of mercy. This argument can find an echo in Confucian ethics. The fundamental value in Confucianism is "*ren*," and one of its meanings is benevolence. According to *Mencius*, the root of "*ren*" or benevolence lies in compassion, i.e., feeling intense pain in seeing others suffer. Traditional Chinese medicine also adopts this cardinal Confucian virtue as its fundamental guiding norm, hence the dictum that medicine is "*renxin renshu*" (benevolence and benevolent art). Thus if the premise "Euthanasia is the only way or best way to eliminate pain in

the dying process" is empirically true, one can infer that euthanasia can be justified by Confucian ethics of *ren*. However, in light of the recent progress in palliative medicine and hospice care, the aforementioned premise can be empirically true only in very limited circumstances, which are analogous to a torture scene in the recent Chinese novel, then turned into movie, *The Red Sorghum*. (The author also observes that the hospice philosophy is more in consonance with the Taoist philosophy of Zhuangzi.)

The second common western argument in favor of euthanasia is the argument of the quality of life. It has been argued that some sufferers of disease and accidents do not want to live anymore not because of intractable pain, but because of the irreversible and unacceptable low level of the quality of life (e.g., in Alzheimer's disease, Parkinson's disease, ALS, MS, quadriplegic, etc.). Since the condition is incurable, and the persons involved would rather die than to endure this "living hell," euthanasia is liberation from this bondage. Confucianism does not subscribe to the doctrine of the sanctity of biological life either, and places heavy emphasis on the quality of life, to be defined with reference to *ren* and *yi* (i.e., in the wide sense of supreme virtue), rather than on the quantity of life (i.e., longevity). To live out one's life to its natural limit is not in itself desirable. In order to secure a high quality of life, in some circumstances, one has to be prepared to die, even by taking matters into one's hand, lest what is going to transpire in the natural life span will decrease the quality of life. However, the limit of the Confucian echo is that Confucianism cares largely the moral quality of life, and cares very little about the biological quality of life. As long as the low quality of biological life is not to affect adversely one's moral quality of life, there is no good reason to terminate one's biological life.

The third common western argument in favor of euthanasia is the argument of death with dignity. According to this argument, our biological condition can be so bad (e.g., loss of control, being brought back to the infant condition, in a state of zombie) that it is a humiliation to our sense of dignity. Such an assault on our dignity can be more intolerable than physical pain. Euthanasia can therefore deliver us from such an undignified state of existence. In Confucianism, especially since the Han Dynasty, to commit suicide in order to avoid humiliation, disgrace, and dishonor is not only desirable, but also obligatory. Such an idea of "a man of integrity prefers death to humiliation" is even accepted by a number of Chinese intellectuals during the so-called "Cultural Revolution." However, historically the Confucian endorsement of death with dignity is largely limited to the cases in which the assault on human dignity came from an external source (from enemies, emperor,

government), and such an assault is not a universal predicament. Furthermore, in those circumstances in which to commit suicide is the only way to avoid humiliation it happens because one's destiny is controlled by hostile forces; there is no friendly force at hand to make one feel better. In the contemporary case of euthanasia, in contrast, the assault on human dignity comes from an internal source (disease, old age, bodily and mental decay all stem from our mortal and corruptible body) and is therefore a universal human phenomenon. Unless we conceive disease and sickness as an enemy, Confucian ethics would not view our deteriorating biological condition as an assault on human dignity. If we accept that our mortal embodied life is a part of our human condition, we can hardly say that bodily and mental decay is undignified. Besides, especially when palliative and hospice care are available, a patient is not captured and isolated in a maleficent environment, but is surrounded by health care professionals who are there to help us. After all, one purpose of hospice care is to help patients to maintain their dignity while they are travelling in this last stage of the journey of life. Hence the Confucian endorsement of euthanasia as death with dignity is quite limited.

The fourth common western argument in favor of euthanasia is the argument of self-determination. According to the cherished western value of autonomy, an individual should be given the liberty to decide on things that matter much to him or her. Like the decisions relating to marriage, procreation, contraception, education, etc., the decision on how and when to die is one of the most intimate and personal choices a person may make in a lifetime. Hence we have the right to die; some even claim that this is a human right, both a negative right (whose correlative duty is non-intervention in suicide attempts) and a positive right (whose correlative duty is suicide assistance). After all, whose life is it anyway? In Confucian values, individual autonomy has never been a cherished value; nor has there been any human rights thinking. That one can decide on the time and circumstances of one's death is only implied. According to Confucian values one should choose a good death (good in the moral sense) even by actively bringing it about. Since "ought" implies "can," that in some circumstances a person ought to commit suicide implies that the person is morally permissible to commit suicide. However, the Confucian echo of pro-euthanasia argument is the weakest here. The western argument is concerned with the permissibility of suicide and euthanasia, whereas Confucian ethics is concerned with the impermissibility of not committing suicide. In other words, the western argument is concerned with the permissibility of all suicide, regardless of its worth. Confucian ethics, on the other

hand, is concerned with only the permissibility of some suicide, those that are deemed morally worthy. The western argument is concerned with the right of euthanasia, but Confucian ethics is only concerned with the rightness, the right conduct, or the right exercise of the right, of euthanasia. Furthermore, the ideas of self-ownership and individual sovereignty are entirely foreign to Confucian values.

To conclude, the Confucian echo of these four western arguments varies. The resonance is most prominent in the first argument and weakest in the last argument. This cross-cultural comparison should be instructive to Chinese as well as to the people in the West because it shows which values are universal and which are not. For example, the western society has the tendency to view the value of autonomy as self-evident ("We hold these truths to be self-evident....."), but this value is obviously not self-evident to the Confucian mind. Who is right, and who is wrong? That the Confucian endorsement of euthanasia is only limited should give something to every member of the global village to ponder about.

Abstract

In confronting death there are differences among people regarding their deep concerns. A survey shows that most Chinese Catholics are worried about what will happen to them after death, whereas most other Chinese are concerned about unfinished life plans, unfulfilled familial obligations, and so on. However, most Western and Chinese authors agree that a great number of terminally ill patients suffer from anxiety, sadness, and depression. And no one denies that unease, puzzle, solitude, and even anger are often experienced by many dying patients. Against this background, this essay argues that the mental sufferings of terminally ill patients can appropriately be healed by taking the Daoist perspective over life and death. Moreover, the essay demonstrates that the Daoist position sheds light on the debate around the issue of passive and active euthanasia.

According to the Daoist, the Dao is the way of nature. Nature is a universal process of constant change, binding all things together into a vast and natural harmony. Humans should live freely, naturally, and spontaneously in accord with the Dao. From the Daoist perspective, life and death can be analogized as day and night. They constitute two complementary aspects of nature. Where there is life, there is death. Everything living dies, and death implies new life. In short, just as the ceaseless transformation of four seasons in nature, life and death constitute a balanced knot in the harmonious chain of constant natural changes. Therefore, humans should take death naturally, just as they take life naturally. Humans should not have unnatural worry or anxiety on death in their mind.

As there are the natural rules of the Dao, one should follow these rules rather than create artificial human laws. For the Daoist, one artificial expectation for humans is to gain an eternal life without death (here the classical philosophical Daoism remarkably differs from the subsequent religious Daoism which pursues immortality). The other unnatural concerns include mental inseparability from the benefits, utilities, and complicated human relations offered in the living world. The Daoist believes that life and death should be identified as one process and that humans and nature should be taken as a unity.

Concerning the issue of euthanasia, we believe that the Dao as following nature is consistent with the position of so-called passive euthanasia. Passive euthanasia allows the terminally ill patient naturally to accept death by foregoing aggressive

medical procedures when such procedures cannot do more benefit than harm to the patient. Peaceably accepting death when it naturally comes is the human action performed in accord with the Dao. Launching extra human efforts against natural processes is against the Dao.

However, the Daoist cannot advocate any type of active euthanasia or physician assisted suicide. On the one hand, the Daoist admires the man who does not use unnatural instruments to prolong the period of dying in the natural process of death. On the other hand, however, to take active means to kill the patient is to act against the Dao. Indeed, actively to kill the patient is on purpose to destroy the natural mechanism and process of human life. It is to intervene with the spontaneous way of nature in the worst sense. Therefore, the Daoist cannot consider it good to take human life with the help of medical tools.

Abstract

This essay analyzes the major outcomes of a survey that we conducted on 400 Chinese individuals of different ages, occupations and levels of education. Our method was to send to every subject a specifically designed form in which the subject faces three types of cases: the terminally ill cancer patient, the persistent-vegetative-state patient, and the severely defected newborn. The subject was required to make a choice among (1) offering treatment at any cost, (2) giving comfort treatment only, and (3) performing euthanasia. Although the survey was made in 1987, new evidence shows that its outcomes remain an accurate index of the Chinese values regarding the matter of euthanasia.

The survey indicates that a great proportion of Chinese peasants do not support performing euthanasia in the given three cases. 45.5 percent of the peasant subjects advocate treatment at any cost. Only 27 percent of them accept euthanasia. In contrast, many more workers, government employees, and medical professionals living in urban areas support euthanasia. This contrast, from our perspective, demonstrates

the significant influence of traditional Chinese values on life and death in the rural areas of China. According to the popular traditional values, life in this world is sacred and death should be avoided at any cost. Although such ideas have been significantly discredited in the urban areas, they are still heavily influential in the rural areas.

However, given that only 44 peasants participated in our survey, we do not believe that, based on this survey, we can draw a general conclusion about what percent of the Chinese peasants support or oppose euthanasia. We need more detailed investigation regarding this issue.

The most interesting outcome of this survey is that only about 26 percent of the subjects think that the patient him/herself should decide whether or not to accept euthanasia. 55 percent of the subjects believe that the matter should be decided by the family and the physician. The Western reader might be shocked by this outcome. After all, what is at stake is the matter of life or death of the patient. However, this outcome is no surprise for us. Whereas individualism (with strong emphasis on self-determination) is a basic feature of Western society, familism (with a clear orientation of family-determination) characterizes everyday Chinese lives. Familism, as the foundational ideology and value of Chinese people, has gone

through the history of Chinese society for about three thousand years. The Chinese individual takes it for granted that one's family is an automatic unit apart from the rest of society. Everyone is born to a family, is brought up in a family, and lives one's life inseparably from the family. Hence the medical problems of one family member are usually taken as the problems of the entire family. According to Chinese values, when one family member falls ill, the entire family should be involved in making decisions and taking actions in the best interests of that member.

Why not allow the individual patient to make an exclusive decision on the matter of euthanasia for him/herself? Chinese people are afraid that, if this is allowed, patients may very well demand euthanasia primarily for the sake of reducing the economic and spiritual burden of their families in taking care of them. Most Chinese believe that the best decision on euthanasia can only be made by the family in consideration of the physician's information and/or suggestion. This is why 55 percent of the subjects in this survey supported the united determination made by the family and physician.

Does this imply that the family and physician are allowed to accept euthanasia on behalf of the patient without consulting the patient even when the patient is competent? The answer is definitely no. The family would not accept euthanasia for a family member unless the member clearly demands it. In reality, Chinese euthanasia practices occur only upon the frequent and strong requests of the patients. However, given the possibility of abuse, it should be made very clear that morality requires that euthanasia may not be performed on any competent patient unless it is demanded by the patient. In China, it should be a unanimous decision made by the family, the physician, and the patient (if competent).

Abstract

This essay briefly illustrates the first Chinese legal case of active euthanasia in 1986 and a hotly debated lawsuit in 1994. It also offers other euthanasia cases that occurred between 1989 and 1995. It further provides the outcomes of a series of surveys made by a variety of Chinese institutions and individuals concerning the issue of euthanasia. Based on the analysis of these lawsuits, particular cases, and survey results, the essay argues that euthanasia should be legalized in China. In particular, the essay argues for the following points.

First, it is misleading to place euthanasia cases under the category of Article 132 of current China's Criminal Law ("the crime of intentionally killing a human"). Although most surveys showed that more than 50 percent of the Chinese people advocated euthanasia, thus far all defendants in China's lawsuits regarding euthanasia have been judged guilty by the courts in light of Article 132. Interestingly, all defendants have been sentenced only in the lightest sense of the crime of "killing." This was because the courts took into consideration the "good motivation" and "mild harm to society" that the behavior of the defendants involved. This way of judging, we believe, involves a category mistake. The objects of euthanasia are terminally ill patients. They usually live in unbearable agony or undignified situations that they judge unworthy of living. They voluntarily request their physicians and families to terminate their lives in painless ways. The matter is not whether those involved in euthanasia should be punished heavily or lightly. Rather, placing such cases under the crime of murder is misleading. What we really need is a new particular statute that both legalizes and regulates such cases so that they are no longer considered in terms of the crime of murder.

Second, claiming that performing euthanasia is against humanism is begging the question. Some Chinese opposers to euthanasia claim that because humanism implies the overriding value of human lives over all other things, physicians committed to humanism should always try every means to save life, but should never be involved in any killing, either euthanasia or physician-assisted suicide. Ironically, many Chinese advocates of euthanasia also use the concept of humanism to lay out their reasons to support euthanasia. For them, the fundamental requirements of humanism are to reduce human sufferings, value the quality rather than the quantity of human life, and respect the wishes of patients. They take euthanasia as the most humanistic choice in certain circumstances.

In fact, humanism is an ambiguous concept. There are as many different senses and requirements of humanism as there are different types of humanism. What humanism implies regarding the issue of euthanasia depends upon which particular theory of humanism is accepted. No one should be forced by others to accept one particular sense of humanism that he/she considers inhumane. No one has moral authority to coerce those who oppose euthanasia to accept or to be involved in any act of euthanasia. However, by the same token, opposers to euthanasia should not use the law to prohibit advocates of euthanasia from accepting or performing euthanasia. In our opinion, making a particular statute on euthanasia will create the opportunities that will better protect opposers from being involved in it involuntarily and ensure that advocates gain access to it safely.

Finally, some people object to legalizing euthanasia in China because they are afraid that it will cause social instability. According to their view, given the reality that there are still a substantial number of Chinese people who object to euthanasia (although more than 50 percent of Chinese people support it), if euthanasia were legalized, these people would be upset and dissatisfied with the society and thereby social solidarity and stability would be undermined. However, we believe this concern involves a confusion between two different attitudes. One attitude is that "I, as one person, do not permit myself to participate in any act of euthanasia because I believe it is morally wrong." The other attitude is that "I, as one person, do not permit anyone to participate in any act of euthanasia because I believe it is morally wrong." The first attitude does not lead to objection to the legalization of euthanasia. Only the second attitude leads to objection to the legalization. In our opinion, most Chinese opposers to euthanasia in fact hold the first rather than the second attitude. Therefore, the worry of causing social instability due to legalizing euthanasia is in fact groundless.