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本期編輯：范瑞平

中美生命倫理學

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中美生命倫理學
Chinese vs. American Bioethics

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摘要

西方醫療技術全球化的趨勢引起了生命倫理學家的關注，有的生命倫理學家指出有必要把國際性的生命倫理學（International Bioethics）放進生命倫理學的研究議程。要確立國際性的生命倫理關鍵在於找出一組具普遍性，能跨越文化、地域和年代的生命倫理原則。但是，從哪裡去找這樣一組原則呢？有的生命倫理學家認為人權理論能夠為我們提供這樣的一組原則。比如 Beauchamp 就認為人權是人類的共同道德（common morality）的核心部分。倘若 Beauchamp 的這一觀點是正確的，那麼我們就可以通過人權理論來確立國際性的生命倫理。對此本文持相反意見。本文的基本論旨是：人權並非人類的共同道德的核心。本文的一個出發點是「道德多元化」這一事實。所謂「道德多元化」並非表述一哲學的論旨，它是要指出人類所面對的一個的道德境遇，那就是事實上人恆常地持有互相衝突的整全的信念系統；而不同的整全的信念系統則含有不同的道德觀，這些道德觀亦往往是互相衝突的。必須指出的是，道德多元化雖是一個沒有邏輯必然性的事實，但它卻是恆常存在的，至少在可見的將來它仍是會存在的。認為人權是人類的共同道德的核心的論者必須照顧到這一事實。有關論者須要証下述兩點：（一）這些互相衝突的道德觀有互相交疊的部分；（二）這一部分含有人權思想。本文將會從儒家的道德觀出發論証（二）是錯誤的。筆者所要論証的是人權的哲學思想和儒家的道德觀並不相容。倘若筆者上述的觀點正確，那麼，人權就並非儒家的道德觀的一個部分，這樣一來，人權亦不可能是人類的共同道德的核心部分。

摘要

醫學倫理學結論的基礎和依據何在？這些基礎和依據是內在還是外在的？根據近來的討論，有三種不同的說法：一種是內在的解釋；一種是外在的解釋；還有一種是內在因素和外在因素結合的解釋。第一種是從醫學角度以及專業實踐的標準中發展一套倫理觀。第二種解釋醫學倫理學中的規範是以外在的標準為依據，例如公眾的意見、法律、宗教倫理觀或哲學倫理觀等。第三種則認為個別的醫學倫理觀是從個別的文化架構產生出來的，而每一種文化都有管制醫生的規範。

每一種觀點都有可取之處，但每一種也不足以支持它自己的論辯以及無法結合其他觀點中合理和可取的部分。本文建議的第四種解釋，它既可以提供一個避開上述三種觀點的限制的方法，同時又能保留每一種觀點當中最可圈可點的特徵。

摘要

基因醫學的進步，有朝一日將使得一個人在出生時的基因組合，不再只是純然的運氣，而是社會體制可以影響和決定的。當這一天來臨時，社會正義是否要求社會提供給父母親必要的基因醫療資源，以避免讓下一代因為基因差異而在機會上不平等？是否要求社會應該提供所有成員必要的基因醫療服務，以確保人與人之間在基因組合上平等？本文從合理契約論的角度來分析對這兩個問題，提出負面的答案。合理契約論的正義觀結合了亞里斯多德與羅爾斯對於正義之概念的分析，主張：社會有欠於每個成員去選擇一個他不能合理拒絕的體制。在這個架構下，本文把基因差異所衍生出來的機會不平等，置於分配正義的脈絡來考察。

本文分析了泛公平式的機會平等原則、中立化基因差異原則、基因平等原則，並且指出這些原則的困難。本文認為，為了避免社會成員因為基因缺陷而有生不如死的抗議，社會有義務要做到讓所有的人帶有一定程度的基因品質。但由於基因工程可能會改變人的同一性，本文論證，在合理契約論的架構下，社會並沒有義務去提供必要的基因醫療資源來中立化基因差異，更沒有義務去落實基因平等。但本文也論證，在允許資源不平等、尊重家庭自主性的體制裡，公平式的機會平等要求社會必須補償基因組合較差者。而為了避免補償不足，社會也許應該提供基因醫療資源，縮小人與人之間因為基因差異而衍生的機會不平等，雖然這並不是社會有欠於基因組合較差者的義務。

摘要

墮胎是當代最具爭議性的道德問題之一。但問題的焦點是否是婦女選擇墮胎的權利與胎兒生存權利的取捨？究竟以權利立論為婦女爭取墮胎的自由是否適切？以權利立論是否沒有限制？婦女在考慮墮胎時，是否以從權利的角度出發作決定呢？如果婦女考慮墮胎時，是從關懷的角度出發作決定，則此進路由是否沒有問題呢？當然，如果論辯的雙方能夠彼此了解及對話，能否為解決此爭拗帶來甚麼幫助呢？本文將會介紹湯森（Judith Jarvis Thomson）及沃倫（Mary Anne Warren）以權利立論為婦女爭取墮胎權的立場，趙凌姬（Carol Gilligan）關懷倫理及徐姿（Laurie Shrage）詮釋及多元的道德進路，並嘗試了解不同進路的限制，目的並不是要解決道德問題，卻是要深化我們對這問題的複雜性的體認。

目錄

弱勢群體捐獻器官的倫理問題：對一個個案的分析

顏青山

摘要

在我國目前，弱勢群體或弱勢人群主要是指低收入階層和殘疾人。從倫理學的角度看，弱勢群體是一個需要保護、需要幫助的社會弱者群體，弱勢群體在維護自身生活和幫助社會的能力方面總體上是低於非弱勢群體的。如果這樣的人反過來要去救助他人的時候，就可能導致倫理難題，甚至難以得到社會的理解（如對其動機產生懷疑）。長沙《當代商報》在今年早些時候報道了一個個案：一位殘疾人家屬、一位下崗工人願意為尿毒症患者捐獻自己的腎臟，並因此進行了公證。我們這裏對該器官捐獻者進行了德性分析和責任倫理分析，從而對其動機的正當性作出了有限的辯護，也對其責任能力的有限性作出了討論。我們建議，應該有限制地勸止而不是禁止弱勢群體的器官捐獻。同時，我們也希望通過德性分析和責任分析導向一種關注個體的倫理學。

目錄

摘要

雖然死亡問題一直是人類文化的重要主題，雖然古希臘人早就提出過“死亡學”這一術語，但真正意義上的死亡學尚未建立。生命倫理學也尚未給我們提供一種相對完整的死亡概念。由於人不僅是一般的自然存在物，而且是一種社會文化的存在物，人的死亡就不僅是一種自然事件，而且是一種社會文化事件。為了說明人的死亡與動物的死亡的區別，我們需要對死亡概念進行綜合考慮。

中國的孔子早就提出過“未知生，焉知死？”這樣的問題。雖然中國文化十分重視生存的倫理問題，但中國人一刻也沒有停止對死亡的探索。從佛教對死亡的沉思冥想到道教對死亡的執著超越，從莊子對死亡的哲學思辨到帝王對長生不老的不斷追求，死亡問題就一直是中國文化關注的中心之一。在中文中，表示死亡的詞至少有 150 種，人的死亡方式，死者的年齡，死者與生者的關係，生者對死者的態度無一不體現在生者對死亡的稱謂中。從中國的死亡文化中，我們可以發現人們對死亡的慎終追遠的心態，對死亡意識的普遍壓抑，畏死的真切。心情或達觀的生死度。實際上，西方意義上的死亡教育在中國一直是一種普遍的社會實踐。

人的死亡不僅是人的自然生命的終結，而且是人的社會生命和精神生命的終結。對人的生存意義和生命尊嚴的倫理關切使我們有必要建立死亡的倫理學，而臨終關懷的倫理學不過是它的一個部分而已。本文作者試圖通過對社會人類學資料和對死亡體驗的臨床觀察記錄進一步說明把人的死亡理解社會文化現象的必要性與重要性，同時也表明死亡體驗並不必然意味著痛苦，悲哀與恐懼，它也可能包含歡快，寧靜與希望等積極的心理因素，充分地認識和巧妙地利用這些因素對尊重臨死者的尊嚴和提高他們的生命質量這一人道目標具有無可置疑的重要性。

摘要

作為一種法律學說，知情同意在西方社會已經存在多年，並且得到長足的發展。這一學說來源於《紐倫堡法典》。知情同意不僅僅是“法律文件”，也不是醫患“共同決策”，它是具有豐富倫理內涵的一個概念，是一個人實際理解並且具正在沒有他人控制下有意地批准和同意專業人員做某事。

中國具有其獨特的文化傳統背景和經濟發展水平，西方國家基於自主的和權利的理論、信念以及方法在中國基於義務的和強調集體的傳統文化中尚缺乏一定的根基。中國文化傳統上的倫理決策是基於義務而不是基於權利的。這種根深蒂固的傳統所肯定的是社會或者整體的利益，容易忽視的是個人應享有的權利。在中國文化傳統中，家庭和社區具有很強的凝聚力，家庭或社區協助和支持下的知情同意往往建立在更加充分的理解、思考基礎之上。這種知情同意獲得的方式很有價值：更加精緻，更加體現了尊重人的倫理學原則。但是需要注意的是，這種協助不能完全超越自我決定性。另外，社區的“允許”並不同於個人的“同意”，而且社區的允許也不應該取代個人的同意。

另外，目前在中國，臨床藥理試驗，倫理審查委員會(IRBS)制度化，合理的補償與不正當的引誘的區別，基因研究中的知情同意問題以及利益衝突等很多現實問題都需要引起倫理學的關注，並進行大量的研究工作。

摘要

本文通過中國和美國的醫學生對同一個案例的不同看法，提出了醫學倫理學教育的本質問題，即如何實現醫學生的道德？作者根據芝加哥大學臨床倫理中心和北京大學醫學倫理學教研室工作的實際情況繪出了兩個單位的工作示意圖，基於此，作者嘗試對北京大學和芝加哥大學醫學倫理學教育和實踐機制進行比較研究。總的來說，無論是從學生入學時的年齡和學生對學醫目的明確上，還是從醫學倫理學的教學方法上，以及學校在醫學倫理學的教育體制等方面，二者都存在很大的差別。

我國的醫學倫理學教學雖然已經比較普及地進行案例教學，但案例教學若想深入下去還是比較困難的，若不成功，非常容易使學生得出學習醫學倫理學之後沒有什麼長進的感覺，表面上看是因為學科本身的對案例分析沒有明確答案的原因，但本質上是教師在引導學生思考的方式、角度和效發性上存在問題，沒能真正提高學生分析和解決問題的能力。

所以，本文提出了我國的醫學倫理學教育是個系統工程，需要在案例分析方法、教師的素質本身的提高、帶教老師的倫理學培訓、教師與醫生聯合進行課題申請和研究、醫院成立醫院倫理委員會和 IRB 兩個與倫理學有關的職能部門等方面必須加強，也開展定期的發生在醫院內的案例討論，這樣既可以使醫學倫理學教學和科研人員能通過正常渠道進入醫療實踐中，充分實現醫學倫理學的實踐性，並反映到醫學倫理學的教學中，也能在醫學生的培養、醫學生成為醫生之後的繼續教育等方面取得突破性進展。

Abstract

The globalization of western biomedicine has become a phenomenon for which many bioethicists are concerned. It generates important ethical issues at the international level that call for the internationalization of bioethics and, thereby, the development of a theoretical framework for international bioethics. For some bioethicists, such a theoretical framework can be built upon a set of fundamental principles of morality that are universally accepted in all cultures and eras. The set enables people to make justifiable cross-temporal and cross-cultural judgments. This moral position is sometimes labeled as "moral fundamentalism."¹ In a paper published in an issue of the Kennedy Institute of Ethics Journal, Robert Baker argued that moral fundamentalism is philosophically bankrupt because it fails to meet the challenges posed by multiculturalism and postmodernism, and that classical humanrights theory, since it is one form of moral fundamentalism, is also rendered untenable by the challenges.

In a response article, Beauchamp made a rejoinder to Baker's criticism by arguing that there exists a universal core of morality, being embedded in the beliefs of all moral societies, and human rights is nowadays the favored form to present this universal core of morality. He wrote: "Morality comprehends many standards of conduct, including principles, rules, rights, virtues, attitudes, and ideals. These standards sometimes vary from society to society, but embedded in the beliefs of all moral societies are the core dimensions of morality ... The common morality contains precepts that bind all persons in all places. In recent years, the favored form in which to present this universal core of morality has been human rights..."^f Beauchamp's above reply is tenable, then one may develop a theoretical framework for international bioethics on the basis of human rights. However, in this article, I shall argue that human rights cannot be the common core of morality. This article starts with what I shall call the fact of moral pluralism. The term "moral pluralism" is used as a descriptive term describing certain human conditions rather than expressing a philosophical thesis about morality. It means no more than that different ethnic or cultural groups hold conflicting comprehensive doctrines, each with its own conception of morality, and that this human condition will continue to exist for a long time or even permanently. Common morality theorists such as Beauchamp has to take into account this fact of moral pluralism if his attempt to defend human rights as the common core of

morality is going to succeed. Beauchamp has to establish two theses: (1) The comprehensive doctrines held by different ethnic or cultural group overlap one another regarding certain fundamental principles of morality. (2) The standards of human rights are the ones among these overlapping principles of morality. I shall examine (2) from the Confucian moral perspective and argue that (2) is untenable. The discussion starts with an interpretation of the notion of rights. Then it will be shown that the notion of human rights has certain philosophical presuppositions that some moral traditions may not be able to endorse, and that Confucianism is the one among those which do not endorse them. That being the case, human rights cannot be the common core of morality or a part of it.

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Abstract

Genetic medicine has made so many unthinkable things possible these days that someday we might be able to determine the features of anyone's genetic profile. Once this is feasible, then the distribution of genetic profiles is no longer a matter of natural lottery. It is then to be decided by social institutions and to be assessed in term of social justice. This paper is concerned with the questions as to whether society then should provide genetic medical resources for parents so that the impact on opportunity of genetic inequalities could be neutralized or minimized, and whether society should bring about genetic equality. I answer both questions negatively from the perspective of a conception of justice, which I have been developing. I call this conception reasonable contractarianism, which holds that society owes to each member a duty to choose an institutional scheme that he or she (if properly motivated) could not reasonably reject. I argued that the brute luck view of equal opportunity, which might give positive answers to the questions I pose, is implausible. In my view, society is obligated to make sure that no one could complain that given his genetic profile, he would rather prefer not being born at all to living. To discharge this obligation, I argue, society should provide gene-based medical resources to help parents give birth to genetically healthy babies. Such provision is necessary for society to do what it owes to its members. I also argue that choosing an institutional scheme that respects the autonomy of family and allows unequal distribution of resources, amounts to choosing a scheme that is unfair to those who are genetically inferior. Society should compensate for them. In the end, I suggest that in order not to fail to provide sufficient compensation, society might have to reduce the inequality of opportunity induced by the autonomy of family via genetic measures, despite that this is not what society owes to those who would come to exist with genetically inferior profiles.

Abstract

Abortion is one of the most controversial moral problems in contemporary world. People believe that the heart of the problem is the conflict between the fetuses' right to life and the women's rights to abortion. However, do women take their rights seriously when they decided to go for an abortion? Or one should look at the issue from the interpretive and pluralist approach? This essay is an attempt to introduce our readers to the problem by looking at three feminist approaches.

Judith Jarvis Thomson and May Anne Warren represent those feminists defending the rights of women to choose abortion. Thomson argues that abortion is justified, even if the fetus has a right to life. For a woman should have the right to refuse the use of her body to a dependent fetus. It is not the obligation of the woman to afford the fetus that use. However, is it morally justifiable for a woman, who willingly accepted the pregnancy, yet suddenly use her right to abortion after hosting the fetus for several months?

What Warren argues is that a fetus does not have those traits characterize "personhood". Since the fetus is not a person, its right to life should not override the right of a woman to choose abortion. However, it is dangerous to use the concept of personhood as a criterion of exclusion. To question someone's personhood is the first step to mistreatment and killing.

While feminists are trying to defend their right to abortion, there are some women abusing their rights. There are women who choose to abort for what they carry are female fetuses. There are also some risked abortions for they do not want to postpone or diminish their partners' sexual pleasure. Moreover, while feminists are defending their rights, are they at the same time oppressing the vulnerable fetuses? Therefore, recently, more and more theorists dissatisfied with rights-based approaches to abortion.

Moreover, according to Carol Gilligan, when women consider for abortion, they do not take the male ethics of duty or obligation. That means they do not approach the decision by rights-based arguments. Usually what women take is an ethics of responsibility or care. Women are more inclined to reflect on how their decisions on abortion might affect the quality of their relationships. Women are making moral decisions in terms of their understanding of the relative importance of their interests versus the interests of others close to them. Although women forgo the right-based approach, the ethics of care is not without its problem. For

when similar responsibilities are in conflict, the ethics of care could not provide any means to give a resolution.

What Laurie Shrage advocates is an interpretive, pluralist approach to abortion. She sees the struggle over the women right to abortion as an indicative of deep cultural conflicts over a range of issue including not only the personhood of fetus, but also the meaning of life itself and how it should be lived by women and others. People involved in the debate have different cultural understandings of personhood as well as motherhood. What they need to do is to understand one another and dialogue with a view to reaching a compromise. Although what Shrage proposed is promising, however, abortion is a life and death issue fueled with emotion. Even the two sides could try to grasp an in-depth understand the other's position, they might not be able to reach an agreement. The abortion issue is not a problem easy to reach a resolution.

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Abstract

From an ethical view, the weak population is a group of people that need protection and assistance by society. Generally, their capacity for survival and supporting society is weaker than the others. It may cause an ethical dilemma when they want to succor the others. For one thing, their moral motive for the succor can be suspicious.

Modern Business, a local newspaper in Changsha, reported such a case in the early 2002. A divorcer, without a formal job but with a seriously disabled daughter, would desire to donate his kidney to a woman contracting uremia. He stated that he wanted to help others since he had been receiving assistance from society. He even signed a notarization with the woman for the donation.

Some people raised four questions regarding the donating arrangement: (1) Did they sign an alternative and secret contract involving economic benefits for the donation? (2) Did they desire to have the aid of the media for extra benefits? (3) Can rewarding society, as the donator declared, be an adequate account of the donating? (4) Did the donator lose his courage to survive and want to get rid of the pressure on his life by the donating, i.e. wishing to die in the operation?

I think these questions are all misleading. They are also discriminative, because they are ethically against the weak. I attempt to offer a justification for the donation. Firstly, the notarization made the alternative contract ineffective by law; secondly, the media had nothing directly to do with the donation-acceptance notarization, because the event was reported after the notarization; thirdly, rewarding society shouldn't be morally censurable, even if one does not admire it highly in ethics.

Taken together, all the questions (especially the fourth) concern with the motive of the donation. The motive must have something to do with the virtues of the actor, while the virtues are reflected in a series of behavior in the everyday life of the actor. Through analyzing the donator's everyday behavior, we have found that he possessed some important virtues, such as optimism, enthusiasm, helpfulness and so on. So it looks impossible for him not to enjoy his life **anymore** and want to die.

On the other hand, I don't think courage and forbearance are the appropriate ethical strategies for supporting the weak population to donate their organs. The weak should be dissuaded to donate organs. From the Confucian view (for

instance, Mencius taught that "you should make yourself good when you are poor, and you should succor the world when you are wealthy"), it is the first responsibility of the weak to make themselves good instead of attempting to succor society.

Finally, the essay suggests that we should move towards an individual ethics through carefully made ethical analysis of individual virtues and responsibilities.

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Abstract

The term "science of death" appeared at one time in ancient Greece. Socrates even said that "philosophy is a practice of death". However, although death has been viewed as an important subject in many fields of cultural studies, a science of death in the strict sense of the terminology has not come into being due to the lack of a rational and sophisticated methodology as well as an organic combination of theoretical speculation and empirical research. Up to date we have not even succeeded in coming up with a relatively comprehensive conception of what death means, even though we can find a variety of explanations of death in such disciplines as philosophy, religion, sociology, psychology, biology and medicine. Accordingly, we need synthetically take the concept of death into account.

Although Confucius asked such question as "how could we understand death without understanding life?" Chinese have never ceased to probe into the issue of death. In the long tradition of Chinese thought, from Zhuang-zi's philosophical speculation of death to the modern culture of death, from the religious experience of the Taoist transcendence to the Buddhist meditation upon death, Chinese have always attached great ethical concerns to the issue of death. In the Chinese language, there are at least 150 words and phrases referring to death. From the Chinese ethos of death we can find the ultimate concern of life, the common concealment of death, the unvarnished mood of fearfulness as well as profound calmness in the face of death. As a matter of fact, death education in western sense of the word has become a popular social practice in current China.

There is no doubt, death of a human being means not only the end of a human biological life but the end of a social and spiritual life. Establishment of ethics of death (part of which is ethics of care for the terminally ill) is indispensable for the development of our ethical concern about the dignity and meaning of human life. This paper clarifies the necessity and importance of our understanding of human death as a social and cultural phenomenon by analyzing the materials of social anthropology and clinical observations of death experience. It indicates that although death experience is often considered painful, sad and fearful, it probably also implies some positive psychological aspects such as hope, serenity and even euphoria. The arousal of these positive aspects of death is of great significance for maintaining the dignity of dying patients and increasing the quality of their lives.

Abstract

In Western societies, the idea of informed consent as a legal account has long been there and developed significantly. This idea originated from the "Nuremberg Code". In fact, informed consent is neither a mere "legal document" nor a "common decision" made by the physician and the patient. It is a concept rich in moral content. It is about how an individual perceives and intentionally (without being controlled by others) agrees and allows professionals to carry out certain actions on him/her.

China has a unique traditional cultural background and economic development level. Due to the emphasis on responsibility and collectiveness in Chinese cultural traditions, introducing the Western theory, beliefs, and practice based upon individual autonomy and rights to Chinese society does not have solid foundation. According to Chinese cultural traditions, people consider responsibility instead of rights during making ethical decisions. These deeply-rooted traditions assure the interests of the whole and tend to neglect the rights of the individual. Chinese families and communities have a very strong sense of cohesiveness. With the assistance and support of the family or community, the thinking and understanding of informed consent can be established on a more adequate and solid foundation. This kind of way to get informed consent is very valuable: it is more accurate and can also fulfill the ethical principle of respect. However, the assistance of the family or community should not override individual's autonomy in making decisions. Moreover, community "permission" is not equal to individual "consent". Indeed, it should not replace individual "consent".

Contemporary China faces many practical problems, such as clinical medicine testing, establishing Institutional Review Boards (IRBs), differences between reasonable compensation and improper reward, conflict of interests in genetic research as well as the practice of informed consent. They demand ethical attention and a large amount of careful research.

Medical Ethics Education and Practice: A Comparative Study of Peking University and the University of Chicago

Cong Yali

Abstract

Based on the fact that medical students at Peking University and at the University of Chicago have different moral responses to a case of medical ethics, this essay raises a question regarding the education of medical ethics: how can medical students realize their medical morality? It firstly offers a general introduction to the distinct working systems of the Center of Clinical Ethics at the University of Chicago and the Teaching and Research Office of Medical Ethics at Peking University Health Science Center. Then it compares the essential differences of the two institutions in their working systems. Generally speaking, there exist differences between the two institutions in the age of students at medical school, their objectives of choosing to study medicine; methods of medical ethics teaching, and education systems. In particular, even though case study as an important educational method is used commonly in current China, it is difficult to deepen the content and strategy of the teaching. Sometimes students think they have not learned anything from the teaching of medical ethics. Simply speaking, it is because there are no fixed, black-or-white answers to many cases used in the course. More essential reason, however, lies in the quality of medical ethics teachers themselves. They often cannot do a good job on the way of teaching and fail to lead students to think carefully. As a result, they cannot assist students to improve their ability to analyze and resolve ethical issues. The essay concludes that education of medical ethics is a systematic moral engineering. It should be paid attention not only to the effective methods of teaching (such as case analysis) and the promotion of the quality of medical ethics teachers, but also to the combination between medical ethics teachers and physicians in clinical practice, and the establishment of hospital ethics committees and IRBs. The essay recommends that Chinese medical ethics teachers, hospital managers and university administrators should appreciate the importance of medical ethics education and help medical ethics teachers and researchers go into practice through certain routine channels, strengthen the training of the humanities on the side of medical ethics teachers, and at the same time make good progress in the continuous ethical education of physicians.

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