

第VII卷 第2期 2009年

ISSN 1386-6354

中外醫學哲學

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應用倫理學研究中心
CENTRE FOR APPLIED ETHICS

Global Scholarly Publications

Vol.7 No. 2 (2009)

生死決策與儒家傳統

Life-Death Decision Making and the Confucian Tradition

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墮胎與“人”的程度：闡釋墮胎（及動物權利）問題無法解決的因由

李翰林著 莊柔玉譯

摘要

本文旨在了解墮胎問題為甚麼那麼難解決。除了一些特殊的情況之外（例如母親如果不墮胎，性命將受威脅），究竟胎兒是不是人這個問題是解決墮胎問題的重要關鍵。我假設胎兒是不是人這問題，是跟多少粒沙便可成堆這個問題相類似，因為兩者都牽涉模糊性。然後我論證：正如沙的成堆度 (degree of heapness) 取決於沙粒的多寡，那麼胎兒的成人度 (degree of personhood) 亦取決於胎兒生理上的發展。我進一步論證胎兒的內在價值或道德地位，是取決於它的成人度。問題是，我們不懂得如何去比較母親對自由的索求和胎兒對生命的索求，因為我們不懂得如何將道德地位和索求的種類合併：我們既沒有任何倫理演算法或概念上的工具，可用來衡量一個重要生物的較輕微索求（例如母親的自由），和一個較輕微生物的重要索求（例如胎兒的生命）。同樣地，在道德素食主義的問題上，我們不知道怎樣去衡量或比較一頭牛對生命的索求，和一個食家對味道的索求。因為這兩類索求不但是互相競爭，而且是不相稱的，因此墮胎和道德素食主義這兩個難題，是不能被解決的。起碼，它們的疑難，有一個我們還未探索的源頭。

目錄

從墮胎問題看權利觀點的局限

余錦波

摘要

本文旨在突出儒家倫理觀與西方立足於個人權利的道德觀在墮胎問題上的重大差別，論證儒家的觀點有助於求取一個比較合理及持平的結論。儒家既肯定生命之價值，不會贊成基於個人一時好惡而選擇墮胎；但在儒家的價值系統中，除了人的生命有價值之外，尚有其他重要的價值。一時的困難並不構成良好的墮胎理由，但人格的尊嚴及對家族的責任則有可能構成好的理由。

目錄

摘要

西方倫理學界長期爭訟的墮胎問題的三個主要不同觀點，即所謂支持生命之保守主義、支持選擇之自由主義，與支持早期墮胎但反對晚期墮胎之折中主義。雖然三者似是各不相容的論點，但實有一共同的基本觀念，即三者同樣以母胎雙方乃是各自獨立的權利主體。本文批判此一假設並不切合母胎的真實情況。本文採用母胎乃一種非一非二之內在關係，不能以權利分析的方法來解決雙方之衝突。而孕母既是一道德行動者，此一關係當納入道德社群之內作準確的說明，方能得出較切合我們道德經驗的結論。本文通過儒家之家庭倫理關係說明此一內在關係的特色，即以相互之義務為主，見出作為道德行動者之孕母，對胎兒實有一不可逃的保護愛護之義務，不能以個人意願或身體權利進行墮胎。本文進而依儒家之取向，說明在不同情況下而懷孕，孕母所具有的墮胎理據和合理的解決方式。

目錄

摘要

本文從倫理角度探討臨終關懷的決策問題。首先會簡介臨終關懷決策問題的內容及不同的決策模式。對於應該選取甚麼模式是與我們的價值取向有關，所以本文會就有關價值進行討論，並探討預設醫療指示在臨終關懷決策過程的角色與安樂死的關係。最後，本文討論香港應該如何引入預設醫療指示，體現儒家思想精神。

目錄

摘要

本文以《後漢書·列女傳》為例，探討女性在節死問題上的道德取向及對自殺行為的道德詮釋。筆者認為，《列女傳》所體現的價值取向屬於儒家道德的大傳統，同時由於其“性別倫理”的特質，又涵蓋了特殊的生死觀，反映出儒家在“肉身”價值與“精神”價值議題上的考量。本文試圖說明，女性自殺有其背後特有的時代精神與文化傳統，因此對它的道德評估要比儒家大傳統中所謂“為己性”與“為他性”的劃分更為複雜，它既反映出儒家在女性問題上的奇特性，也反映出儒家在生死問題上的複雜性。“節死”議題所反映的不僅僅是一個單一的儒家價值取向，因為任何道德理論或規範在“具體化”的實踐過程中都會存在詮釋上的多元性與複雜性。

摘要

面對快速高齡化的社會實況，台灣政府於2007年提出“長期照顧十年計劃”作為長期照護政策的依據。但是，該計劃卻未能具體而微地列明關乎性別正義的政策內容，例如：對於照護勞務的提供與分配尚未建立一套合於“性別主流化”要求的體制與實踐。

就台灣長期照護政策與其實踐未能彰顯性別正義的現況，本文首先提出台灣社會從政府到家庭以至個體的性別觀點，尚未具備性別正義之充分實踐的因素。本文再進而探討道德與政治之間，為何必須以及應該如何考量性別正義，是合理且可證成的。女性主義者常批判長期照護是對女性的一種不公義的制度。女性主義者中的關懷倫理學家則嘗試以關懷的角度去說明女性之互相倚待性，並以關懷去疏解此中的性別歧視。但關懷倫理學是不能證立家庭在長期照護中的特殊角色和義務。

對照於“性別主流化”的時代要求，本文認為孔孟的仁義思想實能就道德規範根源回應政治原則的合理性問題。儒家以家庭為倫理實踐的起點，家庭成員對長期照護有一自然的承擔義務而不必是性別歧視的。為確立本文觀點，進一步論述儒家“各盡其性分”的原則在道德與政治的面向之間，如何能於政策規範之內涵與實踐上回應政府、家庭以及個體合於性別正義的要求，並且有所殊勝於主張關懷倫理的女性主義之論說。

Abortion and Degrees of Personhood: Understanding Why the Abortion Problem (and the Animal Rights Problem) is Irresolvable

Li Hon Lam

Abstract

The aim of this article is to understand the apparent impasse in the problem of abortion. I admit that the particular circumstance in which an abortion is sought is morally relevant. Thus, if an abortion is sought because the mother's life is endangered, or the fetus is grossly deformed, or the pregnancy was the result of rape, then abortion is morally justified, regardless of whether a fetus is a person or not. Notwithstanding these cases, whether a fetus is a person is morally vital for answering the question of whether abortion is justified in most other cases. I assume that whether a fetus is a person is analogous to the question of whether certain grains of sand can form a heap, in that the concepts of person and heap are both vague. I then argue that just as the degree of heapness supervenes on the number of grains, so the degree of personhood supervenes on the biological development of a fetus. I further argue that the intrinsic value, or moral status, of a fetus is a function of its degree of personhood.

However, to resolve the problem of abortion in a "usual" case, we typically have to resolve the conflict of the mother's claim to freedom and the fetus's claim to life. That is, we have to take account of (1) the mother's higher moral status as a person and the fetus's lower moral status as having only a certain degree of personhood on the one hand, and of (2) the mother's less weighty claim to freedom and the fetus's weightier claim to life on the other hand, and then somehow compare the two claims. Yet we do not know how to combine "moral status" and "type of claim" into a single claim, as we do not have any ethical calculus or conceptual apparatus for doing so, or for comparing the lesser claim of a greater being (e.g., a mother's freedom) and the greater claim of a lesser being (e.g., a fetus's life). Hence, a mother's claim to freedom and a fetus's claim to life seem incommensurable. The same is true of a person's claim to tasting a steak and a cow's claim to life, for we do not know how to combine a cow's lesser moral status (compared with the person's higher moral status) and its more important claim to life (compared with the person's claim to gastronomic pleasure) into a single claim, or compare it with the person's claim to gastronomic pleasure (which has to take account of the person's higher moral status and less weighty claim). Because these competing claims seem incommensurable, the problems of abortion and animal rights are irresolvable. At least, the difficulties of these problems have a deeper source than we have so far acknowledged.

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The Inadequacy of the Rights Perspective: The Problem of Abortion as an Example

Yu Kam Por

Abstract

This essay examines the shortcomings and limitations of the rights-based approach to the problem of abortion, and explores Confucianism as an alternative in providing a theoretical framework for handling that problem. It mainly focuses on the downside of the rights-based approach and the upside of the Confucian approach.

I begin by examining the major arguments of the pro-life and pro-choice camps, and argue that they have many things in common. The arguments have similar structures and some common assumptions, and they are both framed predominantly in the language of rights. The arguments lead to extreme positions, either regarding abortion as a wrong comparable to murder or regarding it as a personal matter of the pregnant woman.

I argue that both positions have unpalatable implications. According to the pro-life arguments, abortion would be wrong even in cases where the fetus is the result of rape or incest, as the fetus should not have less right to life than otherwise. According to the pro-choice arguments, it would be right for a woman to become pregnant intentionally, in order to generate fetus' tissues to be sold for use, say, in the treatment of Parkinson's disease. Such a strong claim on the self-determination of one's body can justify abortion for almost any reason, such as going for a pre-arranged trip or selecting the sex of the child.

The two arguments when put together also have counter-intuitive implications. If we take the arguments of both sides seriously, the ideal solution is to respect the rights of the fetus and the pregnant woman at the same time. If the fetus can be removed from the womb without being killed and supported to grow by artificial means in a hospital after being removed from the womb, then the conflict of rights can be resolved. The fact that this "ideal" solution is far from ideal implies that there is something very wrong with the rights-based approach to abortion.

In contrast, the predominant view in Chinese society on abortion is more moderate and sensible – regarding abortion as definitely a bad thing, but not a very big evil. According to the Confucian view, morality is not something absolute like the commandments of God or some objective universal principles discovered by the use of reason, but something constructed by humans (the sages) on the basis of human nature, human needs, and human sentiments. It agrees neither with the religious view in the West which holds the doctrine of the sanctity of life nor with the secular view in the West which holds that life may have positive or negative value depending on contingent facts.

There are two basic characteristics of the Confucian outlook. First, human life definitely has positive value, but it does not have absolute value, and there may be other more important value that can override it. Second, morality is a human construct on the basis of human nature, human need, and human sentiment.

Hence, a morality that is too demanding or too difficult to practice cannot be a reasonable or acceptable morality.

Such an outlook has meaningful implications for the problem of abortion. Abortion is regarded as something to be avoided, but prohibiting, punishing, or censuring abortion is a morally more inferior option than supporting the pregnant woman for opting out of abortion. The Confucian perspective provides a more reasonable framework than the rights-based approach to the problem of abortion. It can strike a better balance (reflective equilibrium) between moral outlook and specific moral judgments (as in the case of abortion). The implied specific judgments are more moderate and reasonable. Using abortion as a test case, the Confucian approach can be considered as a more reasonable and acceptable approach than the rights-based approach.

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Abstract

Abortion is a perennial problem in the West. This essay shows that although the three major Western approaches to this issue – pro-life conservatism, pro-choice liberalism and the third way view that supports early but disallows late abortions – sound quite incompatible with each other, they nevertheless share a fundamental idea. They take the maternal-fetal relation as a relation between two unrelated right-holders, the pregnant woman and the fetus. This assumption can be criticized as not appropriate to the reality of the maternal-fetal relation. In this essay, I adapt the not-one-and-not-two relationship model of the pregnant woman and the fetus proposed by others, and take their proper relationship as an internal relationship. I argue that we cannot solve the conflict in abortion by the claim of rights of the two parties. Furthermore, as the pregnant woman is a moral agent, this relation should be considered within the conception of a moral community to arrive at a conclusion that reflects our moral experience.

I employ the Confucian conception of a family ethical relation to analyze and explain this internal relationship and its characteristics. The most important feature is that within such an intimate family relationship, the obligation of members to each other is primordial. In other words, the pregnant woman as a moral agent has the inescapable obligation to protect the fetus. She cannot claim a right to abortion by autonomy or the right to bodily integrity. Then I go further to explain how this Confucian conception of family relationships could give the proper reasons and solutions for various types of pregnancy to determine whether it is morally acceptable for abortion in such cases.

Abstract

This paper examines the end-of-life (EOL) decision-making process for mentally incapacitated patients from an ethical perspective. It introduces four common models in EOL decision making: medical paternalism, individualism, familism and the shared decision-making model. According to medical paternalism, the final decision should be made by the medical practitioner, whereas individualism asserts that this decision should be made by the patient before losing decisional capacity. Familism regards the final decision as a collective choice made by the family, whereas the shared decision-making model maintains that the family should jointly make the decision after taking the patient's wishes, values and beliefs into consideration. The choice of model is affected by different values upheld by different people across different cultures. These values, including autonomy, best interests, family value, and the sanctity of life, are discussed in this paper.

This paper also examines the role of advance directives (ADs) in EOL decision making. There are two kinds of ADs: instructional directives and proxy directives. Instructional directives can be tools with which patients exercise autonomy, and proxy directives can be used to assert the value of the family. The distinction between the execution of ADs and euthanasia is discussed. Four positions are put forth to defend the distinction. First, following an AD can be regarded as an act of respecting the autonomy of the patient. Second, the doctor who duly respects the patient's wishes does not have the intention to kill the patient. Third, the life-sustaining treatment refused by the terminally ill patient is usually futile. Fourth, the cause of the patient's death is the life-threatening disease itself.

The paper then discusses the use of ADs and the choice of the EOL decision-making model in Hong Kong. Under the common law in Hong Kong, a valid and applicable AD is legally binding. According to a survey, a significant number of people in the community believe that they should be allowed to exercise their self-determination in the EOL stage when they become mentally incapacitated. ADs are important tools for them to exercise their autonomy. Nevertheless, the same survey shows that more people prefer the shared decision-making model. Therefore, it is argued that advanced care planning (ACP) should be promoted in Hong Kong. ACP is a communication process that aims at promoting a common understanding among patients, their family and health-care professionals, and a close alignment of their expectations regarding the goals and objectives of EOL care. It is argued that ADs also have a role to play in the process because they may help the family and the attending health-care team to make difficult life-and-death decisions for the patient.

Hong Kong is a Chinese society deeply shaped by a strong Confucian ethos. This paper argues that the shared decision-making model, which is an amalgam of familism and medical paternalism, is very suitable for Hong Kong. It recognizes the value of the family because the views of the family members are seriously

considered. The involvement of medical practitioners in this model can also help the family to fulfill the responsibility of taking good care of the patient. Furthermore, harmony is an important value in Confucianism. The model takes that value seriously because it aims to develop a consensus among the patient, the family, and the medical practitioner. In sum, the model is very suitable for many people in Hong Kong, though its adoption does not preclude patients from using ADs to exercise their autonomy if they so wish.

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Abstract

The *Lienüzhuan* (LNZ) or the *Collected Life-Stories of Women* compiled by the late-Western Han Confucian scholar Liu Xiang (79-8 B.C.E.), consists of 125 exemplary life stories of women covering a broad period from earlier legendary time to the Han Dynasty. LNZ, like many other narratives in the early Chinese tradition, is a form of character-focused narrative based on quasi-historical accounts. To locate this Han text in a comprehensive framework of Confucian moral philosophy is not an easy task, and neither is recreating the moment of interpretative creativity. What intrigues the reader today about this work is not whether it accurately represents the lives of early Chinese women, but how it represents an ideal of female virtues within the Confucian ethical system, especially Confucian morality on life and death.

The LNZ has eight chapters, of which six are devoted to six forms of virtuous conduct: (1) maternal rectitude (*muyi*); (2) sage intelligence (*xianming*); (3) benevolence and wisdom (*xianzhi*); (4) purity and obedience (*zhenshun*); (5) chastity and righteousness (*jianyi*); (6) skillfulness in argument, rhetorical/ tactical skill (*biantong*). Each form of conduct is explicated in a specific narrative. This essay focuses on two chapters of the book, "Purity and Obedience" (*zhenshun*) and "Chastity and Righteousness" (*jianyi*), which explore the ethical dimension of female virtues and suicide.

The LNZ offers various stories about why women commit suicide, and they all deal with the female virtues of chastity, loyalty, and righteousness. Some stories give examples of women who refuse remarriage. This kind of practice became an ethical norm in the following dynasties, emphasized by what is called "the cult of chastity". Other stories talk about the importance of women practicing traditional rituals and customs. The "Wife of the Duke of Song" 《宋恭伯姬》 gives an account of how a woman refused to flee a fire because she insisted on performing the ritual that does not allow a woman to walk out of the inner chamber alone at midnight. But there are exceptions to this kind of gender-based ethics in the LNZ. For instance, the "Chaste Woman from the Capital" 《京師節女》 is a totally different kind of story where a woman's husband is in the danger of being murdered. The assassin hears that this chaste woman possesses the virtues of benevolence, filial piety, and righteousness, and kidnaps her father as a hostage to get to the husband. Here the woman is facing a moral dilemma: if she does not meet the assassin's demand, her father will be killed. That would violate the virtue of filial piety; if she were to turn her husband in, that would violate the virtue of righteousness. "Without filial piety or righteousness, I am not worthy living in this world," says the woman. It follows that the woman decides to sacrifice her own life to save the lives of her father and husband. At the end of the story, she tells the assassin that she will help him to have her husband murdered. She tells him that she will open the window that night and the one lying on the east side of the house will be her husband. That night, the assassin goes in through the window and murders the one lying on the east side, only found out that it is the wife. The murderer is deeply touched by the woman's heroic act and decides to give up the killing altogether (LNZ

5.15). The eulogy states: The woman of chastity shows benevolence and filial piety, and values righteousness more than her life. In this story, the notion of benevolence, filial piety, and righteousness fits perfectly into Confucian virtue ethics.

From such narratives the author draws the contention that the Confucian notion of “honor” in terms of chastity, filiality, and righteousness is by no means a simple moral principle to be taken as dogma. The gender-based suicide has to be explicated within the broad framework of Confucian moral philosophy, especially its view of life and death. The essay attempts to show that the moral dilemma exemplified by female virtues in the case of the LNZ is much more complicated than the dichotomy between corporeality and spirituality, or the self-regarding suicide and other-regarding suicide. Furthermore, the embodiment of a particular virtue has always been influenced by a broader social context and the established value system that is based on its own understanding of early tradition. The moral ambiguities of suicide cases represented by the “cult of chastity” (Ming and Qing periods in particular) lie in its misinterpretations of the moral pronouncements and properties of suicidal actions advocated by early Confucianism.

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Abstract

Facing the ever increasing pace of ageing in society, the Taiwanese government proposed a “Ten-year Plan for Long-term Care” in 2007 as the basis of its long-term care policy. However, the plan clearly does not pay attention to the issue of gender justice in Taiwanese society. For example, the supply and distribution of care-giving labor as determined in the plan does not establish a system and practice that would conform to mainstream Taiwanese thought on gender issues. Feminists are keen to criticize that the long-term care of the elderly has been a burden and an indication of gender injustice in treating women. Care ethicists try to indicate the interdependence of family members and propose a fair share of the care burden between the sexes. However, they fail to offer an adequate justification for the share of the burden among family members or a proper account of the special role of the family in long-term care.

In this essay I first explore the main factors that explain why the long-term care policy and practice are unable to achieve gender justice from the perspectives of the government, the family and the individual. I then argue that it is morally and politically reasonable to develop policy concerning gender justice. From the Confucian viewpoint, the family is the core of human life and the starting point of individual moral practice and family flourishing. The family is the basic unit that could offer a suitable ground for a proper public policy to enhance the quality of long-term care without gender discrimination. I argue that Confucius and Mencius’ ideas of Jen (benevolence) and Yi (righteousness) provide the moral foundation for a proper response to the demand for gender justice in government policy. To illustrate this point, I elaborate how the Confucian principle of the “utmost fulfillment of each being’s mandate” could be applied to the policy and action of the government, the family and individuals to accomplish gender justice. I conclude that this Confucian principle is better than the feminist care ethic in directing the formulation of a proper long-term care policy.