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### A Confucian View of Informed Consent in Biomedical Practice

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# 6 A Confucian view of informed consent in biomedical practice

*Ruiping Fan*

## Introduction

To explore a Confucian view of informed consent in biomedical practice, one will first need to understand the general moral nature of Confucian tradition. Confucian tradition is not utilitarian. Neither is it grounded in a concept of individual liberty or rights. Instead, the Confucian tradition carries with it a virtue-based and virtue-oriented moral system. It takes the concept of virtue (*de*), rather than the concept of individual rights, liberty or equality, as the foundation of morality.<sup>1</sup> In other words, Confucianism would link human dignity with virtue, not with individual rights, liberty or equality.<sup>2</sup> The ultimate dignity or nobility (*gui*) of human life does not lie in enjoying rights but pursuing virtue. In short, virtue is a stable moral character by which individuals can do the right thing at the right time in the right way. Basic Confucian virtues include *ren* (humanity), *yi* (appropriateness), *li* (propriety), *zhi* (wisdom), *xin* (fidelity), *xiao* (filial piety), *he* (harmony) and so forth.

Nevertheless, human virtue is not the only intrinsic value that Confucianism pursues. Instead, Confucian tradition sees a comprehensive good human life, as it is implicit in the Confucian concept of *zhishan* (the highest good), to be a complete moral ideal at which individuals, families and governments all aim and ought to aim through personal activities and governance measures. Achieving a comprehensive good human life is comparatively similar to achieving Eudaimonia, or human flourishing, in the Greek Aristotelian sense. Importantly, pursuing the *zhishan* of human life in a properly developed Confucian tradition requires not only honouring human dignity by individuals through their exercise of the virtues but also protecting legitimate individual interests by the government. The latter can be done only through safeguarding a list of individual rights, basic liberties and equality in the state.

Although one may still be a virtuous, dignified person even when one's legitimate interests are violated or damaged, the state ought to protect one's legitimate interests so that one may live a comprehensively good life. This is to say, to pursue the complete ideal of human flourishing, Confucian tradition should develop a Confucian conception of human rights that has not been proposed in the tradition in the past. This conception, as well as a list of fundamental human rights covered in it, can be derived from the moral requirements of the basic Confucian virtues, such as *ren* (humanity) and *yi* (appropriateness), of which there is still general acceptance in contemporary Confucian-influenced societies.<sup>3</sup> However, this conception must differ from a full-blown liberal conception of human rights that imposes excessive individualistic values on other non-liberal traditions.<sup>4</sup> Briefly put, from a Confucian perspective, individual interest is legitimate only if it does not gravely conflict with the requirement of any basic Confucian virtue. Confucian society may tolerate certain illegitimate interests (in the sense that they may not be prohibited or punished by law) due to suitable ethical or societal concerns. However, it should not establish them (such as prostitution or gambling) as human rights or fundamental liberties. In this sense, a Confucian conception of rights will inevitably be a virtue-based conception.

Contemporary Confucian people may accept the following minimalistic list of basic rights and liberties that John Rawls has come up with for international practices in his late work. "Among the human rights are the right to life (to the means of subsistence and security); to liberty (to freedom from slavery, serfdom, and forced occupation, and to a sufficient measure of liberty of conscience to ensure freedom of religion and thought); and to formal equality as expressed by the rules of natural justice (that is, that similar cases be treated similarly)."<sup>5</sup> These rights and liberties can be worked out on the basis of the rationale of the Confucian *zhishan* and the virtues. They are implicit, if not explicit, in the fundamental requirements of the basic Confucian virtues regarding how individuals should treat each other and how their governments should treat them.<sup>6</sup> These rights should be developed and emphasized to protect legitimate individual interests in Confucian-influenced societies.

Finally, a right to informed consent for patients, subjects and their families in biomedical contexts can be worked out of the general basic right to liberty for the good human life in the Confucian tradition. Given its concern with human flourishing and virtue cultivation, Confucian tradition must accept and safeguard this right for biomedical practice. In short, although the concept of rights, in general, and a right to informed consent, in particular, were not initiated in the tradition in the past, it is only logical and reasonable for contemporary Confucianism to develop and promote such a conceptual mechanism to guide biomedical practice in Confucian society.

## **Informed consent in Confucian medical practice**

As a virtue-based and virtue-oriented enterprise, Confucian medical ethics has traditionally accentuated the physician's virtues and obligations rather than the patient's autonomy or rights. Indeed, Confucian medicine has not had a strong tradition of practising informed consent in the past.

Specifically, Confucianism sees medicine as "the art of *ren*" (*renshu*), in contrast to politics which is seen as "the governance of *ren*" (*renzheng*). *Ren* (humanity) is the primary and complete virtue of Confucian tradition. These slogans indicate that both medicine and politics are taken to be the virtuous causes of humanity, but politics is more important than medicine. This is, perhaps, because politics can generally be used to benefit more people than medicine in most situations. Indeed, in the Confucian tradition, medicine has been termed "the little *dao*" (*xiaodao*), whereas politics "the great *dao*" (*dadao*).<sup>7</sup> Meanwhile, both traditional Confucian politics and medicine have a meritocratic and paternalistic tendency: only virtuous persons should become politicians or physicians, and they should make decisions to promote people's welfare in light of their professional knowledge and judgements. In medicine, Confucian physician ethics has been similar to the Hippocratic Oath ethics in terms of medical professional obligations. It is the health and well-being of the patient that constitute the end of the art of medicine. But, the judgement of such health and well-being lies in the hands of the physician. Throughout the history of Chinese medicine, the physician's virtue and obligation in performing the art of *ren* in assisting patients and their families have always been emphasized. It has never been required of the physician to provide sufficient information to patients or their families. In reality, Chinese physicians must have normally gained consent, either explicitly or implicitly, from their patients or families before administering medical treatment.<sup>8</sup> Nevertheless, it is also clear that obtaining such consent before conducting treatment has never been formally stipulated in the tradition.

However, such a lack of an explicit requirement of informed consent from the patient has been mixed with another prominent feature of Confucian medical ethics: shared family decision-making for the medical matters of the patient. It is important not to lose sight of this remarkable Confucian familist feature in biomedical practice.

As is well known, the Chinese character *ren* (as Confucian complete virtue) is etymologically made up of the element "person" and the number "two," meaning that one cannot become a virtuous (authentic) human being simply by oneself. By extension, it means that the *dao* (way) of the good life consists in forming appropriate human relationships in leading one's life. Confucius (551–479 BCE) states that *ren* primarily requires loving humans

(*Analects* 12: 12).<sup>9</sup> One must begin the practice of love from one's family and extend it to other people. So the principle of love under the Confucian virtue of *ren* is not only universal (namely, one should love all human beings) but also differentiated and non-egalitarian (namely, one should love one's family members more than other people; so love is relevant to relations in ordinary situations). It is the family, rather than separate individuals, that constitutes the ultimately autonomous unit of decision-making from the rest of society. As Confucian people understand the unity of the family as modelling after the primordial unity of *yin* and *yang*, two basic types of *qi* (as the fundamental elements of the universe), living united and harmonious family lives is precisely for Confucian people to follow the Dao of Heaven.

The family plays a crucial role in taking care of the sick and making shared medical decisions for them in Confucian society. The patient is always taken to be a patient in the family, and a family member's illness is taken to be the issue of the whole family. The family must undertake special fiduciary obligations to care for the ill member. The Chinese physician typically discusses the diagnosis, prognosis and treatment of a severely ill patient with his or her family members. Patients themselves should be left to relax and rest, not to be bothered by making serious communication with physicians. They are usually more than willing to be represented by their family members for their medical arrangements. The family has the final authority to accept or refuse the physician's prescription for the patient. This familist pattern of medical decision-making is appreciated as removing unnecessary burdens from the patient in the medical process, such as listening to and discussing with the physician, unless the patient strongly wants to engage in the process. Confucian people take it for granted that families ought to undertake such burdens for their ill family members. If the family believes that the information of a fatal diagnosis or prognosis will harm the patient and discount the efficacy of treatment, they would ask the physician to hide the truth from the patient, and the physician would generally follow the request. Physicians generally take it unsympathetic (and unvirtuous) if they directly disclose such harsh information to the patient without obtaining the consent of the family in the first place. Instead of seeking a signature for surgery directly from the patient, Chinese physicians usually obtain a signature from a family representative on behalf of the whole family, including the patient. In short, in the Confucian tradition, the family is responsible for every family member's healthcare, financially, emotionally and morally.

Contemporary Confucianism must explicitly reject physician paternalism (namely, the physician should make medical decisions for the patient according to the physician's judgement of the patient's well-being) because it violates the patient's right to informed consent that Confucianism should

integrate. As discussed in the first section, individual rights, as a moral and legal mechanism, are necessary to protect legitimate individual interests essential for living a comprehensive good human life, even if they are not essential for living a virtuous human life. For the sake of patients' legitimate interests, physicians must be required to provide relevant medical information to patients and their families. It should be the patients and their families, rather than physicians, that have the final authority to decide about medical care issues for the patients.

On the other hand, Confucian medical familism (in the sense that the entire family, the patient included, rather than a single patient him- or herself, should be the final authority to make healthcare decisions) should be maintained in contemporary society with specific qualifications.<sup>10</sup> First, contemporary patients should be encouraged to engage in deliberations for their medical care decisions with their family members, and they should not leave all medical issues only to their family members as they did in the past. When patients are very passive in the medical process, it not only imposes unbearably heavy burdens on their family members to make decisions on their behalf but also not contributive to making the best possible decisions for their medical interests. However, for medical treatment, patients should not be granted an exclusive right to refuse medical treatment regardless of their families' views in the Confucian tradition. If the patient's immediate family members unanimously hold that the patient's refusal of medical treatment is violating the patient's medical best interests, and the physician supports this view, then the patient's refusal should be overridden. On the other hand, for non-therapeutic medical experiments, the family does not have a right to require any family member to participate in a medical trial although the family can affirm or deny a member's consent to become a research subject. This asymmetrical requirement is necessary for protecting the vital interests of family members in considering the likely benefits and risks of a medical experiment on the patient.<sup>11</sup> For Confucians, the family veto power in such circumstances is necessary to protect the patient's legitimate medical interests. Finally, although the physician can generally follow a family's decision to hide the truth from the patient to protect the patient, the physician must communicate directly with the patient and tell the patient the truth if the physician finds that either of the two following conditions has not been met. First, there is evidence of manifest mutual concern of the family members for the patient. Second, the family's wishes are not egregiously in discord with the physician's professional judgement regarding the medical best interests of the patient.<sup>12</sup>

With these qualifications and specifications, the practice of a Confucian familist approach to informed consent should not be taken to be depriving the right to self-determination of the patient. Instead, it is undertaking the

fiduciary obligation of the family to care for an ill family member and seek a comprehensive good life for the patient. Accordingly, although contemporary Confucian people must reject medical paternalism, they do not have to shift to an individualist approach to informed consent. "This shift has often taken place through the influence of Western advocates, who falsely portray their own morality as a set of universal ethical principles, regardless of cultural context."<sup>13</sup> The proper Confucian medical context should be one in which the patient is virtuously taken care of.

Does this Confucian familist approach to informed consent violate the principle of autonomy? The answer depends on which principle of autonomy is referred to.<sup>14</sup> It certainly conflicts with the liberal individualist principle of autonomy because this principle requires that one always act on one's reasons or wishes to make decisions and never submit to another authority without losing autonomy. However, as Beauchamp and Childress point out, "no fundamental inconsistency exists between autonomy and authority if individuals exercise their autonomy in choosing to accept an institution, tradition, or community that they view as a legitimate source of direction."<sup>15</sup> People in the Confucian tradition have autonomously accepted the family's authority (in which the patient is included as a member) for determining medical issues for family members. It is "autonomous" because this process of acceptance can arguably be understood to be intentional, with understanding, and without external controlling influences, to meet the three-condition standard of autonomy that has been constructed by Beauchamp and Childress.<sup>16</sup> From this Confucian familist approach to informed consent, individual autonomy and family autonomy can converge into a mutually-cared process of deliberation in which family members communicate with each other and with the physician to make medical decisions for the patient to accomplish the best medical interests of the patient. Burden is on those individuals who do not accept this Confucian familist approach to informed consent in Confucian society to inform their physicians about their individualist preferences in the first place in order to receive different treatment.

### **Concluding remarks**

In short, the Confucian account of informed consent for biomedical practice is not an individualist account, in which the individual is appreciated as possessing sole or exclusive decisional authority in biomedical matters independently of one's family. Instead, the Confucian approach to informed consent is virtue-based and family-oriented. It accentuates the naturalness, usefulness and normalness of the engagement of family members in a patient's biomedical decision-making, thus acknowledging a shared decisional authority granted by both the patient and the family.<sup>17</sup> If the patient

and the immediate family members hold disagreement regarding biomedical issues, they need to work out a solution through reasonable discussion in light of the moral requirements of the virtues. Sometimes, the physician may play a crucial role in providing advice and standing on the patient's or the family's side to tip the scale.<sup>18</sup> As to a question regarding how this familist model of informed consent would imply for those patients who have no families, it should be left to another chance to discuss.

## Notes

- 1 Ruiping Fan, *Reconstructionist Confucianism: Rethinking Morality after the West* (Dordrecht: Springer, 2010).
- 2 Joseph Chan, *Confucian Perfectionism* (Princeton: Princeton University Press, 2014).
- 3 Fan, *Reconstructionist Confucianism*.
- 4 Ruiping Fan and Wenqing Zhao, "Developing Confucian Virtue-Based Rights: A Response to Jonathan Chan's Confucian Critique of the Universal Declaration on Bioethics and Human Rights," in *Religious Perspectives on Bioethics and Human Rights*, ed. Joseph Tham, Kai Man Kwan, and Alberto Garcia (Dordrecht: Springer, 2017), 115–118.
- 5 John Rawls, *Law of Peoples* (Cambridge: Harvard University Press, 1999), 65.
- 6 From a Confucian moral perspective, some more rights, such as elderly parents' right to receive their adult children's care, may need to be supplemented to this minimal list of human rights for Confucian-influenced societies. However, this paper will not address this issue due to the limit of space.
- 7 As a Confucian politician, Fan Zhongyan (989–1052) has famously stated: "if one cannot become a good premier, one should become a good physician." His reason is as follows: "If one can become a good premier and implement the *dao* of a sage king, one will be able to benefit everyone under-the-Heaven, both nobles and ordinary men. However, if one is not able to become a good premier, then nothing is better than becoming a good physician to practice the art of saving humans and benefiting things. Only a good physician, although staying below, is able to offer help to both his superiors and subordinates. To his superiors he can cure the ailments of his parents and emperor, to his subordinates he can rescue them from their maladies, and to himself he can preserve his life and pursue longevity." For details, see Ruiping Fan, "The Discourses of Confucian Medical Ethics," in *The Cambridge World History of Medical Ethics*, ed. Robert Baker and Laurence McCullough (Cambridge: Cambridge University Press, 2009), 195–201.
- 8 As I will show subsequently, medical familism has been strong in Confucian tradition and set up the familist feature of informing family members rather than the patient in Chinese medicine. For example, a famous Han dynasty physician, Chun Yuyi (ca. 215–150 BCE), put it clearly: diagnosis of any severe disease should not be disclosed to the patient, but it should be told only to the family. For details, see Ruiping Fan and Benfu Li, "Truth Telling in Medicine: The Confucian View," *Journal of Medicine and Philosophy* 29, no. 2 (2004): 179–193.
- 9 Mencius (372–289 BEC), following Confucius, gives a further account of *ren* that subsequent Confucian scholars have accepted: the root of *ren* lies in the

human heart that cannot bear the suffering of the other (*Mencius* 2A: 6). Every human heart (*xin*) has this capacity of sympathy because it has been endowed by Heaven (*tian*) with refined *qi*, fundamental elements of the universe. This capacity of sympathy forms the potentials of the virtues for one to develop in the Confucian tradition. So a human heart naturally holds sympathetic reactions to the *qi* of other hearts. For *Mencius*, one must nourish and cultivate one's vast, flowing *qi* to become virtuous (*Mencius* 2A: 2).

- 10 In contemporary Confucian-influenced societies, the family typically includes a patient's immediate family members, such as spouses, children, and biological parents. Sometimes the patient's siblings are also included.
- 11 Rui Deng, "The Informed Consent of Human Medical Research in Mainland China: A Family-Based Binary Decision Model," in *Family Based Informed Consent: East Asian and American Perspectives*, ed. Ruiping Fan (Dordrecht: Springer, 2015), 201–218.
- 12 Fan and Li, "Truth Telling in Medicine: The Confucian View."
- 13 Lin Bian, "Medical Individualism or Medical Familism? A Critical Analysis of China's New Guidelines for Informed Consent: The Basic Norms of the Documentation of the Medical Record," *Journal of Medicine and Philosophy* 40, no. 4 (2015): 371–386 at 372.
- 14 Ruiping Fan, "Self-Determination vs. Family-Determination: Two Incommensurable Principles of Autonomy," *Bioethics* 11, no. 3–4 (1997): 309–322.
- 15 Tom Beauchamp and James Childress, *Principles of Biomedical Ethics*, 7th ed. (Oxford: Oxford University Press, 2013), 105.
- 16 *Ibid.*, 104.
- 17 Ruiping Fan, "Informed Consent: Why Family-Oriented?," in *Family Based Informed Consent: East Asian and American Perspectives*, ed. Ruiping Fan (Dordrecht: Springer, 2015), 3–23.
- 18 Fan and Li, "Truth Telling in Medicine: The Confucian View."