

A Confucian View of Informed Consent and the Issue of Vaccination

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Introduction

To explore a Confucian view of informed consent, one will first need to understand the general moral nature of Confucian tradition. Confucian tradition carries a virtue-based and virtue-oriented moral system. It takes the concept of virtue, rather than the concept of individual right, liberty, or equality, as the ground of morality¹. In other words, Confucianism would link human dignity with virtue, not with individual right, liberty, or equality². The ultimate value or nobility (*gu*) of the human life does not lie in enjoying rights, but in pursuing virtue. Virtue is stable human 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 on.

Nevertheless, human virtue is not the only value that Confucianism pursues. Instead, Confucian tradition sees a comprehensive good human life, as implicit in the Confucian concept of *zhi* (*zhi* is the highest good), to be the 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 general Aristotelian sense. It not only requires honoring human dignity by individuals through their exercise of the virtues, but also implying protecting legit-

imate individual interests by governments through developing and safeguarding a list of basic individual rights, liberties, and equality. Accordingly, although one may still be a virtuous, dignified person even when one's legitimate interests are damaged, society ought to protect one's legitimate interests so that one may live a comprehensively good life. That is, in order to pursue the complete ideal of human flourishing, contemporary Confucian community should develop a Confucian conception of human rights that the tradition did not explicitly put forth in the past. This conception, as well as a list of basic human rights under 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. But this conception must differ from a full-blown liberal conception of human rights which imposes excessive individualistic values on other non-liberal traditions³. Briefly put, an individual interest is legitimate only if it does not gravely conflict with the requirement of any basic virtue. Society may want to tolerate illegitimate interests (in the sense that they may not be prohibited or punished by law) for various concerns, but should not establish them to be human rights or civil liberties for individuals to pursue.

Contemporary Confucians are able to develop and accept the minimalistic list of basic rights that John Rawls has come up with for international practices in his late work:



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“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)”⁴. These rights and liberties can be worked out and emphasized to protect legitimate individual interests within Confucian tradition because they are implicit, if not explicit, in the fundamental requirements of the basic Confucian virtues regarding how people should treat one another as well as how they should be treated by their government⁵.

A right to informed consent for patients, subjects and their families in biomedical contexts can be developed from the general basic right to liberty for the good human life. Confucian tradition should accept and safeguard this right given its concern with human flourishing. Although the concept of rights in general and a right to informed consent in particular was not proposed in the tradition in the past, it is only logical for contemporary Confucianism to develop and promote the right to informed consent in biomedical practices in current society.

A Confucian View of Informed Consent

As a virtue-based and virtue-oriented enterprise that gives accent to physicians’ virtues and obligations, Confucian medicine has not had a strong tradition of informed consent in the past.

Specifically, Confucianism sees medicine as “the art of *ren*” (*renshu*), in contrast of seeing politics as “the governance of *ren*” (*renzheng*). This indicates that both medicine and politics are taken to be the virtuous causes

of humanity, but politics is more important than medicine perhaps because it can benefit people more than medicine in the proper context. Indeed, in the tradition medicine has been termed “the little *dao*” (*xiaodao*), while politics “the great *dao*” (*dadao*)⁶. 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 own professional knowledge and judgements. On 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 people that constitute the end of the art of medicine, but the judgment of such health and well-being lies in the hands of the physician. Throughout the

history of Chinese medicine, the emphasis has always been placed on the physician’s virtue and obligation in performing the art of *ren* for assisting people, rather than on providing adequate information to patients and their families for them to make their own decisions. In reality, Chinese physicians must have gained consent, either explicitly or implicitly, from patients and their families in order to conduct medical treatment, but it is also clear that obtaining such consent before treatment has never been formally required in the tradition.

However, this fact of lack in a clear requirement of informed consent is mixed with another prominent feature of Confucian medical ethics: shared family decision making for the medical matters of the patient.

As is well-known, etymologically, the Chinese character *ren*, as Confucian complete virtue, is made up of the element “person” and the number “two,” meaning that one cannot be an authentic human being simply by oneself. By extension it means that the *dao* (way) of

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the good life consists in forming appropriate human relationships. Confucius states that *ren* primarily requires loving humans (*Analects* 12: 12)⁷. 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 in connection to relations (namely, one should love one's family members more than other people). It is the family, rather than separate individuals, that constitutes the ultimately autonomous unit from the rest of society. The unity of the family is the primordial unity of *yin* and *yang*, two basic types of *qi*, the fundamental elements of the universe, representing the foundational model of human existence.

The family plays a crucial role in taking care of the sick and making shared medical decisions in Confucian society. The patient is always taken to be a patient in the family, and one's illness is taken to be the issue of the whole family, which must undertake special fiduciary obligations to care for the patient. The Chinese physician normally discusses the diagnosis, prognosis, and treatment of a patient with the family members directly. Patients should be left for relax and rest, and they are usually more than willing to be represented by family members for their medical matters. 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 burdens from the patient, such as the burden of listening to and discussing with the physician, unless the patient strongly wants to engage in the process. Confucians 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, the physician normally follows the family to hide the truth from the patient. Physicians usually take it unsympathetic (and unvirtuous) if they directly disclose such harsh information to the patient. Instead of seeking

a signature for a surgery directly from the patient, Chinese physicians obtain a signature from a family representative on behalf of the whole family, the patient included. In short, in the Confucian tradition, the family is taken to be responsible for every family member's health care, financially, emotionally, and morally.

Contemporary Confucianism must explicitly reject physician paternalism because it violates a right to informed consent that Confucianism should accept. As discussed in the first section, individual rights, as a moral and legal mechanism, are necessary to protect legitimate individual interests which are essential for a comprehensive good human life, even if they are not essential for a virtuous human life. For the sake of patients' legitimate interests, physicians must be required to provide relevant medical information to them as well as to their families. It should be patients and their families, rather than physicians, that have final authority to decide about medical care issues for themselves.

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 health care decisions) should be maintained under certain qualifications. The family normally includes a patient's immediate family members, such as one's spouse, children, and biological parents. First, contemporary patients should be encouraged to engage in deliberations for their medical care decisions and should not leave all medical issues to their family members alone as in the past. If patients are very passive in the medical process, it not only imposes too heavy burden on their family members for decision making but is also uncontributive to the making of best decisions for their medical interests. However, patients should not be granted with an exclusive right to refuse medical treatment regardless of their families' views. If physicians agree with their families that their refusal to medical treatment is violating their medical best interests, their refusal should be overridden. On the other hand, the family does not have a right

to require any family member to participate in a medical trial, although it has a right to affirm or deny a member's consent to become a research subject. This asymmetrical requirement is necessary for protecting the important interests of family members in considering the likely benefits and risks of a medical experiment⁸. Finally, although the physician can normally follow a family's decision to hide the truth from the patient in order to protect the patient, the physician must communicate directly with the patient if the physician finds that there is no evidence of manifest mutual concern of the family members for the patient, or that the family's wishes are egregiously in discord with the physician's professional judgment regarding the medical best interests of the patient⁹.

With these qualifications and specifications, the practice of a Confucian familist approach to informed consent should not be taken to be depriving the right of self-determination of the patient. Rather, it is undertaking the fiduciary obligation of the family to care after an ill family member and seek a comprehensive good life for the patient. Accordingly, although we must reject medical paternalism, we 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"¹⁰.

Does this Confucian familist approach to informed consent violate the principle of autonomy? The answer depends on which principle of autonomy we refer to. It certainly conflicts with the liberal individualist principle of autonomy, because this principle requires that one must always act on one's own reasons and can never submit to an authority without losing one's 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"¹¹. People in the Confucian tradition have auton-

omously accepted the authority of the family (the patient included as a member) for determining medical issues for family members. This is "autonomous" because this process of acceptance can arguably be intentional, with understanding, and without controlling influences so as to meet the three-condition theory of autonomy that has been constructed by Beauchamp and Childress. From this familist approach to informed consent, individual autonomy and family autonomy 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 in order to accomplish the best medical interests of the patient.

III. *The Issue of Vaccination*

Confucianism has no religious reason to object to vaccination. As aforementioned, Confucianism adheres to a particular metaphysics of *qi* (divided into the two types of *yin* and *yang*) as the basic and ultimate elements of the universe. The *dao* of *yin* and *yang* governs everything in the universe, including heaven, earth, and human, the so-called "three forces" (*sancal*) in the tradition, and assumes a normally harmonious cooperation between *yin* and *yang* in everything¹². This *dao* grounds the particular Chinese conceptions of health and disease. Health is understood to be the harmonious state of the bodily *qi* in response to the *dao* of *yin* and *yang*. Disease is an imbalanced or abnormal state of the bodily *qi* due to the violation, obstruction, or frustration of the *dao*. On the one hand, the Chinese etiology lists seven endogenous (mental) factors (delight, anger, sadness, pleasure, grief, fear, and fright) and six exogenous factors (wind, cold, heat, humidity, dryness, and fire) as the most common causes of diseases. They exist as the natural modalities of *qi* in both the cosmos and the human body. When any of them becomes excessive or insufficient in the human body, the balance of the *yin* and *yang* function is broken and a disease will occur. On the other hand, there is also

special “evil *qi*” that may invade the body to attack normally functioning *qi* and damage the bodily balance. Infectious diseases may be understood in this way. Accordingly, vaccines can reasonably be taken as “good *qi*” produced to strengthen the human body and fight against “evil *qi*”, and thereby Confucian physicians should endeavor to invent them to preserve human health¹³. Indeed, there were never Confucian antivaccinationists on religious or philosophical grounds in history. However, in the contemporary world, vaccination policies vary from country to country. Whereas some countries focus on educating their populace about the benefits of vaccination while leaving the choice to individuals, others offer financial incentives, and still many others have made vaccinations mandatory to ensure high coverage rates. Although there has been solid evidence to show that certain vaccines are capable of effectively and safely preventing morbidity, mortality and health care costs in society, compulsory vaccination remains a difficult policy issue because it requires a balance of public health with individual liberty. Libertarian philosophers argue that mandatory vaccination violates civil liberties¹⁴, but others do not agree with them. How should the principle of informed consent be properly applied to the vaccination issue? And what should be the proper Confucian attitude to compulsory vaccination policy?

Confucianism would certainly permit medical exemptions for medically difficult individuals, such as those who are immunocompromised, allergic to the components used in the vaccinations, suffering from relevant diseases, or standing other medical contraindications to vaccination. But should Confucianism support to provide religious, philosophical, or personal exemptions from vaccination? As discussed in the first section, Confucianism should develop a list of hu-

man rights and civil liberties to protect legitimate individual interests, but such interests and liberties should not be in conflict with the moral requirements of basic Confucian virtues. Now the question is: should Confucianism support a civil right or liberty to refuse vaccination on religious, philosophical or personal reasons? I think the following considerations suggest that there should be no such Confucian civil right or liberty.

First, no religious doctrine or basic principle out of any established religion in the world has been found to run afoul of the idea of immunization or vaccination (cf. UNESCO-Biochair document). Confucianism respects

other established religions, and religious reason can normally be allowed to ground conscientious objection to government policies or measures. However, genuine religious reason must be inherent in the doctrine of an established religion, and should not be constituted by a special individual interpretation of the religion. Although some religious believers

once announced, or remain to announce, that some diseases are sent by God to punish sin and that humans should not attempt to prevent them by vaccinations, such announcements are not genuinely religiously grounded so that they do not constitute legitimate religious reasons. In addition, some anti-vaccinationists have a deeply held non-religious philosophy of the environment, holism, healing and a critical assessment of the scientific evidence (Wolf and Sharp 2002). But such philosophy, if it is not against a particular vaccine, but is against the entire idea of vaccination and opposing the use of any vaccine, is difficult to hold given the history and fact of scientific immunization.

Second, unvaccinated individuals face tremendous health risks. Empirical studies have demonstrated such high risks. A common objection that vaccinations do not work is simply ungrounded. For example, a popu-

Does this Confucian familist approach to informed consent violate the principle of autonomy? The answer depends on which principle of autonomy we refer to

lation-based study of measles shows that unvaccinated persons were, on average, 35 times more likely to contract measles than vaccinated persons¹⁵. Moreover, the more individuals unvaccinated, the more risks of infection even for vaccinated persons. That is, decreased vaccine coverage increases the risk of disease for the entire population, including those who have been vaccinated, for it reduces herd immunity. This is because unvaccinated individuals may spread disease to vaccinated individuals whose vaccine has not been effective and to the people with weaker immune systems (such as children and elders). Given that it is the requirement of the complete Confucian virtue *ren* to love humans, including oneself and others, the existence of such high risks indicates that one should not refuse vaccination.

Furthermore, allowing non-medical exemptions may be unfair to those who have accepted vaccination. Although vaccines are generally safe and cause fewer side effects, they are not perfect. Allowing free riders for non-medical considerations to reap the benefit of immunization without accepting the reasonable risks of vaccinating complications is allowing them to exempting their necessary social obligations. This is unfair to those who have willingly accepted vaccinations. Given that the basic Confucian virtue of *yi* (appropriateness) requires that one should fairly treat others and do not improperly generate harm to others, Confucianism would not support non-medical exemptions.

Finally, given that laws and public policies inevitably play an educational function in society, allowing non-medical exemptions may carry a message that vaccination is after all not truly important for individuals to accept. This impression may lead to complacency on the part of non-medical exemptioners and may encourage more people to claim an exemption than vaccination¹⁶. Since Confucianism has all along emphasized the importance of individual virtue cultivation for taking care of other people as well as the educational function of law and policy in urging people for proper human conduct,

providing non-medical exemptions would contradict this moral inclination.

Given these multiple considerations, Confucianism would support to override individual desires for non-medical exemptions, although offering non-medical exemptions has the benefit of accommodating the desires of the small minority of people (mostly parents) who do not believe in immunizations for themselves or for their children, for whatever “religious”, philosophical or personal reason. In other words, Confucian scholars would give an account of civil liberties differing from that of libertarianism. In short, from a Confucian perspective, since the above considerations show that an individual desire to refuse reasonably established vaccination on non-medical grounds would not be consistent with the requirements of the basic Confucian virtues, this desire would not constitute a *legitimate* individual interest. Therefore, Confucians cannot reasonably establish a civil liberty to refuse reasonably established vaccination. Accordingly, Confucians would not see that compulsory vaccination constitutes excessive government intervention in personal matters. Instead, it is justifiable for government to set up a mandatory vaccination policy in society.

As a result, the proper application of the principle of informed consent for reasonably established compulsory vaccinations in a country would primarily be an issue of informed compliance. The emphasis must be placed on the appropriate provision of sufficient information to vaccine recipients. Medical exemptioners aside, those who are required to accept vaccinations (or the parents of the children to be immunized) must be provided with full and clear information about the vaccines to be administered, including their safety, functions, complications, and possible side effects. Governments, relevant officials and medical professionals must all be demanded to provide such information responsibly and honestly, so that people could be well prepared in the process of taking the vaccines.

On the other hand, a number of vaccines may not be so effective or important to be

required as compulsory in society. For such non-compulsory vaccines, people certainly have a right to informed refusal. It is also the obligation of governments to make sure that institutions offering such non-compulsory vaccines provide sufficient and honest information, regarding both the positive and negative effects of the vaccines as well as possible safety problems, if any, to any persons interested in the vaccines. Moreover, governments should ensure that people have freedom to refuse such vaccinations if they want to, without being manipulated or even coerced by any institutions or individuals to accept them. It is also very important to prevent the corruption or abuse of governmental powers in regulating such institutions or individuals regarding the pricing, selling, or storing of such vaccines¹⁷.

IV. Concluding Remarks

This essay does not address the issue of what precise standards should be adopted to decide a list of vaccines that should be compulsory. It also leaves it open whether such lists should be different from country to country. It focuses on the point that compulsory vaccinations, if reasonably established, should allow only medical exemptions, not religious, philosophical or personal exemptions. For such compulsory vaccinations, the application of informed consent is properly the application of informed compliance. In contrast, for non-compulsory vaccinations, the issue of informed consent is primarily the issue of informed refusal. Nevertheless, this does not imply that every country must adopt compulsory vaccinations. Although compulsory immunization can be very effective, it might not be acceptable in some countries where high coverage has been achieved through other approaches or efforts, such as in Sweden, Norway, Denmark, the Netherlands, and the UK¹⁸. Finally, Chinese experience shows that governments should have absolute obligations to ensure that vaccinations be sufficiently safe. We must be alert that there are

possible conflicts of interest due to vaccine research funding, misinformation, and even possible collusion between governmental officials and relevant institutions in the provision of vaccinations.

NOTES

¹ R. FAN, (2010). *Reconstructionist Confucianism: Rethinking Morality after the West*. Springer, Dordrecht; S. A. Angle and M. Slote (eds, 2013). *Virtue Ethics and Confucianism*. Routledge.

² J. CHAN, (2014). *Confucian Perfectionism*, Princeton University Press.

³ R. FAN AND W. ZHAO, (2017). "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*, edited by Joseph Tham, Kai Man Kwan and Alberto Garcia, Springer, Dordrecht, pp. 115-118.

⁴ J. RAWLS, (1999). *Law of Peoples*. Harvard University Press, p.65.

⁵ 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, in view of the cardinal Confucian virtue of filial piety (xiao). But this paper will not address this issue given the limit of space.

⁶ 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 parents and emperor he can cure their ailments, to his subordinates he can rescue them from their maladies, and to himself he can preserve his life and pursue longevity". R. Fan, "The Discourses of Confucian Medical Ethics", in *The Cambridge World History of Medical Ethics*, edited by Robert Baker and Laurence McCullough, Cambridge University Press, Cambridge, 2009, pp. 195-201.

7 Following Confucius, Mencius gives a further account of ren that has been accepted by subsequent Confucians: the root of ren lies in the human heart that cannot bear the suffering of the other (Mencius 2A: 6). Every human has this heart of sympathy because the heart is endowed by Heaven with refined qi, fundamental elements of the universe, which naturally holds sympathetic reactions to the qi of other hearts and forms the potentials of the virtues for one to develop. For Mencius, one must nourish and cultivate one's vast, flowing qi in order to become virtuous (Mencius 2A: 2).

⁸ R. DENG, (2015). "The Informed Consent of Human Medical Research in Mainland China: A Family-Based Binary Decision Model." *Family Based Informed Consent: East Asian and American Perspectives*, edited by Ruiping Fan, Dordrecht: Springer, pp.201-218.

⁹ R. FAN AND B. LI, (2004). "Truth Telling in Medicine: The Confucian View," *Journal of Medicine and Philosophy* 29: 2 (April 2004): 179-193.

¹⁰ L. BIAN, (2015). "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(4), p.372.

¹¹ T.L. BEAUCHAMP AND J.F. CHILDRESS, (2013). *Principles of Biomedical Ethics*, 7th edition, Oxford: Oxford University Press, p.105.

¹² As "Huang Di said: 'the law of *yin* and *yang* is the *dao* (way) of the universe, the foundation of all things, the mother of all changes, and the root of life and death. In healing, one must grasp the root of the disharmony, which is always subject to the law of *yin* and *yang*'". HUANG DI NEI JING (*The Yellow Emperor's Internal Medicine*). For a recent English translation, see *The Yellow Emperor's Classic of Medicine*, translated by MAOSHING NI. Boston: Shambhala, 1995, Ch.5.

¹³ Indeed, it is known that unnamed Chinese physicians from 10th century China made the great invention of smallpox variolation and used it for the people to prevent smallpox. C. P. GROSS AND K. A. SEPKOWITZ, (1998). "The Myth of the Medical Breakthrough: Smallpox, Vaccination, and Jenner Reconsidered," *International Journal of Infectious Diseases* 3 (1): 54-60.

¹⁴ R. WOLFE AND L. SHARP (2002). "Anti-vaccinationists past and present," *BMJ* 325 (7361): 430-2.

¹⁵ D.A. SALMON, et al. (1999). "Health consequences of religious and philosophical exemptions from immunization laws: individual and societal risks of measles," *JAMA* 282.1: 47-53.

¹⁶ D.A. SALMON, et al. (2003). "Mandatory immunization laws and the role of medical, religious and philosophical exemptions," unpublished commentary. Available online: www.vaccinesafety.edu/exemptreview101503.pdf (accessed 20 January 2019).

¹⁷ BBC NEWS. (2016). China vaccine scandal: 37 arrested. Available online: <http://www.bbc.com/news/world-asia-china-35878624#> (accessed 20 January 2019). In 2016, a vaccine scandal angered many Chinese. It was found that the estimated \$88m (£61m) worth of non-compulsory vaccines were not properly refrigerated or transported in mainland China (e.g., BBC News 2016). Although the China office of the World Health Organization (WHO) said that improperly kept vaccines did not in themselves present much danger, the scandal has had damaging consequences. Many mainland Chinese have since been going to Hong Kong and Macau to get vaccinated.

¹⁸ D.A. SALMON, ET AL. (2006). "Compulsory vaccination and conscientious or philosophical exemptions: past, present, and future," *Lancet* 367: 436-442.