



Medical Ethics

Ethics consultation: An Asian approach from the perspectives of Cheng Li Fa

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ARTICLE INFO

Article history:
 Received 20 February 2012
 Received in revised form
 26 March 2012
 Accepted 4 April 2012

Keywords:
 Asian approach
 Compassion
 Consultation
 Situation

ABSTRACT

How do Asians solve the daily problems they confront in life? When facing an ethical dilemma in a clinical situation, how do they find their answer? Are they deontologically oriented or utilitarian-minded in decision making? From a Confucian perspective, decision making can be more deontological, yet in general ethics consultation, it tends to be both. Three questions usually are considered when confronting a dilemma, either in a clinical setting or in personal disputes. First, under a given circumstance, what is the motivation of the act and is it justifiable? Second, is the act or suggested solution reasonable and does it proceed according to the principles and propriety conventionally acceptable in society? Third, when the first two fail to come up with an acceptable solution, is the act or suggested solution legal and lawful? These three questions in Chinese are known as the ethics of Cheng Li Fa, described as “ho-cheng, ho-li, ho-fa” meaning: “is the motivation acceptable in a given situation?”, “Is the recommended solution reasonable?”, and “Is it lawful?” This presentation discusses how a consultation is done through these three aspects. First, explore the situation based on compassion. Second, find a reasonable recommendation that is not contrary to social propriety. Third, when the first two fail, appeal to the law for a legal verdict.

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1. Introduction

A fascinating Oriental religious and philosophical school called Zenism quoting from Lao-tzu, has this famous saying: “He who knows, does not speak, he who speaks, does not know” [1]. Zenism is a Buddhist school combining Taoist and Buddhist meditation to achieve enlightenment. Applying this saying to ethics consultation, we know that he who knows, will not ask, he who asks, does not know. Consultation is for those who do not know, so that through consultation, they may find the answer to their problem. But what is ethics consultation and its purpose? How do we help those who ask so that they may be enlightened to find the way?

2. What is ethics consultation?

Ethics consultation aims to provide help to those who are confronted with dilemmas, so that through the process they may be able to make a good decision [2]. Ethical decision making, however, can be complicated by social, cultural, religious and personal differences.

Seeking advice and giving consultation have been done as long as human civilization has continued. Everyone has sought and also given advice to someone in their lives. For instance, a stranger in a new town asks directions to the train station or a friend asks advice on repairing a strained relationship. They ask the questions because they need some advice to help them find the best solutions. This process is called Wen-ta (question–answer) in Chinese and Mondo in Japanese. Here is one interesting example of Wen-ta in Zenism.

Bodhidharma was meditating in a cave and Hui-ko, who was troubled by the ambiguous purpose of life, approached to ask him for guidance. Bodhidharma was annoyed to be bothered during his meditation and wanted Hui-ko to go away, yet Hui-ko pressed on. Eventually, Bodhidharma reluctantly spoke: “What do you want?” Hui-ko said: “I have no peace of mind”. The master said, “Give it to me and I will pacify it”. Hui-ko looked around and did not know what to give and replied: “When I seek my own mind, I cannot find it”. The master said: “There, I have already pacified your mind” [3]. At this point, Hui-ko had his awakening, his tun-wu or satori, the sudden enlightenment, and found his answer. Hui-ko had found that a peaceful mind is “do not mind” at all. For a consultation to take place, someone must ask and the consultant must respond, after deliberation, to help the seeker see the reality of the situation and make his decision.

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Another example is from the Bible. Moses was very tired because he alone assumed the role of leadership in solving all kinds of problems. He shared his troubles with his father-in-law, Jethro, the priest of Midian, when he came for a visit. Jethro, seeing that Moses took all the pressures on his own shoulders, said it would be better if he chose some representatives to help him out. The Scriptures say: “Moses listened to his father-in-law and did everything he said. He chose capable men from all Israel and made them leaders of the people, officials over thousands, hundreds, fifties and tens. They served as judges for the people at all times. The difficult cases they brought to Moses, but the simple ones they decided themselves.” (Exodus 18). Jethro’s conversation with Moses was a good example of consultation.

From the Zen point of view, he who knows, will not seek consultation. Only those who do not know will need help, but they have to ask for consultation first, so that they can see the light through the help of a consultant and find a solution to their problem.

3. Method of Asian consultation using Cheng Li Fa

How do Asians solve a problem? On what basis does a consultant consider a dilemma and provide advice? Traditionally, Asians, especially those who have been influenced by Confucian teachings, approach ethics consultation from three directions. First, they check the given circumstances considering the situation of the confronted dilemma. If some action has already been taken to solve the problem, or if there is any dispute, what is the motivation behind it? Second, would the action taken or decision made be reasonable and according to social propriety? Third, is the decision or action lawful? These three questions that are based on (1) situation/motivation; (2) reasonableness/propriety; and (3) lawfulness/legality, have served as guides for moral decision making in Confucian society for centuries [4,5]. These three considerations are based on and strive for the virtues of compassion; respect (in the spirit of filial piety); righteousness (fair to individual, family and society); soft autonomy (familial consent, based not only on a patient’s individual wish alone); and responsibility, called dharma in Hindu terms. These three are called Cheng Li Fa in Chinese.

3.1. Philosophical foundation of Cheng Li Fa

The basic foundation of Chinese philosophy has been horizontally and vertically based on the insistence that the harmony of the universe must be observed and maintained. There are three aspects, namely, the Way of Heaven (Tien Tao), the Way of Man (Jen Tao) and the Way of the Earth (Di Tao). The Way of Heaven refers to the Mandate of Heaven, the Will of Heaven and the Principles of the Cosmos that govern the universe. The Way of Man refers to the relationships between people, including ruler and subjects, father and son, husband and wife, the elderly and the young, and between friends and social contacts. The underlying principles of these human relationships are derived from the Way of Heaven. The Way of Earth refers to the way of governing earthly affairs in human society. The Way of Heaven is the foundation and the Way of Man the fulfillment of the Will of Heaven and the Way of Earth, the bridge between heaven and humans to reflect the manifestation of the prevalence of harmony and order on earth. Confucians believe that through cultivating and developing the virtues of people these goals can be achieved, whereas Taoists regard the natural flow of Tao as the key to harmony. Legalists insist that regulation or law must be enforced to ensure order and peace.

Human society indeed is not as harmonious as it should be. Dispute and conflict occur from time to time among people, and to

maintain a harmonious relationship, a system of judgment is required. In ancient times, the king’s ruling, the wang-fa, served as the criteria. A king’s ruling, however, could be biased at times. Confucius taught people to cultivate benevolence (Jen), righteousness (Yi), propriety (Li), wisdom (Chi) and veracity (Sin). The consideration of Cheng in ethical dilemmas develops out of these virtues, especially from Jen. This encourages a consideration of the situation and motivation with compassion.

Three thinkers in ancient China must be mentioned here as they each represent the notions of Cheng Li Fa.

Mencius was the champion of Jen. He regarded human nature as good, and therefore all actions or advice must be considered from this compassionate nature. If an action or decision is taken for the sake of gaining profit, it violates good human nature and must not be accepted. All the chaos, disputes and conflicts that occur within human society are the result of selfish thoughts of gaining profit, which is known as a small person’s act. On the contrary, Hsun-tzu, an advocate of human nature as evil, said that we need rules, regulations or laws to guide people to prevent any devious demeanor. Therefore, the emphasis on Fa is of foremost importance. Han hui-tzu insisted that not only should propriety be emphasized, but regulation and law must also be enforced to ensure a harmonious society and peaceful community [5]. Another respected Taoist, Chunag-tzu, should also be mentioned here, because he felt that any artificial arbitrary and human intervention in anything would interrupt the free flow of Tao. People should be left alone to follow the Tao of the universe.

3.2. Applying Cheng Li Fa to ethics consultation

Consultation is an art that should not offend or hurt anyone during the process. The ethics consultation of Cheng Li Fa regards compassionate understanding as important and also attempts to reach a decision that is best for all concerned; therefore, it should be a good approach. How is this approach applied to ethics consultation? We must first point out here that this approach is not based on deontological or utilitarian arguments, but on trying to be humanitarian and also holistic. The following shows how this approach works.

3.2.1. Situation (Cheng)

First, the consultant considers the elements from the point of view of Cheng to find any possible grounds for a good recommendation. Cheng refers not only to circumstances but motivation as well. The Chinese term “cheng” bears at least two meanings in the context of consultation: what is the motivation and under what situation? A consultant must investigate what is the most reasonable accepted solution in a given situation. Cheng implies that several questions must be explored. (1) In a given situation what is the best possible decision? (2) What is the motivation and what is the goal? (3) If a compromise has to be made, would both sides agree that the recommended solution is the best?

Cheng starts from empathy: trying to find the most compassionate way to do something in a difficult situation. If no acceptable solution is found, then the consultation needs to move to a second consideration that is based on social custom and propriety, namely, Li.

3.2.2. Reasonableness and propriety (Li)

This asks the question concerning whether the act/decision taken is appropriate and reasonable? Li also means principles in Chinese. Thus, we must make sure that the proposed recommendations do not violate the norms of society, and must be reasonable to the parties concerned. In most societies, there are customary ways of doing things. This consideration of reasonableness and

propriety becomes the main criterion to search for a solution. The argument is based upon what society will usually do in the given situation. It asks whether the preferred solution is according to set principles and reasonable to all concerned. In Confucian teachings, there are five basic principles, namely, compassion, righteousness, propriety, wisdom, and veracity, which are to be respected during the consultation.

3.2.3. Lawfulness (*Fa*)

This is the last resort when the first two attempts fail. This asks whether the act or recommended solution is legal. A lawyer or court decision may be sought at this point for a final judgment. In ancient China, legalists assumed that human nature is evil and people are selfish, therefore, rules are required. Everyone in society must obey the rules. Any offender must be punished to enforce order. In a dilemma, we must act according to what is expected. Although each community has its norms of behavior, propriety often is unwritten customs. Every member of the community must abide by the promulgated rules.

This approach of solving a problem is known as the ethics of Cheng Li Fa. That is, first explore, analyze and understand the situation with compassionate consideration. Second, find a reasonable recommendation which is not contrary to social customs. Third, when the first two fail, appeal to the law for a legal verdict. These are described as “Dong chi yi ching” – move with compassion to consider what can be done in a given situation; “saw chi yi li” – explain with convincing reasons; and last, “shu chi yi fa” – act according to the law [6,7].

There is a painful debate if Cheng should be considered first or Li should have priority at the beginning. To Confucians, compassion should always be first, but to Taoists, principles should be the guiding criterion. To legalists, the law is law and there is no exception. A wrong act cannot become good simply because compassion is involved. Should consideration and consultation start with Cheng Li and Fa or should it be Li Cheng Fa? Mencius gave a good example of his own dilemma: “I like fish and I also like bear’s paw. If I cannot have both of them, I shall give up fish and choose bear’s paw. I like life and I also like righteousness. If I cannot have both of them, I shall give up life and choose righteousness. I love life but there is something I love more than life and therefore I will not do anything improper to have it...” [8].

From Mencius’s description of how he would choose in a dilemma, we find he opts for Cheng and Li. To him, benevolence and righteousness are closely linked. Therefore any consultation based on compassion cannot be in contrast to social propriety.

4. Confucian principles of bioethics

The concept of Jen is most fundamental to Chinese philosophy. All other discussions on principles and material forces are to serve the purpose of helping people to realize Jen. From this concept, Confucian virtues such as benevolence, righteousness, propriety, wisdom, and veracity are derived to serve as the principles of bioethics for Chinese, as well as people influenced by Confucian teachings in Japan, Korea, Vietnam, Taiwan and Singapore. From these virtues, five principles are developed.

4.1. Compassion

Compassion is based on benevolence (*Jen*). A person without commiseration is not a person according to Mencius, the Second Sage in Confucianism. Commiseration is the ability to be compassionate. Mencius said “All men have a mind which cannot bear to see the suffering of others.... a man without the feeling of commiseration is not a man. The feeling of commiseration is the

beginning of humanity...” [9]. However, this compassion is not based on sympathetic feelings, but rather more on empathy than sympathy. Thus, Confucian bioethics will not stop in simply doing good, but goes further to compassion and empathy. Confucian bioethics would emphasize the empathy of health professionals toward their patients. This in turn will enrich the physician–patient relationship and bring them closer together.

Paul Unschuld in his study of the history of Chinese medicine said that Chinese medicine “consists of humanness and skill” [10]. A Confucian physician always puts compassion first. A story was told of a poor farmer who was seriously sick, yet could not afford to pay his physician. This doctor still took the patient in. After his cure, the physician told the farmer to plant one apricot tree that would be considered payment for the physician’s service. The legend said that this physician would ask those who could not afford to pay for his services to plant apricot trees on the hillside as a payment. Several years later, hundreds of apricot trees yielded fruit that helped pay for more poor patients to receive medical treatment [11,12]. This beneficiary act is what compassion is all about and is an exemplary act of beneficence.

4.2. Righteousness

Righteousness is an Asian way of expressing justice. It means the right thing to do as well as doing things right. The fundamental basis of this teaching is that one should act according to one’s place in life, such as the young showing respect toward the elderly or the elderly showing love to the young. A person should act according to his/her conscience without violating his/her social role, as well as without having any desire to gain profit. Righteousness and profit are two opposing terms. When one does something because of potential profit, it is not righteous and therefore is not just. Confucius said: “The superior man comprehends righteousness, the small man comprehends profit” [13].

Righteousness in Chinese understanding also refers to one’s willingness to sacrifice oneself for the sake of a noble cause, such as for patriotism or for filial piety. A person who dies for such a cause is described as giving up life to opt for righteousness (*sur shun tsi yi*), or as bravely embracing righteousness when being confronted with the situation to make a choice (*chien yi yiong wei*). When one betrays and denies a benefactor who has helped or treated one well, it is described as forgetting grace to be in the debt of righteousness (*wong un hu yi*). Christians like to use this Chinese character, righteousness, to describe how the Lamb of God dies for humankind, as this character is composed of a “lamb” covering “me” [14]. It is obvious that righteousness in Chinese understanding has moral and religious implications. Applying this self-giving righteousness to medical settings could greatly enhance the patient–physician relationship. We can derive from this understanding that a just and good physician will try his/her best to take care of the sick regardless of gain and profit.

4.3. Respect

The third virtue that Confucius upheld was propriety, which refers to the right conduct or right demeanor in social interactions. It is the fulfillment of each person’s given role in a station of life, for instance, respect as found in the spirit of filial piety. According to Confucian tradition, children are required to pay due respect to their parents and elders, and extend this respect to the larger scope of family, where brotherly or sisterly love is emphasized along with mutual respect required for social interactions.

Applying this propriety to a medical setting pinpoints the mutual trust between physician and patient and their interactions. The work of a physician is highly respected in Asian society.

Physicians are not only healers, they are also advisors in many instances in villages [15]. Physicians enjoying this privilege should not take it for granted but rather should reciprocate with caring concern and respect toward patients.

Mencius was once asked if men should love their neighbors' children in the same way as they love their brothers' children. He answered: "Treat the aged in your family as they should be treated and extend this treatment to the aged of other people's families. Treat the young in your family as they should be treated, and extend this treatment to the young in other people's families"[16]. This respect lays the ground for proper interpersonal relationships and is expected as a social norm in life.

4.4. Responsibility

Veracity is the last virtue Confucius mentioned. It refers to accountability. A person must act according to his/her promises and station of life. Knowing and doing must be in accord with each other. Thus, a person must be responsible for what he/she does. A physician must try his/her best to take care of a patient. A responsible physician will heal according to his/her ability and conscience, and thus can be accountable. This sense of responsibility however is based on mutual trust between physician and patient.

This principle of responsibility can also be expressed through the concept of Rectification of Names that underlies all Confucian principles. Names refer to the social station of each person. When asked what the rectification of names was, the master answered, "Let the ruler be ruler, the minister be minister, the father, father and the son, son" [17], meaning that each person should act according to what is expected in his/her profession and station in life. Every name contains certain implications that constitute the essence of that class of things to which this name belongs. Doing should agree with names. The ruler must bring well-being to his/her subjects, the minister loyalty to his/her master, the father caring to his children, and the son filial piety to his superior. Every name in social relationships implies certain responsibilities and duties. Ruler, minister, father and son are all the names of such social relationships and the individual bearing these names must fulfill those responsibilities: "Between father and son, there should be affection; between ruler and minister, there should be righteousness; between husband and wife, there should be attention to their separate functions; between old and young, there should be a proper order; and between friends, there should be faithfulness" [18]. In other words, the person who bears a name ought to make sure that his/her action reflects the requirement of his/her name. A person who does so is of Jen. By the same token, a physician must fulfill his/her responsibility, that is, to care for his/her patients benevolently and the patient must cooperate with the physician.

This principle further advocates that patients must take care of their own bodies to avoid any possible exposure to infection or harm. Mencius said that "Body, skin and hair...are gifts to us from our parents and we must safeguard them" [19]. Any negligence in caring for one's given life is irresponsible and thus is disgraceful. This implies that each person must not abuse their health. It is our inviolable responsibility to take good care of our body. Failing to do so is irresponsible and thus unfilial.

4.5. Ahimsa – do no harm

Ahimsa is not really a Confucian concept, but rather a typical Hindu and Buddhist teaching. In Sanskrit, Ahimsa is normally translated as nonviolence and reverence for life. In practice, it means abstaining from animal food, relinquishing war, rejecting all thoughts of taking life, and regarding all living beings as akin to one

another, thus showing respect toward life. Confucius and his disciples did not speculate on the issue of life itself. However, they said that life must be safeguarded because it is a gift from parents. Ahimsa or do no harm in Confucian teaching is understood in terms of filial piety. As mentioned above, Mencius cautioned his disciples that a filial son would carefully preserve what was given by parents, which most obviously is the human body. If one has to take care of his own body, he must also not harm the body of others as a way of showing respect toward other parents' gifts to their children. Applying this to a medical setting, one has a responsibility to make sure that one's health is maintained and kept. One should also share with others knowledge or experience of how good health is maintained, so that others are also benefited. This is a practice of Jen. In Confucius' words, "Desiring to sustain oneself, one sustains others, desiring to develop oneself, one develops others". As a physician, beneficence and non-maleficence must be kept in his mind and practiced to the fullest.

5. A case study

5.1. Cheng Li Fa in practice in compassionate therapy

This Cheng Li Fa approach to ethical dilemmas is also practiced in compassionate therapy worldwide. When there is no effective treatment available and in a last attempt to help a patient, the doctor, after the approval of the hospital ethics committee, gives a patient a nonproven therapy. In theory, this therapy should not be given because it is not approved, but in consideration that the patient may expire at any time, and for the sake of saving life, this compassionate, experimental therapy is given. This is an exact application of the Cheng Li Fa approach in operation. The whole consideration is based on the situation, motivation and compassion. The treatment is given despite the fact it is not conventionally approved by medical authorities.

On the level of Cheng – the situation is urgent and the motivation is simply to save life. Even though the doctor is not sure whether the measure applied will work, still, with compassion, this therapy is given.

On the level of Li – is the therapy reasonable according to ethical principles adopted by society? Saving life is always stronger than destroying life and should be favored. Beneficence, acting for the benefit of people involved, is the principle. In Confucian understanding, it is an extension of filial piety and "do to others as you would like others to do to you" is also a social golden rule. Giving a therapy otherwise disallowed, in this special situation, is not against social propriety. Therefore, with the approval of the ethics committee, it becomes acceptable, but only in this urgent case.

On the level of Fa – because the decision has been made, Fa, according to the Cheng Li Fa approach, is always the last consideration when the first two fail. The proposed compassionate therapy has passed the bar of Cheng and Li consideration, thus Fa is not a hindrance here. The green light is given.

5.2. A case discussion

A gynecologist had performed a hysterectomy on an 18-year-old girl at the request of the girl's mother. This girl was severely mentally retarded and her mother, for the sake of this girl's future, decided to deprive her of her ability to conceive. The doctor felt uneasy afterward and requested a consultation.

From Asian perspectives, the consultation should consider the following questions:

- (1) What is the motivation and in what circumstances was the act done/did the dilemma arise?

- (2) Is the act/suggested solution reasonable and does it follow the proprieties conventionally expected in society?
- (3) Is the act/suggested solution lawful?

Before the consultant applies the Cheng Li Fa method, he/she should do his/her homework to remind him/herself of the guiding principles shaping decision making in Asia. (1) Compassion: doing good or refraining from harm is not enough. Compassion must be instilled to empathize with patients or whoever needs help. Commiseration is the beginning of humanness. (2) Righteousness: the superior person acts according to righteousness whereas the small person acts because of profit. Righteousness refers to exertion of oneself in the service of others on the basis of one's dharma. (3) Respect: the Asian virtue of propriety refers to the right conduct/demeanor one should observe in social interaction. The ethics of mutuality in practice. (4) Dharma (responsibility): each is given a certain duty to observe. Social relations and station determine the extension of duty.

5.3. Discussion

Consultation is supposed to take place before any action is taken so that a good decision can be reached. In this case, the consultation was done afterward, but it is a typical case. The consultant first asked the doctor if there was proof of the girl's mental condition. Was a consent form signed and who signed it? Did the father of the girl know about the operation and give his consent? The doctor replied that, from his clinical judgment, the girl did indeed have mental retardation, and the mother assured him that the father knew what was happening. The mother signed the consent form acting on behalf of her daughter because she was still under the legal age to behave autonomously.

The consultant suspected that the doctor felt uneasy because he was afraid there might be a legal suit, or his conscience bothered him because he was concerned that what he did might not be right. The doctor replied that he wanted to make sure that what he did was ethically acceptable for future reference, because he had not thought of ethic problems before.

From the perspective of Cheng, the mother made the request out of concern that her daughter, with her mental condition, could be sexually assaulted. To prevent any undesired pregnancy, precautions were taken. The motivation of the mother was protective and understandable, so the request could be considered. However, in an Asian society, the father usually makes the decision on behalf of the family, especially in the case of a girl with mental retardation [20]. The mother answered that the father knew about the request for surgery and had no objections. From the perspective of Li, Asian society regards having offspring as an obligation people owe to their ancestors so that blood lines can be carried on. This young girl surely could bear children but since her ability to care for a baby, and even herself, was in question, the mother's concern for this young girl's own wellbeing seemed to precede that of childbearing. In addition, children in Asian society are a smaller self in the bigger self of the family, and therefore the family's whole wellbeing is the responsibility of the head of the family. From the perspective of Li, "do no harm" is the principle Mencius taught, but Confucius also taught not to do to others what you do not want others to do to you. In other words, should a woman want to be deprived of her ability to conceive? Because this young girl had mental retardation, with no sense of knowing what was involved, her guardian, in this case

her mother with her father's permission would have to make the decision for her. From the perspective of Fa, abortion in Taiwan, where this consultation took place, is legal and it is up to the individual to decide whether or not he or she should have children. The law at least did not prohibit the procedures from taking place.

In the consultation, it was recommended that a certificate of custodianship, the right of power of attorney issued by the court, should be included in the record.

An ethical question, however, remained concerning whether or not a mentally retarded person has the right to be a parent and enjoy sexual pleasure? Or, should their ability to conceive be taken away because of their condition? This was not part of the consultation, therefore, it was not discussed during the process.

6. Conclusion

Can bioethics provide an absolute answer to the dilemmas confronted daily in clinical and social settings? A universal answer may be hard to come by because Asians regard culture to be an important part of ethical deliberation. The task of ethics consultation, however, is to help find the best possible answer in a given situation that upholds human values. "One of the essential qualities of the clinician is interest in humanity, for the secret of the care of the patient is in caring for the patient" [21]. A famous saying in Taiwan reminds physicians, "Before a person becomes a physician, let him first become a man" [22]. This is the manifestation of Confucian ethics consultation – always consider compassion, righteousness, respect, responsibility and ahimsa in the process.

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