

# **Is Informed Consent not Applicable in China? Intellectual Flaws of the “Cultural Difference Argument”**

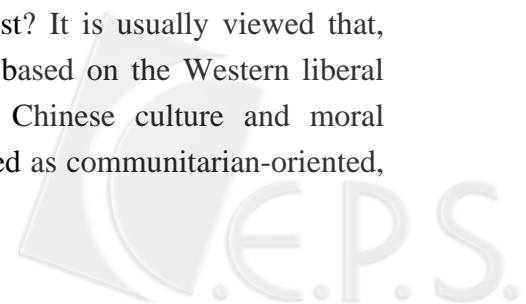
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## **Informed Consent and the “Cultural Difference Argument”**

Informed consent as an ethical term and a moral requirement for medicine is probably the most influential concept in contemporary bioethics as an academic discipline as well as a social-cultural movement. It has produced a significant impact on medical research involving with human subjects and health care practice in the past two or three decades, especially in the Western countries. It has greatly helped to realize the historic change from that doctor-centered, medical-profession-oriented and paternalistic mode of medical ethics into a patient-centered and consent-oriented way of practicing medicine and conducting scientific research. The idea of informed consent was a conceptual cornerstone of the 1947 Nuremberg Code, an aftermath of the well-known trial of the Nazi physicians and scientists who conducted a series of unethical medical experiments in the names of science and the interests of state. The first and longest of its ten principles in the Code clearly states: “The voluntary consent of the human subject is absolutely essential.” The Code has also identified four elements of valid consent: voluntary (being free from “force, fraud, deceit, duress, overreaching, or other ulterior form of constraint or coercion”), legally competent, informed, and comprehending (understanding). The ethical requirement of the Nuremberg Code did not exert notable and direct influence over medicine immediately. This was partly because the Code had been seen as an irrelevant document by medical professionals as it originally dealt with war criminal physicians and scientist. The World Medical Association’s famous Declaration of Helsinki was not formulated until in 1964, nearly twenty year later after the Nuremberg Code. Nevertheless, partly due to the civil rights and the patient’s rights movement in 1960s, along with the birth and development of bioethics, since 1970s the conception of informed consent has become an almost household word in the West and started to hold a central place in medical research and health care including treatment withdrawing.

Is informed consent, with its apparent Western origin, applicable to non-Western societies which, culturally speaking, are strikingly different? More specifically, is the moral conception and ideal of informed consent applicable to China whose cultural and ethical traditions are often conspicuously different from those of West? It is usually viewed that, philosophically speaking, the doctrine of informed consent is based on the Western liberal individualism and especially the notion of autonomy. But Chinese culture and moral traditions, represented by Confucianism, is customarily described as communitarian-oriented,



i.e., emphasizing the importance of the family, community and state, rather than the individual. It, therefore, has been argued and believed that, due to the cultural differences between the West and China, informed consent is not applicable to China. The reasoning of this view can be summarized in the following syllogism:

First premise: Informed consent is a Western moral idea because not only it originated in the West historically but also can be justified in terms of Western individualism only;

Second premise: Chinese culture, represented by communitarian-oriented Confucianism, is fundamentally different from the Western individualistic culture;

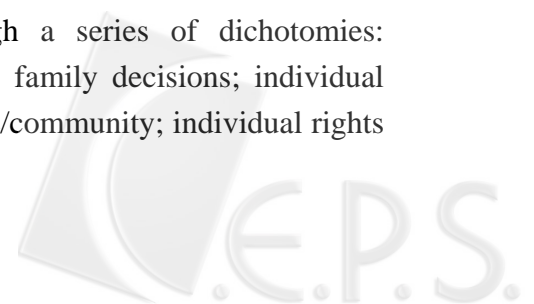
Conclusion: Therefore, the doctrine of informed consent is neither relevant nor applicable to China.

It has even been further suggested that in China a different moral principle should be invented to substitute the principle of informed consent in medical practice. To oppose the applicability of informed consent in non-Western societies including China from this angle can be called the “cultural difference argument or thesis.” This cultural difference thesis seems to be quite widely accepted in the West as well as in China.

In this paper I will reject the above opposition to informed consent through pointing out some intellectual flaws of the cultural difference argument. This argument has at least the following three flaws: first, while emphasizing the fundamental differences or incommensurability of Western and Chinese cultures, it has simplified and even distorted the complexities and pluralities of both Chinese and Western cultures. Moreover, it fails to appreciate the ability to integrate or let co-exist a diversity of value systems within one cultural “region” and thereby ignores existing strategies and experiences in the field of normative cross-cultural communication. Second, the cultural difference thesis has confused the philosophical justification of informed consent, based on individualism and individual autonomy, with informed consent as a practical moral guidance or principle for health care and medical research. Third, according to the argument, informed consent is defined primarily as an issue of culture. However, informed consent is mainly concerned with the issue of power—how to balance the unbalanced power between the medical institutions and professionals on the one side and vulnerable individual patients on the other side which exists not only in the West as well as in China.

## **Misconceptions on Chinese Culture and Medical Ethics**

The cultural difference thesis presupposes that there exists a distinctive Chinese or Western culture. Contemporary discussions in the West as well as China tend to see Chinese and Western cultures, medical ethics in particular, through a series of dichotomies: individualism vs. communitarianism; individual autonomy vs. family decisions; individual liberty vs. social/common good, the individual vs. the collective/community; individual rights



vs. personal virtues, individual development and perfection vs. family and filial piety; contract vs. trust; self-determination vs. self-examination; freedom vs. the concept of duty and obligation; heterogeneous vs. homogenous; evolutionary vs. static; and so on and so forth. But, in these widely used general contrasts, especially the “individualistic West vs. communitarian China” theory, the plurality and complexity in both Chinese and Western societies, especially the great cultural and historical diversity in China, has been unfortunately minimized, if not totally ignored.<sup>1</sup> Since the 19<sup>th</sup> century, many scholars of different disciplines in anthropology, sociology, history, China studies, have attempted to discover the unique way of seeing and acting in Chinese civilization. Quite a few theories such as the Asiatic way, the organic world-view, correlative thinking, holistic perspective, synchronicity, and the communitarian or authoritarian worldview and way of life, have been put forward. These theories take it for granted that a unique Chinese mentality, whatever this is, dominates almost every Chinese individual and pervades every aspect of Chinese socio-cultural life. Richard Bernstein calls this approach to non-Western and Western cultures “false essentialism,” which believes that “there are essential determinate characteristics that distinguish the Western and Eastern ‘mind.’”<sup>2</sup> This false essentialism is the theoretical starting point of the cultural difference thesis to reject the applicability of informed consent in China.

However, it is problematic and misleading to talk about "China vs. the West" since both Chinese and Western cultures are extremely diverse, plural and complex. There is just simply no single Chinese or Western culture (whatever this may be) that ever existed and will. In Chinese culture there is both Confucian and Daoist styles of individualism, just as there are various kinds of communitarianism in the West. A richer and more fruitful cross-cultural bioethics requires us to go beyond these simplistic dichotomies and this false essentialism. Elsewhere I have given a more detailed criticism of this viewpoint of a single, homogeneous and unified culture and medical ethics in China and stressed the necessity of acknowledging the plurality of Chinese medical moralities.<sup>3</sup> Leonardo D. de Castro, a Philippine philosopher has thoughtfully challenged the popular mistake of universalizing (among Asians) a single Asia perspective and characterizing an Asian bioethics significantly different from the Western one.<sup>4</sup> No matter how legitimate and important the attempt to search for an Asian bioethics or Asian identity is, a unified Chinese or Asian value system is a modern myth.

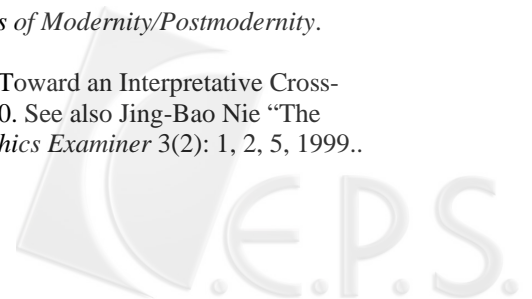
The cultural difference argument on informed consent further assumes that Chinese and Western values are so fundamentally different that they are often incompatible or incommensurable to each other. Intellectually consistent with the postmodernist discourse, contemporary academic discussions on cultures have been fashionably focused on their differences, discontinuities and divergences. Yet, that Chinese and Western cultures and

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<sup>1</sup> Jing-Bao Nie, “The Myth of *the* Chinese Culture, the Myth of *the* Chinese Medical Ethics,” *Bioethics Examiner* 3 (2): 1, 2, 5.

<sup>2</sup> Richard J. Bernstein, *The New Constellation: The Ethical-Political Horizons of Modernity/Postmodernity*. Cambridge, MA: The MIT Press, 1992. p. 66.

<sup>3</sup> Jing-Bao Nie, “The Plurality of Chinese and American Medical Moralities: Toward an Interpretative Cross-Cultural Bioethics.” *Kennedy Institute of Ethics Journal* 10 (3): 239-260, 2000. See also Jing-Bao Nie “The Myth of *the* Chinese Culture, the Myth of *the* Chinese Medical Ethics.” *Bioethics Examiner* 3(2): 1, 2, 5, 1999..



moral traditions are different does not necessarily mean that they are inevitably incompatible or mutually exclusive. For example, in Confucianism, the concept of filial piety, the moral basis of Chinese family value, is so fundamental that it has been treated to be far beyond a domestic virtue. It has been viewed as the foundation of morality, in the words of *Xiao Jing* (The Classic of Filial Piety), “the basis of virtue and the source of culture.”<sup>5</sup> It seems that no moral tradition in the West has ever put the same emphasis over filial piety as Confucianism. An eighteenth century British philosopher even argued about the immorality of filial affection from the utilitarian perspectives.<sup>6</sup> But it will be wrong if, based on this difference, one claims that Chinese and Western moral traditions are incommensurable and that the concept of filial piety is totally alien to the West. A salient counter example to this claim will be the Fifth Commandment in Old Testament although the ethical justifications why one ought to respect for one’s parents in Confucianism and Christianity are certainly different.

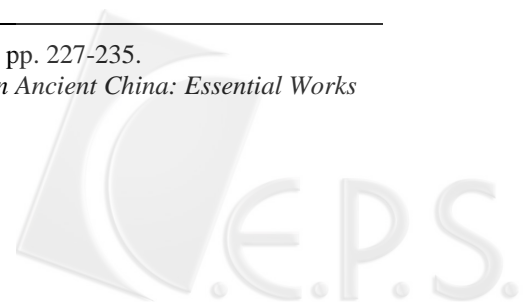
Moreover, culture is not, as the cultural difference argument presupposes, a kind of iron cage or something that we are born, grow up in, and cannot do anything about. Rather, culture, Chinese culture included, is always an open system, changeable and changing at all times. Every society and culture accepts, absorbs, and integrates the elements from foreign cultures. Moral ideas and ideals, no matter which geographical location or historical period they originate in, belong to the whole humankind. In Chinese culture, like in many others, following whatever is right and good, including those with foreign origins, has been seen as an important virtue. The Chinese proverb “*congshan ruli*” has encouraged and even required people to follow the good as naturally as a river follows its course. Chinese history has proven that Chinese have been very active in learning from the other cultures. (Of course, resisting foreign ideas has always accompanied the proceeding of learning.) Lu Xun, the greatest Chinese thinker and writer in twentieth century, has put forward his well-known “*nalai zhuyi*” (grabism) that emphasizes the importance of actively taking from foreign cultures anything that is good for and useful to the Chinese.

Let me use the truth telling, a most fundamental element for achieving any valid consent in medicine, as an example to further demonstrate the complexity of Chinese culture. Actually, any culture, any moral tradition usually includes different and even self-contradictory elements. Historically speaking, there does not exist a distinctive Chinese way—either disclosing or concealing the information—on medical diagnosis, that of terminal disease in particular. It is true, for the sake or in the name of patient’s good and paternalistic reason, many contemporary physicians in China, along with family members and friends, do not directly tell the whole truth to patients who are suffering from terminal disease. But this is far from the standard practice in traditional China. Actually, such great doctors as Bian Que (the “father of medicine in China” as called by some historians) and Hua Tuo (the “father of Surgery in China”) seemed to always tell their patients the whole truth on the diseases, even

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<sup>4</sup> Leonardo D. de Castro, “Is There an Asian Bioethics?” *Bioethics* 13 (1999), pp. 227-235.

<sup>5</sup> In Ch’u Chai and Winberg Chai, edited and translated, *The Humanist Way in Ancient China: Essential Works in Confucianism*. New York: Bantam Books, 1965. p. 326.



when their diseases were diagnosed as terminal. The great sixteenth-century realist novel *Jingpingmei* (four-volume English translation titled *The Golden Lotus*) reveals that in traditional China physicians, family members, relatives and friends rarely made effort to conceal the medical information, including the diagnosis of terminal disease and dying, from the patient, but usually tell the ill person everything directly. To some degree, the dominant way of dealing with the diagnosis of terminal illness in contemporary China—not disclosing directly and fully to the patient—should be seen as following the old Western biomedical mode which was well articulated in the influential 1847 Code of Ethics of American Medical Association but started to change radically in the 1960s and 1970s in the West. In other words, it is problematic to see the contemporary standard practice in China—not telling the truth always—as an intrinsic part or logical development of the traditional Chinese culture and medical moralities.

### **More than One Way To Justify Informed Consent Theoretically**

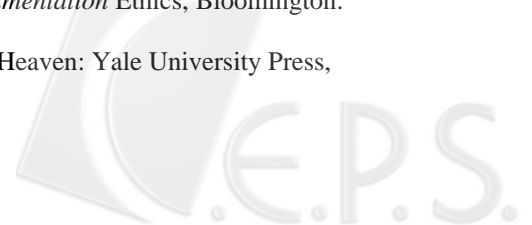
The second intellectual flaw of the cultural difference argument is that it confuses informed consent as a practical moral guidance or procedure with the ways of theoretically justifying it. In other words, even though we assume it a valid view that Chinese culture is basically communitarian and thus fundamentally different from the individualistic Western culture, this does not necessarily result in the conclusion of the inapplicability of informed consent in China or its incomparability with Chinese values. It is true that in the circle of contemporary Western bioethics the principle of informed consent has usually been seen as being based on the notion of autonomy, the language of individual rights and the worldview of individualism, especially autonomy.<sup>7</sup> However, the doctrine of informed consent needs not be justified by this particular moral perspective monolithically. In fact, Christian theologians have promoted the importance of informed consent from the Christian moral traditions. For example, Paul Ramsey has powerfully defended and justified the ethics of informed from the Christian theological concepts of loyalty, fidelity between persons and the faithfulness-claim of persons.<sup>8</sup> One even can justify why we ought to follow or obey the doctrine of informed consent in medical research from a communitarian perspective. In other words, one may argue that it is not for the individual autonomy only but for the common good as well. Informed consent is the best way of promoting trust between patients (the public) and physicians (the medical profession). Without this trust, medical profession would become more and more difficult in gaining the necessary resources from the public and the participation of patients in

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<sup>6</sup> William Godwin, “The Immorality of Filial Affection,” in D. H. Monro, edited, *A Guide to the British Moralists*. London: Fontana, 1972. pp.187-192.

<sup>7</sup> See, most notably, Jay Katz: *The Silent World of Doctor and Patient*, New York: The Free Press, 1984; Ruth Faden and Tom Beauchamp: *A History and Theory of Informed Consent*, New York: Oxford University Press, 1986; and Robert Veatch: *The Patient as Partner: A Theory of Human Experimentation Ethics*, Bloomington: Indiana University Press, 1987.

<sup>8</sup> Paul Ramsey, *The Patient as Person: Explorations in Medical Ethics*, New Heaven: Yale University Press, 1970.



research projects. As a result, the common good of the whole society or community would be harmed.

It is important to distinguish accepting informed consent as a practical ethical principle in health care and medical research and justifying it theoretically. It is a common cross-cultural phenomenon that people in different cultures accept the same or similar moral norms from different ethical reasons. Even in the same culture, certain moral norms can be justified by different ethical worldviews. For instance, in the West the fundamental human rights of the individual can be justified by the divine ordains, or natural law and reason, or the personhood of modern moral philosophy; the reasons given by Christians or deontologists or utilitarians on why not to kill are very different from each other. It seems to me that informed consent is not only well compatible with some spirits of Confucian moral traditions and traditional Chinese medical ethics but also can be justified by indigenous ethical terms, such as “*ren*” (humanity or humaneness), “*yi nai renshu*” (medicine as an art of humanity and humaneness), and “*cheng*” (sincerity and truthfulness).

### **Informed Consent and Empowering Patients**

The third intellectual flaw of the cultural difference argument on informed consent is to misperceive the doctrine primarily as an issue of culture. But informed consent is mainly concerned about the unbalanced power relationship between the medical professionals and the vulnerable patients. Medical information and knowledge are power. The basic social functions of the ethical doctrine of informed consent is to prevent the power abuse of medical professionals, to limit the power of physicians over their patients and to empower patients in decision-makings related to their health care. Here it seems to be necessary and illustrating to stress that informed consent is a very recent historical phenomenon. Historically speaking, even in the West the patient has basically been silent in medical decision-making and informed consent in medicine has been more or less a fairy tale, myth or mirage than reality.<sup>9</sup> Informed consent has not become a common ethical doctrine in medicine and social research in most Western countries till 1980s. New Zealand offers a good example. While New Zealand is a rather progressive country in many social issues, including human rights in general and patients’ rights in particular, still many doctors opposed the ethical requirement of informed consent and truth-telling in the late 1980s. In the well-known Cartwright inquiry into the unethical medical experiment conducted at National Women’s Hospital in Auckland, the then president of the Royal New Zealand College of Obstetrics and Gynaecologists told the judge in the court that telling truth of all complications “would frighten a very large number of people from having necessary treatment, and would also beyond the intellectual comprehension of considerable proportion of the population. Several other doctors expressed

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<sup>9</sup> Jay Katz, *The Silent World of Doctor and Patient*, New York: The Free Press, 1984. See also Ruth R. Faden and Tom. L. Beauchamp, *A History and Theory of Informed Consent*. New York and London: Oxford University Press, 1986.



the similar concern in giving their witnesses.”<sup>10</sup> It should be noted that all these physicians had a Western, British in particular, cultural background.

Today many medical professionals in Mainland China resist informed consent and the patient’s rights movement. This is not surprising at all. Ruth Macklin once reported that a Mainland Chinese physician-researcher, who participated in an international biomedical research project that involved with some rural residents, once articulated two major reasons to object the introduction of informed consent into biomedical research in China. First, it is an altogether alien idea in Chinese medical practice and would be unfamiliar to Chinese participants. The practice of informed consent is thus likely to arouse suspicion among participants on the research project. Second, due to the complexity of biomedicine it would be difficult, if possible at all, for Chinese participants to understand what they would be informed.<sup>11</sup> I do not think that the Chinese physician-researcher’s reasons are good enough to establish his opposition. First, biomedicine he is practicing was regarded as alien or foreign even up to the early part of the twentieth century and is still called “*xiyi*” (Western medicine) in contrast with “*zhongyi*” (traditional Chinese medicine). Second, the current practice in which informed consent is not sought from the patient may not be ethically supported even according to the “indigenous Chinese” moral traditions. In fact, many contemporary Chinese medical ethicists believe that the principle of informed consent should be respected and this principle has been written in most current Chinese texts of medical ethics. Third, according to my experience and knowledge, some Chinese physicians and biomedical researcher are questioning the current practice. In the practice of health care and medical research in China, there exists a kind of informed consent or some kinds of permission-seeking even though the idea of informed consent has not been widely and institutionally honored yet. Forth, it may be difficult for patients, especially those un-educated rural people, to understand the technical terms in biomedicine. But this does not mean that they are not capable to understand, balance and judge the possible benefits and potential harms medical intervention may bring about to them. The second reason given by this Chinese physician-researcher is exactly what the New Zealand OB/GYN doctors said about informed consent. Fifth and most importantly, whether Chinese patients themselves wanted to be informed or not did not taken into account by the Chinese physician-researcher. He seemed to assume that Chinese patients do not care whether they are informed or not. But, as far as I know, many patients do want to be informed and Chinese people do not trust medical professionals and hospitals as much as we usually assume.

There is never a Chinese culture that exists out there. Chinese culture, as any culture, exists in interpretations. Interpretations on Chinese culture can never be neutral and objective. Different individuals and groups often have different interpretations. In current discussions on informed consent and Chinese culture, what medical professionals and the dominant groups

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<sup>10</sup> Sandra Coney, *The Unfortunate Experiment: The Full Story behind the Inquiry into Cervical Cancer Treatment*. Auckland: Penguin Books, 1988. pp 143-144.

<sup>11</sup> Ruth Macklin, *Against Relativism: Cultural Diversity and the Search for Ethical Universals in Medicine*. New York and Oxford: Oxford University Press, 1999. pp 190-193.



have said are usually taken as the legitimate accounts. A question with crucial significance has rarely been asked and empirically researched: What are the patients' attitudes toward informed consent? I am not aware any systematic empirical study on whether or not informed consent is desirable for Chinese people. From my own experiences and knowledge including growing up in a remote village in Southern China (the bottom of Chinese society), I have many reasons to believe it is desirable, at least for many of them. In order to adequately address the topic on informed consent and Chinese culture, listening to voices of patients, especially those with underprivileged statuses, is of the first importance.

## **Conclusion**

In this paper I have pointed out three flaws of the widespread view that informed consent is neither irrelevant nor applicable to China because the Western and Chinese cultures are fundamentally different. My conclusion is that cultural difference argument is founded on some serious misunderstandings on Chinese culture and medical moralities, Western culture, and informed consent. Nevertheless, while I believe in the moral necessity of informed consent in China and its cultural comparability with Chinese moral and medical ethics traditions, I have not positively and directly argued for this point of view in this paper. Either, I did not discuss the socio-cultural obstacles in realizing the moral ideal of informed consent in contemporary Chinese contexts. Besides, to claim that it is wrong to reject informed consent in China merely because of Chinese and Western cultural differences does not mean that the cultural contexts does not matter with regard to informed consent. The question is to what sense and what kinds of cultural differences matter? Yet, to pursue these issues needs separate intellectual explorations.

