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Regular Article

The Modern Significance of Confucius' Laments in Virtue Ethics Practice

Atsushi Asai ^{1*}

Hua Xu ¹

Miki Fukuyama ²

Motoki Ohnishi ³

Abstract

This essay rereads the *Analects* by focusing on Confucius' laments, understood as emotionally charged expressions of normative tension between moral ideals and actual human conduct, social conditions, or fate. We examine twenty-one passages in which Confucius expresses disappointment, grief, self-criticism, powerlessness, or despair. These passages reveal difficulties in virtue-based moral practice: the decline of virtue, the lack of inward sincerity, the gap between understanding and practicing virtue, the limits of self-reflection and moral education, the loneliness of those who uphold moral ideals, and the absurdity of fate. Rather than treating these laments as merely biographical or rhetorical elements, we argue that they illuminate both the promise and the limits of virtue ethics. The *Analects* cannot simply be equated with contemporary virtue ethics, but Confucius' laments remain relevant to ethics education because they show that virtue cannot be taught merely as knowledge or external conduct. The concerns about moral issues and virtue ethics found in Confucius' society are yet to be resolved in the present society. Contemporary virtue education must therefore attend to inner motivation, the limits of educational effects, the social conditions that hinder virtue, and the possibility that a virtuous life may not lead to recognition, success, or happiness.

Keywords: Confucius, Analects, Virtue Ethics, Laments, Virtue education

Introduction

The *Analects* is a collection of the sayings of Confucius, one of the most influential thinkers of Eastern philosophy and a representative of Eastern culture (Tsai, 2005). The *Analects* is highly regarded in the history of philosophy, and has been read by one

generation after another for two and a half millennia in the Asian cultural sphere as well as in China (Asai, Kodooka, & Masaki, 2014). As in China, the *Analects* has long been read in Japan and influenced many Japanese; it is the classic of the classics among the Japanese people (Asai, Kadooka, & Masaki,

¹ Department of Medical Ethics, Tohoku University Graduate School of Medicine

² Course of Nursing, Faculty of Life Sciences, Kumamoto University

³ Department of Health and Welfare Public Policy, Laboratory of Public Health, Aomori University of Health and Welfare Graduate School of Health Science

* Corresponding Author

E-mail: atsushi.asai.d1@tohoku.ac.jp

2014; Saito, 2010). Japan has a long history of reading the *Analects*. It was imported from China in the early sixth century and formed the foundation of some parts of the first Japanese Constitutions by Shotoku-Taishi. Since then, through its massive acceptance by people, regardless of class, during the Edo Era, the *Analects* has molded the mentality and culture of the Japanese (Saito, 2010; Kaizuka, 1999).

We think that even now, the *Analects* is one of the most popular philosophy books in Japan (Asai, Kodooka, & Masaki, 2014). The *Analects* is popular as a practical guide, self-help book, and educational text, and has been discussed and utilized from many different perspectives. For example, it has been introduced, referred to, and quoted as an instruction manual to make the reader's life more fulfilled and happier. This is because the *Analects* teaches readers much about how to improve themselves; build personal relationships; and lead a calm, rich life (Hei, 2022). It is also frequently referred to in discussions on success at work; the ideal for a harmonious family; how individuals should live their lives; and theories of education, organization, and politics (Saku, 2010). Accordingly, many people adopt Confucius' teachings in the *Analects* as their personal motto (Hei, 2022; Saku, 2010; Uchiyama, 2011). Allegedly, Confucius teaches young disciples how to avoid being discouraged by failure as a great failure himself (Saku, 2010). Furthermore, today, it is strongly recommended to read the *Analects* as a source of mental support for people living in modern society, which threatens its members with mental distress and breakdown—a "mental standard" of sorts (Saito, 2010).

Some argue that it can play a key role in medical ethics education and when considering problems

relating to clinical ethics (Tsai, 2005; Asai, Kodooka, & Masaki, 2014; Asai, 2025). Moreover, it is a classic work of virtue ethics in the Eastern cultural sphere that mentions virtues such as humaneness (*ren*), ritual (*li*), trust (*xin*), and the Doctrine of the Mean, as well as exemplars of virtue (Kaizuka, 1999; Uchiyama, 2011; Asai, 2025). In this way, many modern writers have found their own distinct values in the *Analects* and highlight the utility of this record of Confucius' words and actions for ordinary modern readers.

This essay focuses on Confucius' laments and discusses them as important subjects of analysis, not as mere biographical or rhetorical elements. The *Analects* is not a systematic philosophical text, but a work that gathers short comments and dialogues. Clear emotional expressions by Confucius are relatively rare and thus worthy of attention in terms of methodology. Interpreted as moments when Confucius' normative expectations conflicted with the actual state of society and people, these laments visualize the limitations inherent in virtue-based moral practice and its tensions and setbacks. The laments, therefore, do not merely represent what Confucius considered most important, but also function as indicators of normative tension that demonstrate how and why these values were difficult to achieve. Focusing on laments from this perspective may improve understanding extending across time of the fragility of act-focused interiority and spontaneous self-cultivation, as well as reliance on social conditions, which are the essence of virtue ethics. Accordingly, Confucius' laments should not be regarded as random emotional outbursts. Rather, they are philosophically meaningful expressions that reveal both the promise and the limits of virtue-based moral practice.

This essay therefore aims to examine with an open mind what people engaged in ethics education, virtue education, and biomedical ethics education in modern human society can learn by better understanding the laments of Confucius from 2,500 years ago, that is, his earnest cries from the heart. Confucius aimed for a friendly and peaceful society without conflict by cultivating virtue among the people. However, what were his concerns and misgivings regarding the morality, virtue, and ethics education of his contemporaries? What issues and limitations did he sense in the essential nature of humans and in life? In our involvement in ethics education and research in modern society, we seek to discuss what we can learn by answering these questions and addressing what next we should do.

Among previous studies that pay particular attention to Confucius' complaints, sadness, and despair in the *Analects*, Olberding's work is especially important (Olberding, 2013). That discussion aimed to correct the oversimplification of the conventional argument, based on considering Confucius' complaints, that the virtuous person necessarily enjoys a good life and that notes the possibility that a virtuous life could create suffering for the individual (Olberding, 2013). Olberding's important study shows that the *Analects* does not present the good life as a simple harmony between virtue, happiness, and social success. By attending to Confucius' complaints, sadness, and despair, Olberding emphasizes that a virtuous life may involve suffering for the person who tries to live it (Olberding, 2013). Olberding also argues that her sense of the *Analects* is that it is commendably modest in what it expects to follow from the life of virtue and succeeds in avoiding any chimerical claims

concerning what the life of virtue can promise (Olberding, 2013).

We share this concern, particularly the view that Confucius' emotional expressions complicate overly optimistic readings of the *Analects*. The present essay, however, pursues a different question. Rather than focusing primarily on whether the virtuous life is happy or flourishing for Confucius himself, we ask what Confucius' laments reveal about the difficulties of virtue-based moral practice and the limits of virtue education. Our concern is therefore educational and practical as well as interpretive. Through a broader set of twenty-one passages, we examine how Confucius' laments disclose several obstacles to virtue: the fragility of inner motivation, the gap between moral understanding and moral practice, the limited effect of moral teaching on those who do not seek self-reform, the loneliness of those who uphold moral ideals, and the dependence of virtue on social conditions. In this respect, the essay aims to contribute to contemporary discussions of ethics education and virtue education by using Confucius' laments as indicators of the limits, tensions, and setbacks inherent in moral cultivation. We select and discuss 21 passages of Confucius' words and actions, of which only 6 overlaps with the Olberding paper. Furthermore, this essay presents different arguments regarding the modern-day implications derived from these readings. Accordingly, we believe that the substance of this essay is novel.

At the outset, we would like to make it clear that we are not concerned here with the details of Confucian ethics as a whole. This essay focuses solely on Confucius' words and actions as derived from the *Analects*. Confucianism developed through a long and

complex history after Confucius, especially through thinkers such as Mengzi and Xunzi. At the same time, other schools of early Chinese thought, such as Mohism represented by Mozi, developed in dialogues and competition with Confucian thought. Consequently, the contents of their arguments do not necessarily agree with Confucius' thinking in the *Analects* (Hei, 2022; Yamucha, 2016; Kanaya, 2017). It is argued that the *Analects* is the only reliable record of his teachings (Radice, 1979).

We discuss our thesis with a focus on Confucius as an individual living person and his words, actions, and way of life, not on Confucius as a sage or an object of worship. Confucius is someone who thinks and speaks and responds to the world with human instincts and an awareness of his own limitations (Confucius/Chin, 2014). With emotions that well up, like anger (Saito, 2010), we regard Confucius not as a great philosopher or thinker, but as a thoughtful individual person who had his own insights, views, and thoughts on wide-ranging problems in life and society, or as a good, familiar neighbor with a rich lived experience (Hei, 2022). It is said that the disciples remembered him for his jokes and irreverence and for his expressions of self-doubt and self-assurance as much as his profundities (Dawson, 1993).

The *Analects* is a record of Confucius' words and deeds and essentially a collection of sayings. The contents vary widely and organize many of the short phrases he uttered into a single text. These are notably characterized by their lack of organization and of systematic philosophical content (Hei, 2022). It is argued that Confucius stayed away from "putting forth theories" and did not make conjectures (Confucius/Chin, 2014).

However, the sayings were created as a result of innumerable people doing similar things over a long period. A renowned Japanese philosopher argues that sayings are wisdom regarding the matters of life that the populace has gained through various experiences over a long period, and that these are superior to the theories of individual academics (Watsuji, 1988).

Furthermore, we do not assume that Confucius' ethics and contemporary virtue ethics are identical. Confucius' understanding of virtue is inseparable from *ren*, *li*, the cultivation of the gentleman, and the restoration of moral-political order. The Confucian emphasis on ritual is a distinguishing aspect of his virtue ethics and it is claimed that we cannot refine ourselves unless we bother to learn about our community's history and its rituals and practice. Confucian ethics also makes no appeal to an objective world or structure of unchanging beings or natures (Koehn, 2022).

Although the Confucian notion of virtue was historically associated with rulers, exemplary persons, and moral-political order, Confucius' laments are not relevant only to such elite contexts. They illuminate more general difficulties of moral formation: the gap between knowing and practicing virtue, the limits of teaching virtue merely as knowledge, and the dependence of virtue on social and institutional conditions. For this reason, they can speak to contemporary ethics education, including professional ethics education, even though the historical meaning of virtue in the *Analects* differs from that in contemporary virtue ethics.

Tachibana and Nakazawa argue recently that in the West the concept of virtue is derived from the ancient Greek word *aretē*, which originally meant 'excellence' of any kind, and 'virtue' refers to the excellence that one

should acquire as a human being. They also argued that what makes the Confucian notion of virtue different from that of the West is that the notion of virtue is considered the excellence to be possessed by rulers, such as kings and monarchs, rather than by every human being, including the general public (Tachibana and Nakazawa, 2024).

Contemporary virtue ethics often discusses virtue in terms of character, practical wisdom, moral psychology and motivation, professional formation, ethical agency, a variety of bioethical decision-making, universality of virtues, and its incompleteness as an ethical theory (Rachels and Rachels, 2015). Despite its very long and rich history, debates continue among virtue ethicists regarding the relationship between righteousness and virtue, and virtue ethics can take diverse forms. Some view virtue as excellence pertaining to human fulfillment, while others see it as a disposition that contributes to harmonious interaction with others within society. The relationship between virtue and God is also complex. Furthermore, in virtue ethics, ethics is treated as something that pertains to the entirety of human life, and it is believed that our very way of life is deeply connected to virtue (Russell, 2013).

Thus, we believe that both traditions share a concern with the formation of persons rather than merely the regulation of acts. It is at this level—the difficulty of forming, sustaining, and teaching virtue—that Confucius' laments become relevant to contemporary ethics education. We also believe that the new perspective we offer in this paper is that Confucius' laments are not merely expressions of emotion; rather, they point to the moment at which the ideals of virtue ethics collide with the realities of human beings, society, and fate. The

originality of this paper lies in its systematic interpretation of these laments not as expressions of Confucius' personal misfortune or mere rhetoric, but as subjects of analysis that reveal the limitations of the practice and education of virtue.

In recent years, numerous academic papers on Confucius and the *Analects* have been published; these papers present normative ethical arguments from the perspectives of Confucius and Confucianism regarding contemporary medical decision-making, cutting-edge science and technology, human nature, and the implications of mainstream medical ethical principles and global bioethics (Lan, Zhu, & Liu, 2021; Koehn, 2022; Deng and Fan, 2023; Tachibana and Nakazawa, 2024; Tan and Neo, 2025; Jecker and Chung, 2025). There are also active research and discussion on the methods by which both the general public and professionals can cultivate their own virtues (Hawking, Curlin, & Yoon, 2017; Lamb, Brant, & Brooks, 2021; Matchett, et al., 2024; Verstegen, et al., 2024; Okamoto, et al., 2025). We will draw on the valuable findings from these papers in our discussion as needed.

The newly added literature serves three purposes in this essay. First, studies on Confucian ethics and contemporary bioethics provide the background for considering the continuing relevance of the *Analects* to present-day ethical issues. Second, studies on virtue ethics and virtue education clarify the conceptual distance between Confucian virtue and contemporary virtue ethics, while also showing their shared concern with moral formation. Third, recent work on virtue education and professional ethics helps situate the present essay within contemporary educational concerns. Unlike these studies, however, this essay focuses specifically on

Confucius' laments and interprets them as indicators of the limits, tensions, and setbacks of virtue cultivation.

This paper is structured as follows. First, the next section extracts passages with clear emotional expression from Confucius' sayings recorded in the *Analects*, and organizes and analyzes them from the perspectives of laments on contemporary society, himself, and the absurdity of fate. Then, we use the contents of these laments as a basis to consider the issues inherent to virtue ethics, such as the understanding and practice of virtue, internalizing virtue, spontaneous self-cultivation, and difficulty of virtue education. Finally, we consider what stance we should adopt in our involvement in ethics and virtue ethics education in modern society, keeping in mind both the potential and limitations of virtue ethics as demonstrated by Confucius' laments.

Confucius' laments: The 21 passages

In this essay, we use the term "laments" not simply to refer to any emotional expression by Confucius, but more specifically to passages in which Confucius expresses distress, disappointment, grief, resignation, self-criticism, or a sense of powerlessness in response to the gap between a normative ideal and actual human conduct, social conditions, or fate. Thus, a lament is understood here as an emotionally charged expression of normative tension. It reveals not only what Confucius valued, but also where he perceived virtue, moral cultivation, or ethical education to encounter resistance, limitation, or failure.

We selected passages according to three criteria. First, the passage had to include an explicit or clearly implied emotional response by Confucius, such as disappointment, grief, sadness, frustration, despair, or self-

criticism. Second, the emotion had to be connected to a moral or existential concern, rather than to a merely personal preference or incidental episode. Third, the passage had to illuminate a difficulty in virtue-based moral practice, such as the decline of virtue, the lack of sincerity, the difficulty of self-cultivation, the limits of education, loneliness, or the absurdity of fate. Passages that merely state a moral teaching without such an emotional or tension-laden dimension were not included.

The initial selection was made through repeated close readings of Annping Chin's English translation and Saito's Japanese translation (Confucius/Chin, 2014; Saito, 2010). We then consulted two other English translations and two other Japanese translations to confirm that the selected passages could reasonably be interpreted as laments in the sense defined above (Confucius/Lau, 1979; Confucius/Dawson, 1993; Kaizuka, 1999; Kanaya, 2017). The data extraction was initially performed by AA, and the other authors then reviewed and confirmed the results. Chin's English translation includes original Chinese texts, detailed commentary on every passage, and numerous references to previous research, making it extremely useful for identifying "Confucius' lament." All citations from the *Analects* are taken from Annping Chin 2014 (Confucius/Chin, 2014). The themes extracted from the 21 passages describing Confucius' laments are presented in **Table 1**.

The twenty-one passages were classified according to both the object of Confucius' lament and the type of difficulty in virtue-based moral practice that each passage reveals. The authors read the 21 selected passages multiple times to grasp their essence, grouped passages with common themes and assigned concise labels that captured the central concern of each group. The analysis

was initially performed by AA, and the other authors then reviewed and confirmed the results.

At the broadest level, the laments are directed toward three objects: contemporary people and society, Confucius himself, and fate. Within these three groups, we further distinguished the passages according to the specific moral difficulty they disclose. For example, some passages concern the decline of virtue in society, some concern the lack of inward sincerity beneath outward conduct, some concern the difficulty of understanding and practicing virtue, and others concern the limits of self-reflection or moral education.

This classification is not intended to be exhaustive or mutually exclusive in a strict sense. Some passages could reasonably be read under more than one category. Nevertheless, the classification is useful for the purposes of this essay because it clarifies the different levels at which virtue-based moral practice can fail: the social level, the interpersonal and educational level, the personal level, and the existential level. Table 1 should therefore be read as an analytical map of the difficulties disclosed by Confucius' laments, rather than as a rigid taxonomy.

Table 1: Themes extracted from Confucius' laments

<u>Laments about the contemporary period</u> "Decline of virtue in present-day society" "Lack of inner life" "Difficulty in understanding virtue and putting it into practice" "Difficulty of self-reflection" "Inferiority of virtue for beautiful people"
<u>Laments about Confucius himself</u> "Self-criticism" "Lost dreams" "Misfortune" "Limitations of educational effects" "Loneliness"
<u>Laments about fate</u> "Absurdity of birth, aging, sickness, and death"

In the following, if a single passage is longer and includes a dialogue, we extracted and included only Confucius' sayings at our discretion. We also mention other related passages outside the selected 21 when appropriate.

Laments and disappointment in contemporary people

and society (12 passages)

The following five passages lamented "the decline of virtue in present-day society." Here, the word "present-day" is used in the sense of "now" from Confucius' viewpoint. For him, 2,500 years ago was the present day.

Book 3-18: The Master said, "If in serving your ruler you try to do everything correctly by the rites,

others will look upon you as being obsequious.”

Book 5-7: The Master said, “If I cannot practice a proper way here in this world, then I shall take to the open sea and drift around on a bamboo raft.

Book 6-29: The Master said, “Attaining a balance all the time in practical matters and in everyday life (*zhongyong*) is the virtue not the best? For so long now, it has been rare to find it among the common people.”

Book 15-26: The Master said, “I am old enough to have seen scribes leave a gap when they are unsure about a word and horse owners leave the driving to those with the right skills. Nowadays there are no such cases.”

Book 17-16: The Master said, “People in ancient times had three kinds of shortcomings, but even these, I regret to say, seem to have disappeared today. In ancient times, those who were wild dared to act and speak their mind. Today, those who are wild are simply out of control. In ancient times, those who were self-regarding had principles. Today, those who are self-regarding are contentious and bad-tempered. In ancient times, those who were stupid were at least straightforward. Today, those who are stupid are deceitful.”

Book 3-18 laments the inverting phenomenon that due to the waning of morality in society and proper rites, practicing things that were natural and a matter of course to Confucius would be considered “obsequious”

and excessively ingratiating. Natural things would be regarded as abnormal. Confucianism believed that in the era in which he lived, “the world was confused about right and wrong” (Confucius/Chin, 2014). In Book 14-32, he is criticized by a hermit for using “glibness” for his own self-interest, but refutes this criticism. Book 5-7 can be read as Confucius’ wish, albeit a half-joking one, to abandon virtue education for others and flee society because of the excessive corruption of morality in the world. Like Book 3-18, Book 6-29 shows that Confucius regrets the fall of morality in the present day compared to that in the past (Saito, 2010). Book 15-26 mentions that modern society has lost its prudence and humility, and Book 17-16 laments the loss of the merits that could formerly be found in even the most unbalanced personalities. In former times, people considered eccentric had their own personalities and followed a certain logic.

Two passages lamented the “lack of an inner life” among contemporary people.

Book 3-26: The Master said, “To be without tolerance when in a high position, without respect when performing the rites, without sorrow when in mourning – what is the point of witnessing such things?”

Book 6-16: The Master said, “If you have only Song Zhao’s good looks and not Priest Tuo’s rhetorical skills, it will still be hard for you to escape unscathed in the present world!”

Books 3-26 and 6-16 both express anger at the senselessness of the attitudes, skills, and conduct lacking in a

mental inner life. A good inner life is precisely what Confucius sought in other people. He seems to have detested people who were merely superficial as suggested by Book 1-3, "A man of clever words and of a pleasing countenance is bound to be short on humanity". In Book 5-5, he also questions the need for surface-level skills.

In addition, two passages lament "the difficulty in understanding virtue and putting it into practice."

Book 5-12: Zigong said, "I do not wish others to impose what is unreasonable on me, and I also do not wish to impose what is unreasonable on others." The Master said, "Si (Zigong), this is not something that is within your power."

Book 15-4: The Master said, "You (Zilu), there are only a few who understand virtue."

In Books 5-12 and 15-4, Confucius laments situations in which his contemporaries are unable to understand virtue and cannot effectively put it into practice. Concerning Books 5-12, Chin comments, "even when a person has acted correctly in his relationship with others, this does not mean that his conduct will be reciprocated. You cannot wish one's humaneness on anyone else" (Confucius/Chin, 2014). If Chin's interpretation is right, Confucius believed that even if he were virtuous, he could not rely on others to similarly respond morally, and he appears to have despaired deeply of his contemporaries' lack of virtue.

One passage also expresses a feeling of despair concerning "the difficulty of self-reflection."

Book 5-27: Confucius said, "It's hopeless! I have yet to see anyone who could recognize his mistakes and take himself to task privately."

As Liu notes, honestly admitting one's own faults with sincerity and correcting them was highly important for Confucius, but also extremely difficult. Apologies and corrections to show off to others are meaningless, and correcting one's own faults and reforming oneself is important in becoming a better person with pure sincerity (Confucius/Chin, 2014; Baonan, 1974). Here, too, sincerity and internal honesty are questioned, and Confucius is saddened by the lack of these among others. Nevertheless, his sense of despair may also be caused by his own overly lofty ideals for the good character he expects people to have. Higher ideals mean deeper despair regarding reality. It requires self-criticism for its own sake, which will not be seen or well regarded by anyone else. Here, simply apologizing to others is not enough. This attitude toward others is harsh, but he also appears to be harsh on himself, as discussed below.

Two passages concern "the lessening of virtue for beautiful people."

Book 15-13: The Master said, "I should give up hope! I have never met a person who loved virtues as much as he loved physical beauty."

Book 18-4: The men of Qi made a present of singing and dancing girls. Ji Hunazi accepted the girls (on behalf of Duke Ding), and court was not held for the next three days. Confucius left Lu.

Confucius criticizes the difference in people's attitudes to virtuous and to beautiful people, or more accurately, our attraction to people who are beautiful rather than to those who are virtuous. Similar criticisms appear in Books 1-7, 9-18, and 16-7. In the case of the two passages mentioned here, Confucius' deep despair is detected from his direct emotional expression in the former and from his decisive act of leaving the country of Lu in the latter. However, thinking of things people are likely to prefer over being virtuous is simple: for example, their desire for status, fame, wealth, power, career success, appointment to an office, and the satisfaction of the desire to control. Our attraction to people's external beauty seems evident even today.

Laments about himself (6 passages)

In six passages, Confucius laments his own failings and treatment, the limitations of moral education, and lack of understanding demonstrated by the people around him. The first three passages record Confucius' words to himself.

Book 7-3: The Master said, "To fail to cultivate virtue, to fail to practice what I have learned, not to direct my steps toward what is right when I know what that is, and to make mistakes and not be able to correct them—these are the things that worry me."

Book 7-5: The Master said, "I must have been slipping fast! It has been so long since I dreamt of the Duke of Zhou."

Book 9-17: Standing by the river, the Master declared, "How it flows on like this, never ceasing day and night!"

Book 7-3 can be regarded as harsh self-reflection by Confucius. This passage also suggests the difficulty of putting virtue into practice, as mentioned above. Simultaneously considering the other chapters of the *Analects* (Books 7-37, 9-4, and 14-28) objectively, Confucius may have viewed himself too harshly, because he was an almost ideal virtuous person. In Book 7-5, Confucius notices that he had partially abandoned his lifelong dream of realizing his ideals, albeit largely because he led an unfortunate life due to the lack of understanding of those around him. He laments that he lost the will to reform society in moral terms (Yamucha, 2016)—that he abandoned it himself, rather than it being stolen by another.

However, Book 9-26 states, "The Master said, "One can strip the Three Armies of their commander, but no one can deprive even a commoner of his purpose" and in Book 18-6, Confucius questions "Whom can I be with if not with other human beings?" Inoue interprets this as Confucius' determination that he "must not turn his gaze from this world in great disarray and must not stray from this world teeming with human life" (Inoue, 2014). Confucius seems to have resolved this issue in a bid to avoid retreating from society. In addition, there is a statement, "A gentleman takes office in order to understand the rightness in an important human relationship (moral responsibility between ruler and subject). As for putting the moral way into practice, he knows all along that it is not possible." in Book 18-7. For Saitō, in Book 18-7, Confucius states that he knows it will be

difficult in reality, but will do it nonetheless (Saito, 2010). This may depend on the phase of Confucius' life, his situation, or mental state at the time. Regardless, these statements represent the rises and falls in his will. As such, the *Analects* present Confucius in a deeply human way. The remaining three passages express Confucius' deep despair at those around him.

Book 9-24: The Master said, "How can one not agree with exemplary words? But what is important is that they will lead you to self-reform. How can one not be pleased with gentle and tactful words of advice? The important thing is that to try to understand the point of such words. To be pleased but not to try to understand; to agree with but not bring about self-reform-there is nothing I can do with those who behave like this."

Book 15-16: The Master said, "I can never do anything for a man who has not been asking himself, 'What should I do? What should I do?'"

Book 14-37: The Master said, "No one understands me...I blame neither Heaven nor men (for any not being understood). I begin my learning on the ground and travel up to reach a higher knowledge. It is, I believe, only Heaven that understands me."

The first two passages lament that the virtue education he practices is ineffective on people who do not spontaneously seek moral correctness or truth and do not aim for self-reform. Here, too, great importance is placed on individuals' inner life and spontaneity regarding virtue.

Confucius appears to have felt powerless at his inability to inspire these in others. Book 14-37 laments his misfortune due to the lack of understanding demonstrated by those around him. The expression, "No one understands me," gives a sense of his deep loneliness.

Despair at the absurdity of fate (3 passages)

We consider that the three passages below express Confucius' laments at the absurdity of birth, aging, sickness, and death.

Book 6-10 Boniu was ill... "We are going to lose him! Such is the force of destiny, that this man should have this illness, that this man should have this illness."

Book 11-9 When Yan Hui died, the Master cried out, "Oh, Heaven is destroying me! Heaven is destroying me!"

Book 9-9 The Master said, "The phoenix has not been seen. No chart has emerged from the river. It is the end of me, is it not?"

In this regard, in Book 6-10, Confucius laments the fact that a person he considered highly virtuous had fallen seriously ill. In Book 11-9, he laments the early death of his most beloved, most adept disciple, to whom he had entrusted the Way. In Book 9-9, he laments the fact that Heaven had sent him to this world at the wrong time. Essentially, in all three passages, Confucius' grief runs deep. Specifically, Boniu is said to have been afflicted with Hansen's disease. For this, it is argued that Confucius recognized the limits of human affairs and resigned

himself to fate, given that “such an outstanding person contracted such a wretched disease” (Kanaya, 2017; Kaji, 2011).

Confucius was certain that Heaven had given him a mission to make society more moral as shown in Book 7-23, “Heaven has given me this power-this virtue (Inoue, 2014)”. The inability of his good disciple to fulfill a good, long life, and his own birth in an era when he could not complete his divine mission despite this, was a completely illogical state of affairs that made no sense to Confucius. Perceiving this condition as absurd, he was unable to find any convincing solution through human rationality or reason. As for Book 9-9, according to Chin, Confucius’ lament refers either to the fact that he would not be able to live in such a world or to the fact that he was born in the wrong age and so would never be able to realize his potential (Confucius/Chin, 2014). However, in Book 14-38, a gatekeeper describes Confucius plainly as “the person who knows that what he is working toward simply cannot be realized,” highlighting that making society more moral is impossible.

Confucius’ laments and virtue ethics

Our research on Confucius’ sayings recorded in the *Analects* revealed the various difficulties faced by a person who had firm moral ideals and sought to live in a way that realized these ideals. As shown in **Table 1**, these difficulties included contemporary people’s lack of virtue, the decline of virtue at that time, superficial conduct lacking in sincerity, practice of virtue, difficulty of virtue education and moral self-criticism, loss of ideals in an absurd life, social misfortune, and loneliness. Many aspects provide a point of entry for discussion, such as Confucius’ emotional history, ethical relativism,

reason and emotion, theories on limitations to virtue ethics in general, virtue education theory, the absurdity of life, and existence of Heaven; however, we examine the implications for those involved in ethics and virtue ethics education in modern society.

Confucius’ teachings in the *Analects* frequently include mentions of “the virtue of benevolence and acting in accordance with the rites and rightness” and moral exemplars, and they strongly include elements of virtue ethics (Kaizuka, 1999; Uchiyama, 2011; Radice, 1979; Tan, 2005). Their central issues pertain to the question of what kind of person one should become (Tan, 2005). Accordingly, we believe that Confucius’ hurtful experience and despair recorded in the *Analects* shares something in common with the experiences of people involved in ethics education, especially virtue ethics education, in modern society. This is because many major issues have been noted regarding modern virtue ethics for many years, such as different opinions on what personality characteristics constitute virtue among individuals and groups, differences in important virtues and virtue orders over time, differing views on life objectives and ideals, the weak relationship between individuals’ virtues and their conduct, potential for several virtues to suggest diametrically opposed actions, and complicated motives for action (Higgs, 1997; Hursthouse, 1991).

No clear conclusion has been derived on the question of what human moral excellence, which is one definition of virtue, is. Confucius’ contemporaries did not appear to share his awareness of the ideal form for society or desirable personality characteristics for people. Confucius was a great admirer of the Duke of Chou and looked upon himself as a transmitter of early Chou

culture, rather than as an innovator (Radice, 1979). This could be due to the decline of morals over time, as Confucius thought, or to generational differences. Confucius' laments are understandable from the viewpoint of the authors, who consider Confucius' teachings important.

Virtues are good character traits that enable human beings to act quickly, spontaneously, and happily, so that they may better attain the ends that are perfective of their nature (Austriaco, 2017). By definition, the actions of a virtuous person must be truly spontaneous. However, Confucius' laments suggest the difficulty of spontaneous virtue practice that is not superficial and originates in sincerity, as well as that in virtue education aimed at those who make no attempt to spontaneously and actively study morality. We consider this an issue that cannot be disregarded in modern virtue ethics education settings.

Several Japanese researchers recognize Confucius' teachings as "mediocre truth" and "commonsense arguments in ordinary society" (Hei, 2022), "simple morality and sound argument" (Yamucha, 2016), an "entirely natural way of life for a person in society" (Kanaya, 2017), and "dubious preaching" (Saku, 2010). In other words, these are obvious things stated since antiquity. The virtues and exemplary people Confucius discusses in the *Analects* likely existed in eras predating him, because he is reactionary rather than revolutionary and sought to restore, organize, and establish things from better days (Watsuji, 1988). Therefore, the morally important things mentioned in the *Analects* may be considered obvious preaching from more than 3,000 years ago.

At this juncture, a simple question is raised: Why are we able to easily create lists of virtues and imagine

ideal virtuous people, but not practice and embody them or effectively teach them to others? Confucius' teachings are recognized as things that "are correct but not as straightforward to put into practice in reality" (Yamucha, 2017). Confucius said, "Is humaneness far away? As soon as I desire humaneness, it is here." (Book 7-30) . However, as Chin suggests, "a person can choose to live a moral life if he wants to, and he has the strength to do so. But he resisted putting effort into it, or worse, he finds the other life-a life stripped of its moral impulses-to be alluring" (Confucius/Chin, 2014). Chin regards this situation as paradox (Confucius/Chin, 2014). We are able to identify the virtues important to us as people and to easily practice conduct based thereon if we have the will to do so. However, in many cases, we do not or cannot behave in that way. Confucius' self-criticism in **Book 7-3** suggests a similar situation.

Resolving this issue is extremely difficult, and requires that many people in society have, like Confucius, a willingness for them and their neighbors to achieve a friendly, peaceful human society that values consideration and courtesy. However, achieving this is impossible, unfortunately, unless an epoch-making virtue ethics education method is discovered. Harari claims, "Morality doesn't mean 'following divine commands.' It means 'reducing suffering.' Hence in order to act morally, you don't need to believe in any myth or story. You just need to develop a deep appreciation of suffering. If you really understand how an action causes unnecessary suffering to yourself or to others, you will naturally abstain from it (Harari, 2018)." However, we believe that developing a deep appreciation of suffering is the most difficult thing of all.

According to Freud, people engage in war based on

their desire for power, the pursuit of self-interest of all kinds, instinctive aggressiveness and violence, existence of conflicts of interest, and enmity and hatred toward people different from oneself. As long as we continue to have these vices, it is impossible to cultivate a deep appreciation of suffering (Freud, 2016). For Baldock, the period 2,500 years ago when Laozi wrote *Tao Te Ching* and the present day are no different, in that we humans pursue power and status with unceasing conflict, and it has become a compulsion to possess wealth (Baldock, 2019). Although the dating and textual formation of the *Tao Te Ching* and the *Analects* are complex, both texts emerged from the broader intellectual world of early Chinese thought. For the purposes of this essay, the important point is that the concerns expressed in these classical texts—such as power, desire, moral cultivation, and human conduct—remain relevant when we compare Confucius’ world with our own (Kanaya, 1993).

Conclusion: What should we do in our present-day lives?

The results of our research showed that living in an absurd world as a virtuous person is challenging and accordingly, emphasized Confucius’ misfortune and loneliness. Confucius traveled to foreign lands in exile. As he toured each state, he futilely hoped that the ruler of a certain country would resonate with and adopt the principles of his political philosophy. However, upon his return home, he took on no further roles and did not return to the political sphere (Hei, 2022; Yamucha, 2016; Kanaya, 2017). Confucius was a magnificent failure (Saku, 2010). He was also considered “a loser in life who died in misfortune without having done any of the things he

had wanted to” (Yamucha, 2016). After over ten years spent in travelling through the various states, Confucius, realizing that there was no hope of converting any of the feudal rules to his way of thinking, returned to Lu where he spent the rest of his life teaching a group of gifted and devoted disciples (Radice, 1979). Alongside Confucius, the same applied to his disciples.

The Master said, “Those who followed me to Chen and Cai are no longer studying with me now” (Book 11-2).

Kaizuka notes that Confucius sympathized with his disciples, who lost the opportunity to find employment because they faithfully accompanied him on his journeys to Chen and Cai (Kaizuka, 1999). Confucius lived in the late Spring and Autumn period, before the Warring States period, although many of the political tensions later associated with the Warring States world were already emerging. The powerful sought personnel with materialistic knowledge and capabilities, as well as mythical authority. However, Confucius preached the politics of courtesy by demonstrating feelings of consideration, emphasized respect as an attitude, and rejected mythical authority. This prevented the powerful of the time from accepting him while he was alive (Yamucha, 2016). However, he did not change his way of thinking to advance in the world (Yamucha, 2016), and refused to retreat from it (Saito, 2010; Inoue, 2014).

Essentially, Confucius’ credo was that people should value the feeling of consideration and live courteously (Yamucha, 2016). Government by virtue, which aims to realize a better society by instilling virtue in the hearts of the people and is centered on humaneness and

rites, seems difficult to achieve in view of this analysis and our life experiences. Laws are important in maintaining the social structure, but on their own, cannot achieve a world of heartfelt mutual care and respect. In that case, what should we do to achieve a friendly, peaceful human society that values consideration and courtesy? This is a difficult problem, but we should begin by first improving ourselves, like Confucius, from a virtue ethics perspective.

The Master stayed away from four things: he did not put forth theories or conjectures; he did not think that he must be right; he was not obdurate; he was not self-centered. (Book 9-4)

The Master said, “to give comfort to the old, to have the trust of my friends, and to have the young seeking to be near me.” (Book 5-26)

The Master is gentle but serious and principled, dignified but not fierce, respectful but relaxed.” (Book 7-38)

The Master said, “It is perhaps the word *shu*. Do not impose on others what you yourself do not want (others to impose on you). (Book 15-24)

As mentioned above, the approach of taking Confucius as a role model could be described as “exemplarism” (Lamb, Brant, & Brooks, 2021; Okamoto, et al., 2025). Second, one must also constantly strive to achieve the Mean (golden mean) so as to accomplish the goals one has set for oneself as Confucius. For Confucius, the Mean is a virtue that enables one to respond flexibly to

changing circumstances and realize one’s goals without excess or deficiency; it is an attempt to fully understand all the diverse and conflicting views and positions before making the highest quality decision that best suits one’s need to achieve the goals at any given moment (Asai, Xu, & Ohnishi, 2025). People in modern society involved with ethics and virtue ethics education must take Confucius as their model and not retreat from society and maintain his willingness, regardless of how absurd the world. One possible starting point is to cultivate virtue in ourselves while encouraging those around us to recognize its value and develop a sincere desire for similar virtues. We hope that the statement, “Virtue does not stand alone. It is bound to have neighbors (Book 4-25)” is true.

The Japanese philosopher Yamucha writes that what we should really learn from the *Analects* lies in the spirit that “a man who was no more than a mere scholar stood against state power and mythical authority without submission in an era of power struggles by force, in an attempt to return history to the right path” (Yamucha, 2016). We agree with this view. Confucius was unable to build a world of freedom and harmony by making the people of his generation virtuous. Even today, 2,500 years after his death, no one has been able to achieve this. Thus, much remains for humanity to learn from the *Analects*. We must continue to read the *Analects*, remain engaged with society, and keep striving to make the world a better place, as Confucius did, while enduring misfortune and loneliness and seeking like-minded companions.

Second, Confucius’ laments teach us about our own moral weaknesses and the obstacles that prevent us from living virtuously. According to Bazerman and

Tenbrunsel, even if we humans fully understand what is ethically correct in our daily lives, when we are actually faced with a dilemma and must take action, we are unable to act ethically due to self-indulgence, a focus on immediate gains and losses, tunnel vision, preconceptions, and vulnerability to various temptations. In their view, by being aware in advance of factors that might influence our moral actions, activating abstract thinking to recognize the values we hold dear, and acknowledging in advance the weaknesses in our capacity for ethical behavior, we can increase the likelihood of putting into practice what we believe we should do on a daily basis (Bazerman and Tenbrunsel, 2011).

From Confucius' laments recorded in the *Analects*, we can understand the moral weaknesses of human beings—including ourselves—the lack of ethical agency, and the obstacles to the manifestation of virtue. Confucius' laments are directed at us. We are weak in the face of beauty, superficial, vain, prone to self-justification, and tend not to reflect sincerely on our own undesirable behavior. We also have a tendency to prioritize fame or power over virtue. Therefore, in our view, if people come to know Confucius' laments in the *Analects* and realize that they themselves are among those being lamented, they will be able to practice basic morality and increase their potential to become more virtuous beings. Therefore, we should encourage as many people as possible to read this classic.

We now note the weak points in our argument. First, deciding which of Confucius' 500-odd teachings in the *Analects* to recognize as important laments or take as a life motto is a choice that differs between individuals. Confucius' words and actions may also be interpreted differently. Choosing between selected virtues and

sayings is to a certain extent unavoidable. Why Confucius' teachings are correct, why the characteristics he considers virtuous are virtuous, and why behaving according to his teachings is correct cannot be objectively proven. In addition to these questions, which are shared with virtue ethics in general, Confucius' teachings do not seem to fit with modern society in some respects. However, there are no perfect theories of ethics, nor are there theories that cannot be refuted. There are also no premises that everyone accepts unconditionally. Even if there were a perfect theory, it could not be used by imperfect people and would be frequently distorted, misused, or abused. We do not assert that the conclusion to this paper is universal, objective, or certainly valid. We merely hope that if those who agree with our ideas behave in the same way, human society may become a little more peaceful.

In conclusion, this paper examined the significance and implications of Confucius' laments for people involved in ethics and virtue ethics education in modern society. His words and actions as recorded in the *Analects* are very important for ethics educators like the authors. However, this education is equally important outside of educational institutions. Regular examination of the virtues and character that members of society should have, whether at home or in friendships or organizations, is essential for building a society in which people are sincerely considerate of others and courteous. In addition, insights into the limitations, tensions, and setbacks inherent in moral practice based on virtue may prevent people's educational practice from becoming excessively idealistic and fundamentalist, inhibit unnecessary criticism of people who speak or act contrary to virtue—including criticism by the people themselves—and

enable moral forgiveness with suitable magnanimity. We believe that moral education that fulfills the Doctrine of the Mean in educational settings and in daily life is necessary to achieve a better society.

Finally, we would like to add more specific reflections for present-day virtue education as follows. Taking Confucius as a model, therefore, does not mean simply imitating an idealized sage or assuming that virtue education can straightforwardly make people virtuous. Rather, Confucius' laments invite us to take seriously the difficulties and limits that accompany the cultivation of virtue. The preceding analysis suggests four implications for contemporary virtue education and professional ethics education.

First, virtue education should be based on the premise that there is a gap between understanding virtue and practicing it, and knowing virtue, being able to speak about virtue, and being able to practice virtue are different things. Second, virtue education should acknowledge the limits of educators' influence on learners' intrinsic motivation. Educators can provide knowledge and set examples, but they cannot fully produce learners' inner spontaneity. Third, virtue does not guarantee happiness, success, or recognition. Finally, virtue education should focus not only on individual cultivation but also on social conditions. In a society where it is difficult to practice virtue, individual effort alone is insufficient. Institutions, organizational culture, evaluation criteria, power, fame, and profit can all hinder the practice of virtue.

We believe that Confucius' laments offer at least these four important implications for modern ethics education and professional ethics education. The Analects is not a panacea for making people virtuous.

Nevertheless, it can provide moral reminders that help readers recognize the importance of particular norms and virtues. Such reminders may also create a psychological barrier against self-justification and self-deception (Lamb, Brant, & Brooks, 2021). These four implications constitute the main contemporary significance of Confucius' laments. They show that the Analects remains valuable not because it offers an easy solution to moral education, but because it helps educators recognize both the necessity and the limits of cultivating virtue.

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Regular Article

出生前検査の文脈における中立性

——リベラル優生学をめぐる議論を手掛かりとした医療専門職と政府の役割

圓増文 *

Abstract

日本社会は、出生前検査全般の提供およびその情報提供について、消極的な方針をとってきた。しかし NIPT（Non-invasive prenatal genetic testing：非侵襲性出生前遺伝学的検査）の導入と急速な普及（特に非認証医療施設での急速な拡大）を契機として、「妊娠・出産・育児に関する包括的な支援の一環として、妊婦等に対し、出生前検査に関する情報提供を行う」という方向へと方針転換が図られてきた。この新たな方針にあって、医療専門職や政府に求められる態度として頻繁に言及されるのは「中立的な態度」やそれに関連した「非指示的態度」である。本稿は、この「中立的な立場」とはより正確にはどのような態度を指し、なぜ望ましいとされるのか、中立的態度は本当に政府や医療専門職の態度として望ましいのかを検討する。本稿はこうした問題を検討する手がかりとして、リベラル優生学の「国家の中立性（state neutrality/governmental neutrality）」をめぐる議論に注目する。検討を通じて、最終的には、この技術の普及・提供に関し政府に求められる役割を明らかにすることを目指している。

キーワード：優生学、リベラル優生学、出生前検査、非侵襲性出生前遺伝学的検査、国家中立

In Japan, the governments and medical professionals had held restrictive attitudes toward the provision of prenatal testing and related information. However, triggered by the introduction and rapid spread of NIPT (Non-invasive prenatal genetic testing), They have recently begun radical policy changes to toward providing information on prenatal testing to pregnant women and others as part of comprehensive support for pregnancy, childbirth, and childcare. Within this new policy, the terms 'neutral' and 'non-directive' are often used to represent the ethical stance of healthcare professionals and the governments. This paper examines what this “neutral” attitude entails more precisely, why it is regarded as a desirable attitude of healthcare professionals and the governments and whether it is truly the most appropriate attitude for the government and healthcare professionals. To clarify these issues, the paper focuses on debates surrounding the 'state neutrality' of liberal eugenics. Ultimately, the paper aims to clarify the role expected of governments in providing technology for prenatal screening and selective abortion.

Keywords: Eugenics, liberal eugenics, prenatal test, NIPT (Non-invasive prenatal genetic testing), state neutrality

* 慶應義塾大学文学部

1. はじめに

日本では、これまで他の社会に比べて出生前検査の提供や普及、その情報提供について慎重な態度が取られてきた (Tsuge 2015)。かつては超音波検査を除く検査に関し、妊婦側からの問い合わせがない限り医療専門職側から情報提供を行わない方針が採られてきた (厚生科学審議会 1999)。受検可能な妊婦についても、年齢など一定の制限が関連学会指針において設けられてきた (日本産科婦人科学会 2013)。しかし非侵襲性出生前遺伝学的検査 (NIPT: Non-invasive prenatal genetic testing: 以下 NIPT と表記) の導入と急速な普及、特に非認証医療施設での急拡大を契機として、政府や関連学会において方針転換が進められてきた。2021 年政府専門委員会の報告書において「妊娠・出産・育児に関する包括的な支援の一環として、妊婦等に対し、出生前検査に関する情報提供を行うべきである」との見解が示されて以降 (厚生科学審議会 2021)、同検査について情報発信や情報提供の体制整備が進められている。さらに、受検可能な妊婦についても要件が緩和された (日本医学会 2022, p13)。

こうした方針転換の中で医療専門職や政府に求められる態度として特に強調されるのは「中立的な立場」およびそれに関連した「非指示的な態度」¹である。日本医学会委員会の指針では、自治体が情報提供等を行う際の留意事項のひとつに「自治体においては、中立的な立場から対応し妊婦等が熟慮の上に出生前検査の受検や検査後に選択したことを尊重する」 (日本医学会 2022, p. 5) という

点が挙げられている。また同指針では、検査に際し医療機関が取るべき姿勢に関して「非指示的な、共感的理解を伴う受容的な態度が重要」と述べられるなど、「非指示的」という語が繰り返し用いられている。

本稿で問題としたいのは、「中立」や「非指示的」はより具体的にはどのような態度を指し、なぜそのような態度が政府や医療専門職の態度として望ましいとされるのか (第 2 節)、そしてそうした態度は本当に政府や専門家の態度として望ましいのか (第 3 節) である。こうした問いを検討する手がかりとして、本稿では、リベラル優生学における国家中立 (state neutrality) をめぐる議論に着目する。検討を通じて最終的に目指しているのは、出生前検査の普及や提供に関して政府が果たすべき役割や責任とは何かを検討することである (第 4 節)。

2. リベラル優生学と中立性

2-1. リベラル優生学とは

まずリベラル優生学がどのような立場であり、そこにおいて「中立」がいかに位置づけられるのかを確認したい。「優生学 eugenics」はギリシア語の *eu* (good) と *genesis* (birth) からの造語であり、定義として広く引用されるのは提唱者 F. ゴルトンの「[人の]種の改善・改良に関する科学 the science of improving stock」である (Galton 2005, first 1883, p. 17)。近年の遺伝と生殖関連の科学技術利用をめぐる議論において「優生学」が使われる場合、様々な定義が与えられるが²、本論では、リベラ

¹ 遺伝カウンセリングの文脈では一般に価値中立的な情報提供およびクライアントの決定に対する価値中立的な態度として説明される (Oduncu 2002; Rehmann-Sutter 2009)。

² 優生学の定義をめぐる問題を扱った議論としては、(MacKellar and Bechtel 2014) がある。

ル優生学の代表的論者アイガーの説明を採用する。彼によると、優生学とは遺伝子や染色体レベルでの次世代への介入による人間改良(human improvement)あるいはエンハンスメント (enhancement)を擁護する立場である (Agar 1998, pp. 137-138; 2004, p. 3)。そしてリベラル優生学とは、国家中立というリベラルな原理を採用する優生学を指す。

リベラル優生学が念頭に置く「優生学的な」営みには、遺伝的特性に基づく婚姻相手の選択から技術を用いた子の選択に至るまで、幅広いものが含まれる。本論で問題とする出生前検査と選択的中絶はそうした営みの一つである。これらの技術を用いた介入は、生まれてくる子の同一性を変えることになるが、先の定義から示唆されるように、リベラル優生学は帰結主義的な傾向があり、生まれてくる子の同一性の有無に関わらず次世代の人間が改良されるという帰結をよしとする傾向が見られる (MacKellar and Bechtel 2014, pp. 9-10)。

リベラル優生学の特徴として、擁護者および批判者がおおむね共通し挙げるのは下記四点である (Selgelid 2000; Agar 2004, pp. 5-7; Sparrow 2014; de Melo-Martin and Goering 2022)。第一に、過去の優生学が強制の形で実践されていたのに対し、リベラル優生学は個人の自由、特に親になろうとする人間 (prospective or potential parents; 以下単に「親」と表記) の子をもつ選択の自由に基づいて実践される点である (Agar 1998; 2004, pp. 5-6; Buchanan et al. 2000, pp. 14, 107, 256; Savulescu 2001; 2007; Harris 2007, pp. 72-85; Green 2007, pp. 162-165)。アイガーはこの特徴を「国家中立」と呼ぶ。第二に、過去の優生学が善き生についての一元的な見方に依拠していたのに対し、リベラル優生学は価値多元主義を前提にする。そのため、リベラル優生学にあって、ある個人が善き生に関する自らの

価値に照らして行った生殖の選択は、他の個人の選択とは大きく異なる場合があり、そうした選択の多様性は尊重されなくてはならない (Buchanan et al. 2000, pp. 47-50, 107; Agar 2004, p. 6)。第三に、過去の優生学が依拠していた科学は人種差別的であり、現在の生物学に照らすなら誤りが含まれる。これに対し、リベラル優生学は最新の遺伝学に依拠しており、擁護者からは、それに依拠することでより確実な次世代の遺伝子の選択や操作が、ひいてはその遺伝上の改良が可能だとされる (Buchanan et al. 2000, pp. 41-42, 306; Agar 2004, pp. 6-7; Green 2007, pp. 160-165)。第四は、リベラル優生学が、社会全体の福祉向上よりは、個人の福祉向上を目指す点である。ただしこの点に関しては、擁護論において立場が分かれる。一方で、社会全体の福祉や利益を目的とすることを徹底的に避ける論者もいれば (Agar 1998; 2004, pp. 1-19, 111-131; Savulescu 2001; 2007; Green 2007, pp. 216-218)、他方で、社会もしくは人類全体の利益を正当化の根拠の一つとする論者もいる (Buchanan et al. 2000, pp. 333-345; Harris 2007, pp. 1-7, 8-35)。

2-2. リベラル優生学における中立

リベラル優生学の初めの二つ特徴において示されるように、この立場における「中立」は、過去の優生学との倫理的な違いを説明する上で重要な役割を果たしている (Agar 1998, pp. 137-138; 2004, p. 135; Fox 2007; Dekker 2009; Van Camp 2014; Gynge and Selgelid 2017; de Melo-Martin and Goering 2022, section 2.1)。この原理によると、リベラルな社会では、人々は善き生について多様な構想をもっており、いずれが正しいかを公的に定めることは困難である。そのため国家は、人々の多様な構想に中立でなければならず、自らの構想に基づ

く個々人の選択に対し基本的に非介入の立場をとらなければならない (Agar 1998, pp. 137-138; 2004, pp. 5-6; Harris 2007, pp.ix-x, 72-85)。特にリベラル優生学にあっては、どのような子をもつか、その選別のために技術を用いるかについての個人の選択もまた非介入の対象と位置づけられる (Agar 1998, p. 138; 2004, pp. 5-6)。

セルゲリッドが指摘するように、次世代の生命操作（ひいては将来的な人間性の改変）に関わる技術利用の是非をだれがどのように判断すべきかという問題は、出生前検査や着床前診断を含めた生殖と遺伝に関わる科学技術の発展によって提起された新しい問題である (Selgelid 2000, p.26)。リベラル優生学は、リベラルな原理としての中立を、生殖にまつわる技術利用の決定にまで拡張するという仕方で問題解決を図る立場と位置づけられるが、そのような主張を展開する上でリベラル優生学の論者は、広く受容されている二つの区別を否定する (Sparrow 2011b, p. 501; Mills 2015, p. 182-183; de Melo-Martin and Goering 2022, section 2.1)。第一の区別は、教育や養育など環境への働きかけによる子どもの改良（エンハンスメント）と遺伝子や染色体への働きかけによるものとの違いである (Agar 1998; 2004, Harris 2007, pp. 1-3; Buchanan et al. 2000, pp. 17, 156-161; Green 2007, p. 107-134)。前者は一般に、既に社会において広く認められているものであるのに対し、後者はそうではなく、様々な点で倫理的に問題があるとされる。リベラル優生学の批判者はしばしばこの二つの区別に依拠して、親による子の遺伝子や染色体への操作を批判する (Habermas 2003, pp. 61-63)。しかし例えば擁護者のアイガーはこのような区別は遺伝子決定論という、誤った前提に依拠していると主張する。彼によると、親による子への遺伝子や染色体

の改変を通じた介入と教育や養育を通じた介入とは、その影響力や可逆性において決定的な違いはない。いずれもやり方次第で子どもに不可逆的かつ人生に甚大な影響を及ぼす場合もあれば、そうでない場合もある。むしろ、子どもの改良（あるいは特定の能力や特性の獲得）において、この二種類の介入は相互に深く影響し合っており、区別することができないこともある。そのため、道徳的な観点からみて、一方（子の教育や養育の自由）が一定範囲において親に自由な裁量が認められるならば、他方（子の遺伝子操作のための技術利用の自由）もまた同程度において認められなくてはならない (Agar 1998, p. 139; 2004, pp. 111-131)。

第二の区別は、治療とエンハンスメントの違いである。治療とは通常、介入対象となる人間の機能や特性を、人間にとって普通と見なされるレベルにまで引き上げる（引き戻す）ことを目的とする。これに対し、エンハンスメントとは、一般に普通と見なされるレベル以上に人の機能や特性を高めることを指す。仮に親世代による子世代への遺伝子や染色体の操作が許されるとしたら、一般にそれは治療目的に限定されるという見方がある (Buchanan et al. 2000, pp. 83, 96, 101; Sandel 2009, pp. 46-57)。しかしリベラル優生学の擁護者は治療とエンハンスメントの間の区別を否定する (Agar 1998, pp.139-142; Savulescu 2001; 2007; Harris 2007, pp. 4, 21-35, 57; Green 2007, pp.53-80; Buchanan et al. 2000, pp. 17-18, 71-73, 104-155, 345)。例えばアイガーによると、何を病気あるいは通常の状態だと思えるか、またいかなる介入を治療あるいはエンハンスメントと見なすかの判断は複雑であり、事実の問題というよりは道徳の問題（言い換えるなら価値評価を伴う問題）である。例えば左利きや同性愛はかつて病気として見なされていたが、

今はそうではない。こうした例が表すように「病氣」の語はある社会において非理想的とされる特性に対し用いられることがある (Agar 1998, p. 142)。また予防接種は医療行為のひとつと位置づけられているが、その目的は、病気の治癒ではなく免疫システムのエンハンスメントである (Harris 2007, pp. 21-35, 57; Green 2007, p. 60)。ある人にとって治療のための介入は、別の人にとってはエンハンスメントとなることもある (Harris 2007, pp. 44-58, Green 2007, p. 60, 71-73)。さらに、治療もエンハンスメントも、対象となる人を害から保護し相手に利益を与えることを目指す点では同じである (Agar 1998, p. 142; Harris 2007, p. 58)。つまり、一方（治療）がある理由で許される（あるいはその実施が義務である）なら、同じ理由が当てはまる場合には他方（エンハンスメント）も許されなくてはならない（あるいはその実施が義務でなければならない）のであって、両者の区別は道徳的に意味ある区別（例えば実施が許容されたり義務であったりすることとそうでないことの区別）を提供しない。

このように、リベラル優生学における「中立」とは基本的に、自らがいかに生きるのかに関する個人の選択への非介入、つまり消極的自由の保護を指し、その保護の対象には、自らの生殖にまつわる技術利用に関する個人（親世代）の選択も含まれる。ただし政治理論としてのリベラリズムにおける中立原理については、多様な解釈があり (Kymlicka 1989)、それを反映する形でリベラル優生学の論者のうちでも異なる中立性の解釈が提示されることがある。例えばブキャナンらの議論では、中立は「正当化における中立 (neutrality of justification)」として、つまり、ある政策を正当化する上でいずれか一つの善の構想に依拠しない

ことを求める原理として理解されている (Buchanan et al. 2000, pp. 343)。また、アイガーは、基本的に非介入という意味での中立概念に依拠して、子の選別のための技術利用の個人の自由を擁護するが、他方で、それに部分的な制限を課す根拠として、もう一つ別の中立解釈を導入している。それは、子世代を含めた人々の多様な人生設計の尊重という意味での中立である。しかしそれでも、主だったリベラル優生学の議論において「中立」は、基本的に個人の選択への非介入を意味し、これを基本的原理とする点がリベラル優生学と従来の優生学との大きな違いを成している。

こうしたリベラル優生学の議論には多くの批判がある (Habermas 2003; Sandel 2009; Sparrow 2011a; 2011b; 2014; de Melo-Martin and Goering 2022)。そもそも遺伝に関わる技術利用についての倫理を論じる上で「優生学」の概念を引き合いに出す必要はないという主張もある (Selgelid 2000; Foth 2021)。しかし本論ではこうした問題には踏み込まず、出生前検査の文脈での中立について検討する手がかりとして、リベラル優生学における中立概念とそれをめぐる議論に、とくにアイガーの議論に注目していきたい。

2-3. 出生前検査の文脈における中立

現在の日本の出生前検査の文脈において強調される「中立」には、こうしたリベラル優生学における中立と共通する点を見出すことができる。

第一に、いずれの「中立」も「生殖にまつわる技術利用に関する個人の選択への非介入」という意味で理解できる点である。すなわち、政府の態度としての中立は、出生前検査を受けるか否か、その結果に基づきどのような選択を行うのかに関する個人の選択へ介入しないという意味で理解で

きる。医療専門職の基本的態度としての「非指示的な態度」も同様に理解できる。非指示的な態度は、出生前検査に限らず遺伝学的検査や遺伝カウンセリングの際の基本的態度として国際的に採用されているものであるが、それは基本的に検査を受けるか否か、その結果に基づきどのように行動するかに関する受検者の選択に対し医療専門職が価値中立性を保つこと、ひいては受検者の自律的決定を保護し高めるために求められる態度と位置づけられている (Oduncu 2002; Warton, Johnston, and Mills 2023)。

第二に、このような意味での中立概念が果たす役割についての共通点である。先に見たように、リベラル優生学における「中立」は、過去の優生学との倫理的な違いを説明する上で重要な役割を果たしている。政府の態度としての「中立」および医療専門職の基本的な態度としての「非指示性」にも同様の役割を見出すことができる。すなわち、こうした文脈において中立や非指示性が強調されるに至った歴史的な要因として、過去の優生政策への批判と反省がある (Resta 1997; Oduncu 2002; Zuckerman 2021; Warton, Johnston, and Mills 2023)。政府の中立や医療専門職の非指示的な態度は、強制的に実施された過去の優生政策やそれに基づく医療専門職の指示的な態度とは異なって、自らがいかに生きるのかについての個々人の多様な考えを尊重し、それらに基づく決定を尊重するために不可欠な態度と位置づけられている。

もっとも、こうした共通点があるからと言って、決してそれは、日本の政府や医療専門職の方針や態度がリベラル優生学を前提とすることを含意するわけではない。先に見たように、リベラル優生学は、遺伝子や染色体レベルでの次世代への介入による人間改良やエンハンスメントを擁護するが、

他方、「中立」や「非指示性」を強調する政府や医療専門職の方針と態度の根底には、必ずしもそうした人間改良やエンハンスメントといった意図があると主張することはできないだろう。ただ少なくとも言えるのは、政府や医療専門職の中立を強調することで、出生前検査や中絶に関する政策や支援がもち得る優生学的含意を完全に排除できるわけではないという点である。リベラル優生学という立場の存在がこの点を示唆している。本論文ではこうした問題には立ち入らず、中立や非指示的な態度を基本的な態度として強調することが果たして望ましいのか否かの問題を、リベラル優生学をめぐる議論を手がかりとして検討する。

3. 中立概念をめぐる問題

3-1. 事実として中立であるか

まずは事実問題として、現状の政府や医療専門職の態度が上記の意味で中立ではないことを指摘しておきたい。まず、出生前検査を受けるか否か、その結果に応じてどのように行動するかに関する女性個人の選択に対し、政府の態度が結果として中立ではないという点は、この文脈での個人の選択に対し実際には様々な制度上の制約がある点から指摘できる。内閣府男女共同参画局『男女共同参画基本計画 2006』では「我が国では、人工妊娠中絶については刑法及び母体保護法において規定されていることから、それらに反し中絶の自由を認めるものではない」と述べられている (内閣府男女共同参画局. 2006, p.87)。このように、個人の、とくに女性の中絶に関する決定には、まず法制度上の制限がある。刑法第 29 章墮胎罪の規定により中絶は処罰の対象とされており、その違法性が阻却されるのは、母体保護法に規定されている要件のいずれかを満たした場合である。同法では胎

児の特性を理由とした中絶は、中絶の許容要件として明記されておらず、一般には「妊婦の身体的又は経済的理由により母体の健康を著しく害する恐れがある場合」に該当するものとして容認されている（厚生科学審議会 2021, p. 10）。ただし他の場合の中絶と同様、法的に中絶可能な時期は妊娠 22 週未満と解釈されており、出生前検査の結果を得てから中絶するか否かを決定するまでに女性に残された期間は限定的である³。加えて、中絶を受けるには、妊婦だけでなくその配偶者の同意が必要となる。

次に、検査の提供に関しても、妊婦やカップルの決定には医療システム上の制限が設けられている。NIPT と関連技術の進歩により、一定の精度をもって検出可能な胎児特性の範囲は拡大しており、性別や他の染色体異数性といった特性に関する NIPT は、国際的に広がっている（Johnston et al. 2023; Steffensen et al., 2023）。日本では、非認証医療施設では検査対象となる胎児特性の拡大が報告されている（白土ほか 2023; 毎日新聞取材班 2025, pp. 52-3, 93-110）が、認証施設において提供される NIPT については、これまでのところ技術的な限界（他の疾患・特性の分析的妥当性や臨床的妥当性の未確立）を理由として主要トリソミー（トリソミー 13、18、21）の検出に制限されてきた（日本医学会 2022, p. 13）。

医療専門職の中立性に関しては、そもそも検査の存在を伝える時点でカウンセリングや情報提供自体が中立的ではありえないという指摘もある（Zuckerman 2021; Warton, Johnston, and Mills 2023）。一般に非指示的なカウンセリングにおいて専門職

は、価値中立的な形で情報をクライアントに提供するものとされる。しかしウォートンらは、出生前検査のカウンセリングに関する実証研究を引き合いに出し、非指示的なカウンセリングがこの領域では達成困難だと主張する。情報の表現の仕方が妊婦の意思決定に大きな影響を与え得る。例えば各選択肢のリスクに関する情報を肯定的に伝えるのか否定的に伝えるのか、数値によって示すのか言葉で示すのかといった点での違いによって、妊婦の決定は変化するという。また限られた時間内でのカウンセリングでは、複雑な遺伝情報の全てを正確に伝えるのは限界があるが、どのような情報を伝えるのかの選択は実質カウンセラーに委ねられる。ウォートンらによると、そうした情報の選択は妊婦の決定を一定の方向へと促す（Warton, Johnston, and Mills 2023）。

こうした諸制約の各々が倫理的に妥当かどうかは別途検討が必要である。少なくとも日本に関し言えるのは、検査や情報の提供場面で個人の決定への非介入という意味での中立がいくら強調されたとしても、それは諸制度の制約の下での中立だということである。それは、ごく限定的な場面での限定的な選択肢に対する中立にすぎないのであり、過去の優生学との倫理的な違いを説明するものとしての「中立」—— 人々の善き生の構想やそれに基づく決定への非介入としての自由 —— とは隔たりがある。

3.2. リベラル優生学における中立概念への批判

では、中立や非指示的態度は政府や医療専門職が取るべき望ましい態度といえるのだろうか。以

³ 確定診断である羊水検査は通常妊娠 15 週以降に実施可能であり、検査結果を女性が得るのはそれ以降となる。

下では、この問題について、特に政府の中立的態度に着目し、リベラル優生学への二つの批判を手掛かりとして検討したい。

第一の批判は、中立という政府の態度が、差別や排除、格差など様々な社会的不正義に影響を受けた個人の決定を助長するというものである（Selgelid 2000; Oliver 2010; Sparrow 2011a; 2011b; 2014）⁴。第二節で見たように、もともとリベラル優生学の中立原理の前提には、個人の多様な生き方を尊重するという理念があったはずである。しかし実際には、個人の生殖の決定は自身の善き生の構想よりも、むしろそれ以外の様々な社会的要因——影響力ある社会規範や文化、多数派の意見、市場の圧力など——に大きな影響を受けうる。善き生の構想がそうした要因に影響を受けて形成されていると見ることもできる。いずれにせよ、そうした要因には差別や偏見、格差など、不正義と見なされるものが含まれる。政府の中立は、生殖にまつわる技術利用がそうした不正とされる社会的要因によって決められることを助長し、ひいては不正義自体を強化する可能性がある。

例えばスパロウは、性別や性的志向、外観、人種に関わる差別を例として挙げ、このような差別が根深い社会においては、総じてそうした社会に有利となる特性の子が生まれるよう、親世代の選択が促されることになる」と指摘する（Sparrow 2011a, p. 35, 40; 2011b, pp. 502-3, 506-514; 2014, pp.142-143）。スパロウによると、そのような技術利用が広がることで、社会において次世代の生き方の均質化が進むか格差が助長されるかすること

になる（Sparrow 2011a, p. 35, 38-9; 2011b, pp. 503, 509, 515-516; 2014, pp. 145）⁵。

リベラル優生学へのこうした批判は、出生前検査の文脈における政府や医療専門職の中立にも当てはまるように思われる。実際この文脈では、実証研究を通じて様々な不正義の影響が指摘されてきた（Lippman 1991; Seavilleklein 2009; Kaposy 2013; Mozersky and Sankar 2017）。例えばカーボジーは、中絶を選んだ女性や生殖年齢にある女性、障害ある人やその家族等を対象とした様々な実証研究の分析を通じて、特にダウン症（トリソミー 21）に関して、その高い中絶率（60%から 90%とされる）がこの特性への偏見に起因すると主張する。彼によると、この胎児特性を対象とした中絶や検査の普及は、それ自体が同特性をもつ人を直接害するわけではないにしても、そうした人への偏見を起源とする態度の表れである（Kaposy 2023）。自己責任化の問題に言及する議論もある（Mozersky and Sankar 2017）。モゼルスキーらによると、出生前検査にまつわる「倫理的な」意思決定には、受検希望者が自身の価値を明確化したり、子をもつ理由を改めて明確化することが含まれるが、実際には受検希望者は必ずしもそうした検討を望んでいない。その多くは、ただ陰性の受検結果を得て不安を解消したいと望んで受検をするからである。受検にまつわるこうした個人の希望の背景には、検査提供企業の圧力や中絶にまつわる法的規制など、様々な社会的、文化的、政治的、経済的、地域的な要因が作用しているが、決定の責任が個人に帰せられることで、そうした影

⁴ こうした批判へのリベラル優生学からの応答もある（Green 2007, p. 225; Buchanan et al. 2000, pp. 332-333; Savulescu 2001; 2007）。

⁵ リベラル優生学の擁護者 Agar も同様の懸念を検討している。ただ彼は基本的に特定の技術利用を親世代に対し禁止するだけでこの懸念に対処可能だと見ている（Agar 1998, p.175; 2004, pp.133-157）。

響の是非が検討されなくなるという懸念をモゼルスキーらは指摘する (Mozersky and Sankar 2017)。

第二に注目するリベラル優生学への批判は、中立原理の前提にある自由や人間像の妥当性に関するものである。先に見たように、この原理における個人の自由とは基本的に、介入の不在という消極的な自由を指す。また遺伝カウンセリングの文脈において医療専門職の態度として中立が強調される場合、その前提には「他者からの介入がなく情報があれば人は自分の価値に適ったよりよい (合理的な) 決定ができる」という消極的自由に基づく人間像がある。しかし、自由や人間についてのこうした理解は、少なくとも生殖に関する決定の複雑さを捉え損なっており、ひいては女性が直面する課題を見過ごす可能性がある (Selgelid 2000, pp. 21-23, 27)。このような批判は、リベラル優生学をめぐる論争においてだけでなく、生命倫理や規範倫理学の幅広い領域において出されてきた。とくに生殖関連の文脈に関してはフェミニズムからの批判が多数ある (Oliver 2010; Mills 2013; Wardrope 2015; Johnston and Zacharias 2017)。例えば「妊娠する」という選択は、厳密に言うと「妊娠しようとする」という選択であり、それは完全な自己コントロールの対象ではなく、様々な偶然や社会・文化的な要因に影響を受ける (Oliver 2010, pp. 85-90)。またリベラリズムの中立は「各行為主体は自身の善を、他者の善の概念から独立し規定し、それに従って生きることが可能である」という考えを前提に置くが、道徳的主体としての私たちは何らかの意味で社会的に構成されており、私たちの決定は他者や社会によって深く影響を受ける。そのため、決定に必要な能力をもち明白な強制を受けていない個人であっても、ある意味で自分のものとは異なる価値に基づき決定する可能

性がある (Wardrope 2015)。さらに生殖の決定は、他者に依存的な個人を生み出す決定でもある点で、単なる自己決定ではなく、同時に責任を引き受けることを伴う (Mills 2013, p.643)。

中立原理の前提をなす人間像についての同様の指摘は出生前検査の文脈においても出されてきた (Seavilleklein 2009; Mozersky and Sankar 2017; Warton, Johnston and Mills 2023)。先に見たように中立原理の前提には、個人の多様な生き方を尊重するという理念がある。特に出生前検査の文脈では、個人の、その人の価値観に基づいた「自律的な」決定を尊重することが理念として強調されることがある。しかし、そのような人間像と実際の受験希望者の姿との間には隔たりがある。先に見たように、しばしば受験希望者は検査を通じて安心を得たいのであって、必ずしも検査に伴う倫理的課題について自分の価値に基づいて熟慮したいわけではない。中立的な情報提供やカウンセリングが必ずしもそうした熟慮を促すわけでもない (Mozersky and Sankar 2017)。遺伝カウンセリングの前提にある人間像と現実の検査希望者とのこうした乖離は、日本の医療現場においても生じていることが実証研究から窺える。文化人類学者のアイヴリーらは、出生前検査前後の遺伝カウンセリングに携わる医療専門職や受験者等へのインタビュー調査を通じ、日本の医療現場の特徴について考察している。彼女らによると、日本の出生前検査の場面では、検査を受けるかどうかについての両価的態度 (ambivalence) が医療専門職によって「道徳的な態度」として見なされる傾向があるという。この両価的態度とは、検査を受けるかどうかについてすぐに明確な結論を出さない態度であり、受験希望者が「倫理的な熟慮」をしていることの表れと見なされている。アイヴリーらによ

ると、日本の医療専門職は、こうした両価的態度を受検希望者に期待している。アイヴリーらは、そうした期待とそれに合わない態度を取る受検希望者との間の解離に直面した場合のカウンセラーの違和感や葛藤を、調査を通じ明らかにしている (Ivry, Ogawa, and Murotsuki 2023)。

生殖の決定、特に出生前検査と中絶の文脈での中立に関するこうした諸問題を踏まえるなら、個人の決定への非介入という意味での中立をこの文脈における政府の基本的態度とすることは適切ではないように思われる。こうした意味での中立は本来は各人の多様な善の構想に基づいた決定や生き方の多様性を尊重するという考え方に依拠しているが、そこにおいて前提とされている人間像は実際の受検希望者のあり方と乖離している。そうした受検者の決定に対し非介入という態度を取することは、その人が自身の善の構想に基づいて決定し生きていくあり方を尊重するというよりは、むしろ不正義を含んだ個人の決定への様々な社会的要因によって次世代の生のあり方が決められることを強化し得る。そもそも、非介入という意味での中立に照らすなら、日本の出生前検査と中絶の文脈における中立は、限定的な意味しかもたない。では、政府にはどのような役割や態度が求められるのだろうか。この点を検討するため、次に、アイガーが提示したもう一つの中立理解に着目したい。

3-3. 子世代の生の多様性の尊重

2-2.において言及したように、リベラル優生学の論者アイガーは、子の選別のための技術利用への個人の自由を擁護する一方で、その自由に対する一定の制限の必要性を認めており、その制限の範囲と根拠を論じる上で、非介入という意味での

国家中立とは別の中立理解を導入する。それは、個人の決定への中立ではなく、多様な人生設計の尊重という意味での中立である。前者は、もっぱら親による子の選択への非介入を指すのに対し、後者は、子世代を含めた社会の人々の生き方や人生設計の多様性への尊重を意味し、1998年の論文でアイガーはこれを前者の中立とは別の意味での「中立」と表現している (Agar 1998)。その後、2004年の著作では、中立という用語を避け、「生の多様性の尊重」といった表現を用いている (Agar 2004, pp.103-106, 121-131)。

生の多様性の尊重という、この基準によってアイガーが論じようとした問題は、ファインバーグが「開かれた未来への権利」(right to an open future)の概念によって論じた問題、つまり親による子の将来への介入がどこまで許容されるのかという問題と重なる (Feinberg 1992)。この概念によってファインバーグが論じた問題の一つとして、信仰に基づく親による子の養育方針がその子の将来の生き方の選択肢を狭め、ひいては自らの生き方を自分自身で方向づけるという、将来の子の自己決定の権利を侵害し得るという問題がある。ファインバーグによると、極端に偏った親による子への介入は、その子が将来成人して対応能力をもつようになった時点での自己決定の権利行使の可能性を奪うという点で、その子が現時点においても、開かれた未来に対する権利を損なうという (Feinberg 1992, pp.76-89)。

こうしたファインバーグの議論で問題となっているのは既に生まれている子への親による介入であるが、アイガーはこの議論に言及しつつ、これから生まれてくる子の遺伝子や染色体への親によ

る介入がどこまで許容されるかを論じる⁶。許容されない場合として、自らの人生設計を選択するという子世代の自由を侵害する仕方で親が子の特性を選ぶ場合をアイガーは挙げる。ここでの「子世代の自由」は、個人に選択肢を保障するために政府や国家が他者へ介入することを認める点で、もはや非介入としての消極的な自由ではない。アイガーによると、親世代の自由に基づく技術の濫用について検討するには、生まれてくる子の自由を、単に「妨げられない」という消極的な意味で捉えるのではなく、実際に選択が可能だという積極的な意味で捉える必要があるという。この積極的な自由を説明する上で彼はアマルティア・センのケイパビリティ概念を引き合いに出す。それによると、生まれてくる子の自由は、その子にとって選択可能な機能の幅によって捉えられるのであり、外的な制限があるか否かだけでは評価できない（Agar 2004, pp.103-106）。とくに彼が問題視するのは、性的マイノリティへの偏見や差別意識など、道徳的に問題ある見解に基づく親の決定である。彼によると、そのような親の決定が社会の中で一般化した場合、それは生まれてくる子の自由や権利を侵害し、ひいては生き方の均質化を導くという点で、価値多元主義というリベラルな社会の基本的な価値を損なう（Agar 1998; 2004, pp. 146-

157）。親世代の選択に制限を設ける規準の一つとして、アイガーは、親が子に望む生き方と相反する生き方が選択肢として子に残されていないとはならないという規準を提案する（Agar 2004, pp. 103-106, 121-131）⁷。

子世代の積極的な自由や権利を根拠にして親世代の生殖の消極的な自由を制限するという、こうしたアイガーの議論の前提には⁸、善き生の多様な構想やそれに基づく生き方の多様性の尊重というリベラリズムの理念がある（Agar 1998; 2004, pp.100-3, 146-147）。出生前検査の文脈に当てはめて考えると、この「生の多様性の尊重」という態度は、検査の対象となりやすい特定の胎児特性——とくに障害や性別など——をもって生きる生の在り方を尊重する、少なくとも否定しないという、この文脈において——特に遺伝カウンセリングにおいて——強調される考えに一致すると思われる。性別など、特定の性質をもった生命を産まないという親世代の選択は、それが集団として行われた場合、ひいては同世代や次世代において同様の性質をもって生きる人生の選択肢の幅を狭め得る。出生前検査の文脈においては、障害という特性に基づく親世代による子の選択の集積がひいては障害ある人や社会にどのような影響を及ぼし得るかについて検討がされてきた（Kaposy

⁶ 同様の問題は、リベラル優生学の擁護者からも批判者からも検討されている（Buchanan et al. 2000, pp. 322-325; Habermas 2003, pp. 60-66; Green 2007, pp. 107-134; Harris 2007, pp. 73-85; Johnston 2014; Sparrow 2014）

⁷ このような自由理解を採用した場合、アイガーの議論の一貫性が損なわれる可能性がある。なぜなら、スパロウが既に指摘しているように、個人の積極的な意味での自由の実現に国家が寄与しようとするなら、そこには必然的に親のどのような介入が子の善き生の実現を妨げるかについての実質的な判断が伴うはずであり、その判断は善き生に関する何らかの構想に依拠することが避けられない——つまり第一の中立原理を放棄せざるを得ない——からである（Sparrow 2011b, pp. 515-516; 2014, p. 147）。

⁸ 子世代の自由や多様な生の観点から親世代の自由を制限するこうしたアイガーの議論への批判としてはスパロウ（Sparrow 2011b; 2014）や赤塚（赤塚 2016）がある。

2013)。しかし、以下で見るように、この領域での関連技術の急速な発展を踏まえるなら、生の多様性の尊重という態度を、この領域の政府や医療専門職の基本的な態度とすることも困難であるように思われる。

先に触れたが、技術発展により近年、検査対象となる胎児特性の範囲が拡大している。NIPT が登場した当初、多くの国において主な検査対象となっていたのは主要三トリソミーである。これらの疾患は、NIPT が登場する以前から現在に至るまで、複数の国で公的出生前スクリーニングプログラムの対象とされてきた⁹。しかし私的な出生前スクリーニングの領域では近年検査対象となる胎児特性が拡大しつつある。例えば性染色体異数性は、主要三トリソミーに比べると検査精度は劣り、多くの国のガイドラインでは検査結果を伝えることを推奨していないが、日本を含め多くの国で既に検査提供が広がっている (Enzo 2024)。

一定の精度をもって技術的に検出可能な胎児特性のうちどこまでを社会制度上可能な検査対象とするのかの問題は、もはや単なる事実の問題（つまり精度や浸透度等の問題）に還元することはできない。一方で、検査対象となる胎児特性に何らかの制限を設ける場合には、優生学的含意をもつことになる（あるいは差別表出論の批判が該当する）(Chen and Wasserman 2017)。なぜなら、変更不可能なある胎児特性の検査が認められる一方で、例えば性別のように、同じく変更不可能で同程度の検査精度をもつ別の特性については検査が認め

られないということは、言い換えると、個人の決定によって中絶することが許される胎児特性とそうではないものとの区別があるということだからである。そこには個人の決定に基づく中絶から保護すべき生とそうでない生の区別についての社会的な判断が前提とされている。他方で、検査対象に全く公的制限を設けず、検査市場の原理や受検者の要望に応じて検査提供を認める方針を取る場合、公的スクリーニングプログラムをもつ国では財政上負担の問題に加え、情報過多や限定的な選択肢等に起因する自律の侵害や、生まれてくる子の権利侵害、医療における混乱や負担など、様々な実践上あるいは倫理的な課題が指摘されている (Bunnik et al. 2013; Dondorp, Page-Christiaens and de Wert 2016; Stapleton 2017)¹⁰。

技術の急速な発展と普及によって提起されたこうしたディレンマを踏まえるなら、子世代の生の多様性の尊重という態度も、これをそのまま政府や医療専門職に求められる態度とすることは実践上困難であるように思われる。つまり、次世代の生のあり方に対し、社会や政府が間接的にであれ一定の態度をとることは避けられない。それでは、出生前検査の普及や提供に関して政府や社会はどのような役割を果たすべきなのか。

4. 出生前検査の文脈における政府の役割や責任

本論の冒頭で見たように、そもそもリベラル優生学が中立を規準としてきた前提には価値多元主義があり、議論を展開する上で彼らは格差原理な

⁹ 特にダウン症が公的スクリーニングの対象とされてきた要因については幾つかの分析がある (Kaposy 2023; Seavilleklein 2009)。

¹⁰ 技術が提起するこうした倫理的課題は、深刻な倫理的ディレンマとして、NIPT が登場した当初から国際的に議論されてきた。国際的には、胎児特性に関して一定の制限を設ける方針が広く取られてきた。日本では、2024年3月に国の専門委員会が見解を出している (こども家庭庁 2024)。

ど、ロールズの議論を参照している（Buchanan et al. 2000, pp. 65-76, 65-84, Agar 1998, pp. 148-152; 2004, p.137; Green 2007, pp.147-158）。確かに価値多元主義を議論の出発点とする点で、彼らの議論はロールズの議論と共通する。しかしロールズにおける多元主義は、理念や規準を与えるものではなく、正義原理を構想する必要性が生じる背景的事実と位置づけられる（Rawls 2001, pp.1-5, 33-34）。ロールズの理論においてむしろ理念として強調されているのは、善の構想の多様性そのものを保持することよりも、自分なりの善の構想をもち、時にそれを見直し変更しながら、それに沿って生きていくという、人々の生き方を等しく尊重することである（Rawls 2001, pp.18-24）。こうした彼の正義論にあって中立は、あらゆる善き生の構想が社会において等しく支持を受けて繁栄すること——の構想やそれに基づく生き方の多様性が保持されること——を求めているわけではない。むしろある善の構想が広く支持される一方で、別の善の構想が支持を失い廃れることを許容する（Rawls 2001, p.153; Kymlicka 1989）。

こうしたロールズの議論から本稿の問題を考えるための直接的な規準——次世代の生のあり方やそれに対する親世代の決定に対する政府の態度に関する規準——を引き出すことはできないのかもしれない。しかし、少なくとも、出生前検査の普及や提供の文脈での政府の果たすべき役割について、一つの重要な点を彼の議論に依拠して指摘できるように思われる。

これまでの議論で示してきたように、出生前検

査の決定とは、「命の選別」と表現されるような単なる自己決定の問題ではなく、同じ社会に生きている他の人や次世代の生のあり方にも影響を及ぼす決定である。先に見たように、こうした決定をどこまで個人の自由に委ねるのかの問題は、生殖や遺伝に関わる科学技術の発展によって人類に新たに提起された問題である（Selgelid 2000, p.26）。技術発展によって可能になった、あるいは人類に課されるようになった、こうした決定の負担と責任を社会においてどのような形で分担し共有するのかは、極めて公的な問題である。ロールズは、社会的な営みから生じる利益と負担の公平な配分に関する原理の提示を正義理論の主要な役割の一つとしている（Rawls 2001, p.7）が、そうした彼の考えに依拠して出生前検査の文脈における政府や社会の責任について考えるなら、少なくとも言えるのは、医療の場における受検や中絶の決定という、極めて限定的な場面での限定的な選択肢の中での個人の自由にのみ注目して問題を検討するのでは十分でないということである。技術の進展によって可能になった（課されるようになった）生殖の決定に伴う利益と負担とを社会においていかに共有し分担するのか、特に特定の胎児特性のみをターゲットとした検査について一律の情報提供を公的に行うべきなのか、それによって生じうる差別的な含意をいかに除去するかを公的に検討すること、また検討を促すことは、政府や社会の役割だと考える¹¹。

最後に本議論の限界と今後の見通しを述べて稿を閉じたい。本論文は、前半において、中立や非

¹¹ Kaposy は、より重篤な疾患に関する胎児の遺伝的・染色体上の特性への検出可能性が出てきている中でダウン症（トリソミー21）が特段重篤といえないと指摘した上で、ダウン症に対する検査の一律の情報提供を否定している（Kaposy 2023）。

指示的態度を政府や医療専門職の取るべき態度と位置づけることの問題点を指摘したが、後半の検討では、政府の取るべき態度に焦点を当てたため、医療専門職の態度や役割について論じることができなかった。これは本論文の限界である。医療専門職の非指示的態度は、確かに個人の選択への非介入という意味で考えるなら、本論文において指摘したように、事実問題として限界がある。他方で、それに代わってどのような態度が医療専門職として望ましいかをより具体的に示すには、医療における人間関係についての規範的な検討だけでなく、さらに、受検希望の背景にある社会的・文化的・ジェンダー上の要因や医療専門職が医療現場で直面する課題や葛藤など様々な点に関する実証研究を踏まえた検討が不可欠だと思われる。

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Letter

**How Does the Comfort of Outpatient Care Environments
Relate to Patients' Ethical Values?
— Raising Questions in an Underexplored Area —**

Kana Nishida ¹

Kei Takeshita ¹

Tomoari Mori ^{1*}

Outpatient care is the form of healthcare most frequently utilized by the public. Outpatient care depends heavily on patients' ability to communicate openly within limited time and space. Patients are often expected to discuss sensitive matters, express preferences, participate in healthcare decisions, and undergo examinations or procedures involving privacy and vulnerability. Environmental and operational conditions may therefore influence whether ethical values such as dignity, privacy, autonomy, and meaningful participation can be realized.

In this letter, comfort refers to environmental and operational conditions that enable patients to participate in healthcare without unnecessary physical, psychological, or communicative barriers. Existing research has established that healthcare environments influence a wide range of patient-related outcomes, including safety, stress, satisfaction, waiting experiences, and overall quality of care.[1,2,3,4] Moreover, communication, participation, and responsiveness are central components of patient-centered care.[5] Research on dignity in healthcare has further suggested that privacy protection,

communication, staff attitudes, and environmental conditions play important roles in preserving patients' dignity.[6,7] However, these bodies of literature have not sufficiently examined how comfort may support the realization of ethical values in outpatient care. In particular, little attention has been paid to how comfort may support patients in communicating openly, maintaining privacy, preserving dignity, and participating meaningfully in care, or to how experiences of comfort and discomfort may reflect the ethical quality of healthcare environments.

Like ethical values, comfort often remains unnoticed when present and becomes most visible when absent. Patients and families do not necessarily interpret such situations in terms of dignity, autonomy, or privacy. Instead, they may experience them as discomfort, embarrassment, difficulty speaking openly, or a sense that something is "not quite right." These experiences may reveal how patients perceive the ethical quality of healthcare environments. The environmental and operational conditions that give rise to such discomfort can shape how patients experience privacy, dignity, and

¹ Department of Medical Ethics, Tokai University School of Medicine

* Corresponding Author

Email: t-mori@tokai.ac.jp

participation in healthcare decisions. In this sense, experiences of discomfort may provide an important clue to ethical shortcomings that might otherwise remain unnoticed.

Privacy protection and respect for dignity are ethical obligations in themselves and cannot be regarded merely as matters of patient comfort. Nevertheless, comfort may function not only as a condition supporting the realization of ethical values but also as a lens through which patients and families experience the ethical quality of healthcare environments. If experiences of comfort and discomfort are meaningfully connected to the realization of ethical values and the recognition of shortcomings in care, they may offer an overlooked perspective for evaluating outpatient care.

These considerations raise three important questions. How does comfort support the realization of ethical values in outpatient care? How do experiences of comfort and discomfort reflect the ethical quality of outpatient care? And how should outpatient care environments be evaluated from an ethical perspective?

Reconsidering comfort in outpatient care may strengthen connections between medical ethics and healthcare environment research and contribute to the development of more ethically responsive and patient-centered healthcare environments.

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Letter

CDR の制度化に向けた ELSI の役割 —セーフハーバー条項を用いた一試論—

稲葉治久 *

政府は、チャイルド・デス・レビュー (CDR: Child Death Review) の制度化のあり方を 2026 年中にとりまとめるとしている¹⁾。CDR は、子どもの死亡事例を多機関で検証し、再発防止につなげることを目的とするが、その実効性は関係機関間の適切な情報共有に大きく依存している。本稿は、CDR の実効性確保に向けて、単なる情報共有の促進のみならず、責任制限、非公開性及び説明責任をどのように制度設計するかについて、ELSI (Ethical, Legal and Social Issues) の観点から検討を試みたい。それは、CDR に内在する法的障壁にとどまらず、倫理的配慮や社会的受容にも波及する課題が存在しているからである。

CDR で扱われる情報は、医療・福祉・警察等にまたがる高度に機微な個人情報であり、その共有にあたっては慎重な判断を要する。その背景には、情報共有をめぐる制度上の課題がある。個人情報保護法における第三者提供規制・利用目的の制限や公務員・医療従事者に課される守秘義務について、情報提供の適法性や責任の範囲が必ずしも明確とは言えない。また刑事訴訟法上の捜査情報の秘匿、遺族による情報開示の不同意といった実務的制約にも直面している。これらの重層的な制約は現場に萎縮効果をもたらし、CDR の根幹である再発防止に必要な知見の蓄積と活用を妨げるおそ

れがある。

こうした課題への対応として、欧米で制度的基盤の一部として既に運用されている「セーフハーバー条項 (Safe Harbor Provision)」^{2)-5), [1]} に着目したい。これは、善意で行われた情報提供や会議における発言・評価活動について、故意又は重大な過失がない限り一定の責任制限を認めるとともに、議事録等の訴訟利用を制限することで、関係機関が法的リスクをためらうことなく事案分析に参加できる環境を整備するものである。ワシントン州法 (RCW 70.05.170)⁶⁾ における訴訟上の証拠利用制限は、その一例である。そして、セーフハーバー条項の導入に伴う検討すべき領域は、こうした法的障壁の緩和のみでは解決しえない遺族の意向と再発防止という公益との調和、子どもの権利やプライバシーの保護、関係機関間の信頼形成や第三者的検証の確保といった倫理的・社会的課題にも及び、その対応を必要としている。ELSI の枠組みによる検討が求められる理由は、まさにここにあると言えよう。

確かに、訴訟リスクへの対応を重視する米国と、個人情報保護や行政の説明責任への要請が強い日本とでは制度的・文化的差異が存在する。こうした差異を踏まえた上でも、CDR が社会インフラとして構築されていくためには、セーフハーバー条

* 新潟大学大学院医歯学総合研究科
E-mail: hinaba-nii@umin.ac.jp

項の導入可能性を模索しながら制度設計を進めていく必要がある。

注

[1] 本稿における「セーフハーバー条項」とは、米国の Health Insurance Portability and Accountability Act of 1996 (HIPAA) ²⁾における医療情報の非識別化基準 (Safe Harbor Method) と同一の制度を指すものではない。もっとも、一定の条件の下で情報利用を可能とし、公益的目的の達成を支えるという基本的な発想には共通する側面がある。HIPAA の Safe Harbor Method が一定の条件の下で医療情報を非識別化し、その利用及び共有を可能とする仕組みであるのに対し、本稿では、CDR における情報共有と再発防止を促進するため、責任制限、非公開性及び証拠利用制限等の制度的保護を付与する仕組みを総称する概念として用いる。英国の CDR における Safe-Space Principles³⁾ や、米国 ⁴⁾及び豪州 ⁵⁾の Confidentiality ・免責制度等にみられる共通の制度理念を踏まえたものである。

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Journal information**《目的と領域 -Aims and Scope-》**

CBEL Report は日本における生命倫理・医療倫理研究のますますの発展に資するために創刊された学術雑誌である。当該分野の、新たな研究成果の開かれた発表の場として、また国際的な学問交流の場として、オープンアクセスの形で出版される。アカデミアの専門的研究の活発な知的交流の場を作り出すこと、およびそれに基づき全ての学問分野の研究者・学生ら、医療従事者、各種倫理委員会の委員、政策担当者、等に対して優れた知見を提供することをその使命とする。

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- ② 翻訳論文 (translated article) : 他の媒体にすでに投稿した論文を翻訳したもの。英語への翻訳および日本語への翻訳を受け入れる（元の言語については限定を付さない）。投稿にあたっては著作権の許諾を証明する書類を添えること。

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