



## Protection of Conscience Project

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# In Defence of the New Heretics: - A Response to Frank Archer

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## Introduction

*The May 2000 number of the Canadian Pharmaceutical Journal included a column on professional ethics by Frank Archer, Bio-Medical Ethics Tutor, University of British Columbia, Faculty of Pharmaceutical Sciences & Division of Health Care Ethics. Mr. Archer is also an Ethics Committee Member, College of Pharmacists of British Columbia. In his CPJ column, directed to disputes about the 'morning after pill', Mr. Archer implied that there is no right to conscientious objection, and insisted that pharmacists must ensure that their patients "are provided with recognized pharmacy services, despite personal religious or moral objections."*

*The following article addresses, in general terms, Mr. Archer's erroneous legal opinions and inadequate ethical reflection. For a more detailed analysis of these problems see the article by lawyer Iain Benson, noted under "Further Reading" at the end of the article.*

*The Project has also responded to later public statements by Mr. Archer, and Project Report 2001-01 reviews the prejudicial statements made in the CPJ article that the author has failed to substantiate*

*This article and that of Iain Benson were submitted to the Canadian Pharmaceutical Journal in July, 2000, but were not published.*

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**B**efore taking action that they may later regret, those who would coerce or discriminate against conscientious objectors, or drive them from the practice of pharmacy, would do well to revisit Frank Archer's critical review, "Emergency Contraceptives and Professional Ethics" (Canadian Pharmaceutical Journal, May 2000, Vol. 133, No. 4, p. 22-26). Although many pharmacists have accepted the review as a definitive ethical statement, it is insufficient warrant for repression of freedom of conscience within the profession.

From a purely practical perspective, the first concern is a matter of law rather than ethics. Mr. Archer asserts that pharmacists are obliged to provide services "despite personal religious or moral objections." He also warns "that conscientious objection, *unlike a right* (italics added) usually carries with it certain penalties if acted out."

Mr. Archer's implicit claims that conscientious objection is not a right and that it is usually punished should be re-examined in the light of the Charter of Rights and provincial human rights legislation and jurisprudence. One finds that freedom of conscience and religion are guaranteed as fundamental freedoms, and that there is a duty to accommodate the exercise of those freedoms by conscientious objectors. In this regard, readers should take care that they are not misled by the analogy used by Mr. Archer.

"Imagine," he writes, "if a power company allowed its employees to refuse to engage in activities to which they had a moral objection."

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The case thus stated and the rhetorical questions following invite a serious misinterpretation of the law. Contrary to the impression created by the review, even a company with a monopoly is legally required accommodate employees who refuse to engage in activities to which they object for reasons of conscience. The extent of accommodation required depends upon the facts of the case, for

neither rights nor obligations are absolute. But the existence of a monopoly is only one fact among many to be considered. Moreover, it is hardly the most important, unless one's ethical perspective is primarily shaped by a desire to protect the economic or professional status quo.<sup>1</sup>

All of this suggests that the advice of qualified legal counsel is to be preferred to that of Mr. Archer, at least with respect to accommodation of conscientious objectors. It also raises a concern that misapprehension of the law engendered by the *Journal* article is leading to increased intolerance. It is not a coincidence that this article was cited at the recent Canadian Pharmacy Association conference in Saskatoon, and that pharmacists there who spoke on behalf of conscientious objectors were told by more than one colleague that they should leave the profession.

Of greater moment are Mr. Archer's accusations that conscientious objectors believe that they are entitled to lie to and mislead patients, and that they wish to obtain patient consent by dishonest means. Circulation of unsubstantiated and prejudicial generalizations offends against three of the principles espoused by Mr. Archer: beneficence, non-maleficence and justice. In some forums, the term of art for the practice is "poisoning the workplace environment."

Remarkably similar allegations were made in the March/April bulletin of the College of Pharmacists of B.C. A request that the Registrar provide evidence to support the allegations has gone unanswered. The omission of evidence from Mr. Archer's later review was, perhaps, an oversight that will soon be rectified by the author and the editor of the CPJ.

It is to Mr. Archer's credit that he accurately and succinctly states the position of many conscientious objectors in another respect: "They assert and defend the right to life of individuals from fertilization to natural death and argue that any drug that interferes with the continuation of this life is killing a human being."

Unfortunately, his response is confused and seriously weakened by a failure to recognize and make appropriate distinctions. The mocking tone and facetious rhetorical questions he employs to dismiss

opposing views contribute nothing of substance to the discussion.

Begin with the science. Contrary to what might be understood from Mr. Archer's review, conscientious objectors do not regard zygotes, sperm, egg and skin or liver cells as identical in nature simply because all are alive. On the contrary: they would be quick to cite scientific data to demonstrate the absurdity of such a claim.

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Regrettably, Mr. Archer adopts the popular but inaccurate and unscientific term "fertilized egg." Once fertilization has occurred, neither egg nor sperm exist. What exists is a human zygote - a unicellular human embryo.<sup>2</sup> Conscientious objectors who describe this as the first stage in human development would also describe a zebra zygote as the first stage in zebra development, and the monkey zygote as the first stage in monkey development. Alternatively, they would describe the formation of these zygotes by fertilization as the beginning of human, zebra and monkey life respectively, or the zygotes themselves as the first stage in the development of human, zebra or monkey individuals. Another name for a human individual is human "being": that is, an existing human individual.<sup>3</sup> What should be noted is that these formulations accurately reflect current scientific data, and are entirely consistent with standard texts on human embryology. They are not religious statements, nor are they derived from religious belief. They do not become religious statements, nor cease to be scientifically accurate, simply because they can be used to support a religious belief or moral position.

Concerning the limits of science, however, Mr. Archer correctly states that science cannot establish a right to life from conception until natural death. Such a claim arises from some type of belief, not from science. What he fails to acknowledge is that a claim that there is no right to life from conception is also a statement of belief. To compel conscientious objectors to abandon the former position and accept the latter would not be a vindication of scientific fact, but a victory for despotic faith.

This is apparent in Mr. Archer's assertion that pharmacists are obliged to set aside personal religious or moral convictions" and accept the "ethical underpinnings" of the profession . He criticizes conscientious objectors because what they propose is "at variance with the concept of patient-centred practice" and a "deviation from accepted professional ethical standards."

Whence come these ethical underpinnings, concepts and standards? Not from science, to be sure; ethics and morality are not within its purview. Thus, when Mr. Archer condemns "deviation" and "variance" he is not insisting upon scientific integrity, but ethical conformity. Yet at no point does he demonstrate the superiority of the ethical judgement that he proposes to force upon unwilling colleagues.

In fact, Mr. Archer's judgement is not universally accepted, *even by those who work from the same ethical principles*. The Canadian Medical Association, for example, does not require physicians to perform or to refer patients for abortion, assisted suicide or euthanasia. The American Society of Health-System Pharmacists expects employers to reasonably accommodate conscientious objectors; its policy on assisted suicide specifically notes the primacy of individual conscience. Dr. Jim Lane,

chair of the BC Medical Association's Council on Health Promotion, recently stated that physicians “would never accept” the ethical approach being taken by the College of Pharmacists of BC.<sup>4</sup>

These differences and disagreements are a symptom of a deeper problem with bioethics principlism and its application in clinical ethics . Mr. Archer refers to “the four generally accepted principles of biomedical ethics”: non-maleficence, beneficence, justice and autonomy. These first principles - statements of faith - are expressed in the Four Commandments: do no harm, do good, be fair, and respect patient choices. Problems arise, however, because the application of the Four Commandments is impossible without defining what is meant by harm, by good, and by fairness. Is causing the death of the patient “doing good”? Is prolonging life “doing no harm”? Is it “fair” to expend health care resources on severely deformed neonates?

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Answers to such questions depend primarily upon prior assumptions about the nature of the human person, the nature of human relationships and understanding of right and wrong. These are all faith-based concepts, yet bioethics principlism pretends to provide a means of arriving at ethical conclusions that are grounded in ‘neutral’ fact, not belief. Mr. Archer, who is much concerned about “dishonest argument”, does not appear to recognize that fundamental weaknesses in secular bioethics are cloaked by false pretence.

The pretence is the assertion that only scientific (i.e., empirical) knowledge partakes of reality, and that only ‘neutral’ facts, empirically established, are a legitimate basis for laws and policies in society. Those who adhere to this view excoriate religious believers or principled moralists who try to influence public affairs, damning them for attempting to impose their beliefs upon others. Author Lois Sweet describes this as “secular fundamentalism.”<sup>5</sup> What is becoming apparent, however, is that secular fundamentalists, convinced of the superiority of their own beliefs, are doing exactly what they condemn others for doing.

For secular fundamentalists are believers; they cannot be otherwise. They believe that human dignity exists, that all men are equal, that human life is worthy of respect, and they often believe in the biomedical principles of beneficence, non-maleficence, justice and autonomy. None of these are facts that have been or can be established by science.

Even if they explicitly profess atheism and agnosticism, secular fundamentalists have faith. That God does not exist, or has nothing to do with man's daily life, or cannot be known, are properly religious or theological propositions maintained by faith, not by empirical evidence.

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Nonetheless, secular fundamentalists persist in the belief that they do not believe - that they know. More important, they believe (for they cannot know) that theirs is that special kind of knowledge required for the just ordering of society, and that

only people who share their understanding - who believe what they believe - can be trusted with the management of public affairs. When this hidden faith becomes dominant among governing elites, they not only dismiss critiques of law or public policy that are informed by religious convictions, but tolerate religiously motivated acts only to the extent that they are consistent with what social critic Iain Benson has described as “the hidden faith of this new secularity.”<sup>6</sup>

The hidden faith of governing elites in modern society is as great a threat to freedom of conscience and religion as was the manifest faith of governing elites in days gone by. Fire, dungeon and sword are out of fashion, but in these more comfortable times, compliance can often be secured by threats of economic and social sanctions, or by professional excommunication of the new heretics who dare to live and work by what Mr. Archer repeatedly terms “personal” moral or religious beliefs.

It is as if such convictions are the ethical quirks of isolated individuals that do not deserve accommodation in the public domain because they are deemed too narrow and private when compared to the “generally accepted” ethics of Mr. Archer. In the case of religious believers, however, these beliefs are held in common with hundreds of thousands or even millions of people, living and dead. Non-religious objectors may make similar claims with respect to their own ethical systems. If moral convictions so widely shared are yet too narrow and private to be worthy of accommodation, Mr. Archer’s specialized branch of ethics is not less so.

Two points may be made in conclusion.

First: leaving aside its other shortcomings, Mr. Archer’s review has not demonstrated that people who do not share his personal ethical beliefs - specialized, if you will - should be excluded from the profession of pharmacy.

Second: Mr. Archer and the Canadian Pharmaceutical Journal should acknowledge that the review’s presentation of the law on accommodation was erroneous, and retract and apologize for unsupported and prejudicial accusations made against conscientious objectors. One hopes that this will help to re-establish a respectful environment in the workplace for all members of the profession.

## Notes

1. For a discussion of accommodation see Esau A., *Islands of Exclusivity: Religious Organizations and Employment Discrimination*. 2000 UBC Law Rev 719 - 827, and a following "Case Comment" on the Ontario Human Rights case of *Brillinger v. Brockie* by Bradley Miller in the same issue at pp.829 - 839.
2. O’Rahilly R. and Müller F. *Human Embryology & Teratology*. New York: Wiley-Liss, 1994, p. 16, 19. In Irving DN. “When do Human Beings Begin? ‘Scientific’ Myths and Scientific Facts.” *International Journal of Sociology and Social Policy* 1999, 19:3/4:22-47.  
<http://www.consciencelaws.org/Examining-Conscience-Issues/Background/GenScience/BackGenScience01.html>
3. Moore KL and Persaud TVN. *The Developing Human*. Philadelphia: W.B. Saunders Company, 1998, p. 2; Larsen WJ. *Human Embryology*. New York: Churchill Livingstone, 1997, p. 1; also O’Rahilly and Müller, p. 20. In Irving DN. *supra*
4. Haley LH. “Legal issues halt BC’s ECP Program.” *Pharmacy Connects*, June 2000. Available from: URL: <http://www.pharmacyconnects.com/content/phpost/2000/06-00/legalBC.html> (Accessed

10 July, 2000)

5. For the insights into “secular fundamentalism” the author is indebted to Iain Benson, B.A. (Hons.), M.A. (Cantab.), LL.B, Director of the Centre for Cultural Renewal (Formerly the Centre for Renewal in Public Policy). His analysis of the subject has just appeared in the University of British Columbia Law Review. He has written a popular summary of the main points in the Law Review article in “There are no Secular Unbelievers”, which appeared in *Centre Points*: Vol. 4, No. 1, Spring, 2000, the newsletter of the Centre for Cultural Renewal.

<http://www.consciencelaws.org/Examining-Conscience-Issues/Ethical/Articles/Ethical10.html>

6. Benson IT. *Notes Towards a (Re) Definition of the "Secular."* (2000) 33 U.B.C. Law Rev. 519-549, Special Issue: "Religion, Morality, and Law", p. 521.

### Further Reading

Benson, Iain T., “There are No Secular ‘Unbelievers’”. *Centrepoints* #7, Spring 2000

<http://www.consciencelaws.org/Examining-Conscience-Issues/Ethical/Articles/Ethical10.html>

Benson, Iain T., *"Autonomy", "Justice" and the Legal Requirement to Accommodate the Conscience and Religious Beliefs of Professionals in Health Care*. (Revised March 2001)

<http://www.consciencelaws.org/Examining-Conscience-Issues/Legal/Articles/Legal04.html>

Murphy, Sean, *Establishment Bioethics*.

<http://www.consciencelaws.org/Examining-Conscience-Issues/Ethical/Articles/Ethical16.html>

Protection of Conscience Project, *Report 2001-01: Re: College of Pharmacists of British Columbia-Conduct of the Ethics Advisory Committee* (26 March, 2001 )

<http://www.consciencelaws.org/Conscience-Archive/Conscience-Project-Reports/Report-2001-01.html>