

Keeping Faith in Community: A Pastoral Response and Ethical Argument

Rev. Joseph E. Bush*

It is with some irony that I begin this essay on the subject of counseling ethics for a symposium issue of the *Journal of Criminal Law* with the observation that church professionals are speaking less and less of their work with parishioners as pastoral “counseling.” In fact, the clergy are even speaking less frequently of themselves as “professionals.” The disinclination to speak of ourselves as “professionals” and of our work as “counseling” would seem to be partly out of fear of litigation in a day when “counselors” are often licensed by the State and in accordance with the establishment of professional standards of practice. Ronald K. Bullis and Cynthia S. Mazur accordingly advise clergy and religious counselors to be very cautious in claiming to be doing professional counseling or even “pastoral counseling,” as such claims would need to be consistent with applicable state licensing laws.¹ I have been on record previously, however, of both advocating the professionalism of clergy and of recognizing that counseling is an inextricable part of pastoral ministry.² Nevertheless, in keeping with the trend of my profession, I will often refer in this essay more precisely to “pastoral advice” or “moral guidance” or other phrases in order to connote specific aspects of the religious counseling typically provided by members of the clergy.

Also by way of introduction and as a matter of definition, it might be helpful to notice a distinction in the use of the word “agency.” When speaking of legal obligations, an agent is said to act on behalf of a principal. In the language of moral discourse, however, a moral agent is understood to be one who has the capacity for moral action oneself. There may be no other individual or entity identified as the principal. Sometimes we may refer to “autonomous” moral agents in further clarification. In the hypothetical scenario which is the subject of these essays, there are two moral agents being discussed—the counseling professional and Steven. The scenario is written with the agency of both in mind: How would the counseling professional advise Steven regarding “what he [Steven] should do”? As a member of the clergy and as Steven’s hypothetical pastor, I would normally understand my agency within the pastoral role to be to encourage Steven’s own moral agency as a decision-maker.

* Professor and Director of Practice in Ministry and Mission, Wesley Theological Seminary, Washington, DC. Ordained elder in The United Methodist Church.

¹ RONALD K. BULLIS & CYNTHIA S. MAZUR, LEGAL ISSUES AND RELIGIOUS COUNSELING 52 (1993).

² JOSEPH E. BUSH, JR., GENTLE SHEPHERDING: PASTORAL ETHICS AND LEADERSHIP 58 (2006).

The first half of this essay will describe various dimensions of pastoral response to Steven that seem salient in this hypothetical scenario. The second half of this essay will then offer in greater theoretical detail ethical justification for this pastoral response.

I. PASTORAL RESPONSE

A. *Moral Guidance*

The provision of moral guidance is accepted by many to be a legitimate aspect of a pastor's role.³ It is sometimes held to be in tension with a duty of providing pastoral care—especially when such pastoral care is informed by non-judgmental approaches such as Rogerian non-directive counseling. But when a parishioner specifically requests moral guidance, a pastor would be remiss not to engage the moral topic with that parishioner. Pastoral care and moral guidance meet here, as my initial intent would not be to direct Steven but to clarify his moral quandary, his moral choices, his moral resources, his moral intuitions, and his own sense of moral direction. If he is asking me explicitly what he should do, I would turn the question back, asking: "What does your conscience seem to be telling you?" Especially if Steven has been struggling between social responsibility and irresponsibility in his lifestyle or in his commitments, I would want to encourage his greater sense of moral responsibility.

The emphasis in decision-making ethics often focuses on the attempt to discern and justify a right course of action. This question of determining the right course of action often assumes a situation of moral dilemma—in which the moral agent is choosing between two mutually exclusive goods or between two mutually exclusive wrongs. Not all situations of moral decision-making, however, are so logically dilemmatic. There are situations of mere moral confusion in which an agent is simply unsure of how to proceed—perhaps given emotional complexities in the situation. There are also situations typified more by moral courage and cowardice than by either moral confusion or quandary. These would be those situations in which an agent does have a strong sense of the right course of action, but is afraid to pursue it. The scenario with Steven might represent such a situation. By approaching the pastor, Steven may already be demonstrating moral resolve to come forward but may be seeking greater courage to do so. If such is the case, the pastor would be in a position to offer such encouragement. The pastor can begin to determine the type of moral situation by asking Steven questions to clarify the choices that Steven is facing and Steven's reasons for considering one choice or another.

To the degree that the parishioner seems both genuine in his expression of conscience and accurate in his understanding of the situation, the pastor is able to

³ See REBEKAH L. MILES, *THE PASTOR AS MORAL GUIDE* 4 (1999); GAYLORD NOYCE, *THE MINISTER AS MORAL COUNSELOR* 56–60 (1987).

encourage the parishioner in those moral leanings. However, if Steven has demonstrated a lack of moral integrity and concern for others—as would seem to be the case with his apparent murder of someone on behalf of drug-dealing gang members—I would be both keen to support his emerging moral conscience and suspicious of his sense of moral virtue and obligation. One of the differences between this hypothetical scenario and the *Morales* case⁴ is the lack of any mention of remorse in the hypothetical scenario. In the *Morales* case, the self-confessed murderer, Jesus Fornes, was reportedly remorseful for the crime and concerned for the person who had been wrongly convicted.⁵ If a parishioner is voicing such remorse and a desire for repentance, then the pastor's response as moral guide is facilitated. The pastor is able to respond to the parishioner's own expression of moral conscience and to encourage the parishioner's resolve to attempt to rectify the situation.

However, the parishioner's moral conscience might be dulled, his understanding mistaken, his motives mixed, and/or his principles skewed. He may be seeking advice primarily to avoid adverse repercussions from the law, a gang, or his family. He may be hoping to settle his feelings of guilt through self-justification or rationalization of his actions. He may be expecting reassurance of divine forgiveness in order to proceed without amendment of life. The pastor might need to listen carefully in order to discover how Steven is understanding his own situation and to discern the reasons that he is now approaching the pastor for advice. The pastor may also need to speak clearly and deliberately to help Steven to name the moral dimensions of his problem and to explore the courses of action that are open to him. This is more than simply a non-directive matter of asking leading questions of Steven and helping him to explore his tentative responses. This is a matter of helping Steven to name the injustice, his own responsibility in it, and to urge his rectifying action. It is to introduce moral judgment even while staying in pastoral communication with Steven.

B. Referrals

If Steven is to come forward to confess to this crime, as I would encourage him to do, he should do so with legal counsel. While I would encourage him to confess, I would not want him to do so naively. He would need legal advice to know how to come forward in such a manner as to have both the greatest effect on David's behalf and the least adverse results on his own or on others' welfare. (In the *Morales* case, timing was of greater importance than in this hypothetical scenario; Fornes was coming forward after the convictions but before the sentencing of Morales and Montalvo with the apparent hope of a timely intervention on their behalf.⁶) My referral for Steven, then, would be to an

⁴ *Morales v. Portuondo*, 154 F. Supp. 2d 706, 727 (S.D.N.Y. 2001).

⁵ *Id.*

⁶ *Id.* at 713.

attorney that would be able to facilitate that which he, hopefully, is now resolved to accomplish by coming forward. I would ask him if he already has an attorney and if he is satisfied with that attorney's ability to understand his concerns and to represent him. If not, I would offer suggestions of other lawyers to him. I would also ask Steven if he would think it helpful for me to communicate with his lawyer—either by accompanying Steven in person to a consultation or by communicating on my own.

I would also want to refer Steven to a mental health professional if he is not already seeing one. Murdering people is not normal behavior. Steven would seem to be troubled beyond the scope of the immediate problem and beyond the competence of caring pastors. With both of these referrals, though, I would want to stay in pastoral relationship with Steven. For pastors, referral is not like a baton in a relay race. Pastors of congregations remain in pastoral relationship with their parishioners even while they might refer them to others (such as lawyers and mental health professionals) for their professional services or counseling. Pastors should also continue in relationship with parishioners when they become imprisoned or hospitalized.

C. Spiritual Care

While the immediate problem is Steven's decision about whether to come forward to authorities in order to confess to this murder, and while this would seem to be the primary reason for Steven approaching his pastor, this matter of moral guidance and decision-making ethics is framed within the context of a pastoral relationship. While pastors may provide many different kinds of leadership and service within a parish, and while they may offer many kinds of advice to parishioners, the primary relationship is one of spiritual companion. The pastor is interested in the spiritual welfare of all people in the parish—those such as Steven who approach the pastor for advice as well as those who may not.

The pastor has a special relationship with the members of the pastor's congregation. In a Christian congregation, it is often understood to be a covenantal relationship marked by baptism, and reinforced by worship together. Sometimes, this special relationship between pastor and congregants might be understood in legal terms as contractual and perhaps informed by the rules and polity of the overarching denomination. But the corporate "contract" is also of a spiritual nature in covenant with Christ who initiates the relationship and with all those—even members of other congregations and other denominations and in other parts of the globe—who are incorporated into the mystical body of Christ. Indeed, this spiritual community is understood to transcend time and mortality and to include those who have lived and died faithfully before us.

The pastor's relationship with a particular congregant might also be understood as fiduciary. But because the relationship between pastor and congregant is nested within this wider and deeper fellowship, the faith, the *fides*, kept between pastor and congregant is also a faith that is shared within this broader

and deeper fellowship.⁷ The primary spiritual question for Steven that the pastor should be asking is: How is Steven's relationship with God? A corollary question for their mutual spiritual discernment is: How is God calling to Steven? The wider spiritual fellowship that frames this pastoral encounter makes demands on Steven as well as Steven's pastor. How might Steven, as well as his pastor, be called to love and serve thy neighbor or be called to a ministry of reconciliation? In short, a spiritual relationship involves them mutually in discerning together how God might be calling Steven both to his own salvation and to his own ministry to serve others in the community.

In addition to conversation surrounding the matter of moral guidance, then, this pastoral relationship might also involve prayer and theological reflection. Prayers might be made for any of the individuals involved in this matter as well as for Steven in his struggle to discern the right course of action and the courage to pursue it. Prayer might occur at any time during this pastoral encounter to focus both Steven and his pastor on God's presence with everyone involved and to draw on spiritual resources to help them in deliberating about the problem.

Theological reflection might also occur at any time during this pastoral encounter. Theological reflection is to make explicit the ways in which both Steven and his pastor might be understanding all of these relationships and dynamics in light of their relationship to God. Moral guidance might precede theological reflection, or it might follow theological reflection. More likely the two might be more interwoven, as theological reflection informs moral deliberation and as moral choice provokes theological ponderings. Also, both prayer and theological reflection can persist in this pastoral relationship beyond the immediate crisis into future encounters between pastor and parishioner.

II. JUSTIFYING RESPONSIBILITY

Another way to speak of encouraging a person's agency is to speak of encouraging that person's responsibility. Responsibility, though, has multiple meanings. One way of categorizing reasoning about responsibility is with reference to temporal perspective. Is our understanding about responsibility oriented primarily to past actions, present decisions, or future possibilities? The discussion about responsibility thus far in this short essay has been oriented primarily to past action (the question of culpability—the occurrence of a murder and a conviction) and to present decision (What should Steven now do, and how ought his pastor advise him?) Another perspective attends to future consequences to determine the merits of present action. This more utilitarian approach to responsibility seeks to minimize harm and maximize benefit for everyone—not only for those most immediately involved but also for society as a whole.

⁷ One who has poignantly emphasized the importance of the congregation as a community of trust in understanding pastoral ethics is BARBARA J. BLODGETT, *LIVES ENTRUSTED: AN ETHIC OF TRUST FOR MINISTRY* 9–10 (2008).

A. Consequentialism

This last, consequentialist, approach to ethics was elaborated and popularized in 1966 as a “Christian” method in ethics by Joseph Fletcher who equated such consequentialism with the biblical command to love.⁸ This perspective not only telescopes to the consequent horizon of present action, it also widens in scope to consider the consequences to everyone. From this perspective, one must not only consider what is best for David who is falsely accused and convicted of homicide. One must also consider what is best for the families of both David and Steven, for the families and friends of the murdered victim, and for the society as a whole. Society as a whole, in this scenario, is suffering from drugs and from the threat of drug-related violence. From a utilitarian perspective, Steven’s pastor should also be thinking of the potential harm to society by allowing the innocent to be punished and the guilty freed in this instance. This would further incline the pastor to urge Steven to confess his crime to the authorities. Even if it did not have the desired effect of freeing the innocent from undeserved bondage, it still might serve to diminish the potential of Steven’s ongoing threat to others’ well-being.

Two objections to this line of reasoning, though, become readily apparent. First, for the pastor to advise Steven in a way that might result in his personal harm for the sake of the greater good is not to honor the pastoral relationship as a fiduciary one. Even if one interprets a pastor’s fiduciary duty to lie more properly within the larger community rather than exclusively to a single parishioner on the analogy of “client,” this still seems like a rather harsh way of regarding a parishioner who is in fact placing trust in the pastor.

Second, a more general criticism of consequentialist moral reasoning is that one cannot in actuality predict the consequences of others’ actions with precision. If Steven were to come forward (or even if he were to not), one would not be able to know with certainty how others (such as judges and juries) will respond to his confession. Other individuals are their own moral agents making their own decisions based on their own interpretations of the facts of a situation.

B. Deontology

This problem of predictability provides both a criticism of consequentialist ethics and an argument for a more deontological duty of veracity. From a Kantian perspective, lying can never be justified—even if ostensibly to prevent murder—because a lie negates the very principle of rational autonomy that forms the basis of ethics. From this principled perspective, present demands—not future possibilities—frame the requirements of responsibility. A lie not only diminishes the humanity of the liar; by deceiving others, we hinder their own respective

⁸ JOSEPH FLETCHER, *SITUATION ETHICS: THE NEW MORALITY* 26 (1966).

exercise of autonomy as reasonable decision-makers. Truthfulness, in this perspective, is constitutive of the very basis of ethics.⁹

The biblical commandment in Exodus 20:16, “Thou shalt not bear false witness against thy neighbour,”¹⁰ can be interpreted similarly as positing truthful testimony as constitutive for the very establishment of justice. While this commandment is popularly perceived as prohibiting lying in general, the particular context presented would seem to be the ancient corollary to a court or a legal trial. Since people’s welfare, livelihood, reputations, and freedom are at stake in the courts of power, the commandment seems to imply that one ought not to wrongly accuse or testify falsely against another.

From both a consequentialist and a deontological perspective, I have been arguing that the pastor should encourage Steven in his truthfulness—even if at the risk of Steven’s liberty. To advise Steven in this way is not only simply to ensure safety for society, it is to nurture Steven in his very autonomy, his humanity, his virtue, and his relational and spiritual health. As pastor, I would be so inclined in counseling Steven, even if he were not explicit in his request for my advice. Of course, were Steven to ask for such advice, I would be even more obliged by his request—as a matter of honoring and keeping faith with him. Even without such an explicit request, however, it would be in keeping with the pastoral role to encourage a parishioner toward greater spiritual perfection and moral virtue. This is not simply about the pastoral role, however. Professional responsibility is not facilely formed from the pastoral “role,” in this understanding, but rather respective understandings of role and responsibility are seen to be mutually informing each other in the pastor’s relationship with Steven.

C. Roles and Rules

Writing about professional ethics in general and pastoral ethics in particular, Karen Lebacqz has elaborated on the relationship between role and responsibility. A professional role, in her opinion, can be the beginning point for reflection about professional ethics, but as such it provides a conceptual link between situations and pertinent moral norms and values.¹¹ The role alone does not determine moral responsibility in a situation, but it does make more salient the relevance of moral

⁹ IMMANUEL KANT, *GROUNDWORK OF THE METAPHYSICS OF MORALS* 15 (Mary Gregor ed. and trans., Cambridge University Press 1998) (1797); Immanuel Kant, *On a Supposed Right to Lie from Altruistic Motives*, in *CRITIQUE OF PRACTICAL REASON AND OTHER WRITINGS IN MORAL PHILOSOPHY* (Lewis White Beck ed. and trans., University of Chicago Press 1949) 346–50 (1788), which was reproduced and discussed by SISSELA BOK, *LYING: MORAL CHOICE IN PUBLIC AND PRIVATE LIFE* 37–39, 267–72 (1978). *see also* ARTHUR J. DYCK, *ON HUMAN CARE: AN INTRODUCTION TO ETHICS* 53 (1977).

¹⁰ *Exodus* 20:16 (King James).

¹¹ KAREN LEBACQZ, *PROFESSIONAL ETHICS: POWER AND PARADOX* 31–43 (1985)

resources to determine one's actual duty. Among the moral resources that Lebacqz considers are the *prima facie* moral duties elaborated by W. D. Ross.¹²

W. D. Ross notices that while actual duty is determined in concrete situations and relationships, *prima facie* moral obligations may inhere in those relationships and help to inform one's actual duty. Some are forward-looking toward the consequences of actions—duties of nonmaleficence (not harming), beneficence (doing good), and self-improvement. Others attend to the obligations enjoined in relationship, perhaps through prior commitment or action: duties of reparation (righting a wrong), gratitude (acknowledging a kindness), justice (which for Ross involves a meritorious distribution of benefits), and fidelity (such as keeping promises).¹³ According to Lebacqz, one's professional role allows one to connect these *prima facie* obligations more concretely with the demands of particular situations and relationships.¹⁴

Given this approach, both Steven and his pastor might be seen to be weighing the various obligations putatively present in this scenario—not only the question of preventing harm and maximizing benefit, but also those obligations entailed in the history of these relationships. Does a duty of reparation oblige Steven or his pastor to seek to correct a miscarriage of justice? Does a meritorious understanding of justice seek to place the burden of punishment more precisely on Steven rather than David? Moreover, how does a consideration of these various dimensions of *prima facie* duty oblige Steven or his pastor toward the family and friends of the one murdered? These are questions that Steven and his pastor can explore together, albeit with less technical jargon and more heartfelt intuition. This approach allows for an understanding of responsibility to emerge that is both forward-looking to the consequences of action and past-respecting regarding promises made, wrongs to be righted, or kindnesses to be gratefully acknowledged.

The question of the applicability of a duty of confidentiality, too, might be weighed within this framework. From this perspective, confidentiality cannot simply be assumed as an absolute moral requisite governing the professional relationship. Rather, the actual stringency of a *prima facie* duty of confidentiality is to be determined within the context of the particular situation. Many ethicists, such as Sissela Bok, consider a duty of confidentiality to be predicated upon duties of promise-keeping and veracity.¹⁵ Such confidentiality is justified in order to keep true to a promise made. Professional confidentiality is also seen to serve the interests of clients, of those being served, and of society as a whole. Interpreting Bok with reference to pastoral ministry, I have elsewhere argued that the stringency of a duty of pastoral confidentiality increases to the degree that such a promise of confidentiality has been made explicit, that confidentiality protects the vulnerable from harm, and that the circle of confidentiality includes legitimate

¹² *Id.* at 24–30.

¹³ W. D. ROSS, *THE RIGHT AND THE GOOD* 21 (1930)

¹⁴ LEBACQZ, *supra* note 11, at 37–41

¹⁵ BOK, *supra* note 9, at 152.

claimants on the confidential information.¹⁶ Applying those criteria to this scenario, it would seem to me to build a relatively weak case for confidentiality unless the pastor explicitly promises confidentiality to Steven. The direction of the argument in this essay, however, has been to support the pastor's encouragement of Steven's self-disclosure rather than to justify either the breaking or keeping of pastoral confidence.

A limitation of role-based morality becomes apparent upon further reflection on this scenario within the context of this symposium. The roles being contemplated in this symposium are the professional roles of pastor, psychologist, and lawyer. Steven, too, can be seen to be operating within the morality of a role that he has assumed—that of gang member and drug dealer. Steven can be seen to be exhibiting such virtues as loyalty and fidelity—both to the gang of which he is a member and to David with whom he has a relationship. Steven's virtue and his moral regard for David may indeed be part of his motivation for having this pastoral conversation. It may also be the primary reason that he would confess to the authorities—to protect David to whom he may feel specific obligation rather than to the wider community or to the victims of his crime. In fact, such role-based morality may be the primary moral resource available to both Steven and his pastor as they contemplate this situation together. Still, it becomes apparent that these role-based moral resources may be limited by the moral legitimacy of the role with which Steven identifies. Less immediately apparent is that the same can be said for the more ostensibly legitimate roles of the professions of lawyer, psychologist and clergy. These, too, entail role expectations which professional ethics should be prepared to challenge rather than simply assume.

III. CONCLUSIONS

This essay began with a response to the "Counseling Hypothetical" scenario from a pastoral perspective. The second half of this essay has then elaborated an ethical argument to justify this pastoral response. This argument has evaluated pastoral responsibility in terms of both consequentialist and deontological ethical theories—looking both ahead to the foreseeable consequences of the pastor's advice to Steven and looking back to the nature of the relationships establishing *prima facie* obligations. From every perspective, I have attempted to show that Steven's pastor should encourage Steven to be forthcoming to authorities and to confess to this crime even if at a cost to Steven in risking his liberty.

A final perspective on responsibility, though, places this conversation within a wider frame. The influential theological ethicist, H. Richard Niebuhr, acknowledged both the importance of consequentialist and deontological ethics. He sought both to include and amend these approaches, however, by advocating an

¹⁶ BUSH, *supra* note 2, at 106–26.

ethics of responsibility, or an “ethics of the fitting.”¹⁷ Prior to the questions, “What is right?” and “What is the good?” according to Niebuhr, is the question, “What is going on?”¹⁸ A fitting response to what-is-going-on would likely include both deontological and consequentialist concerns. Niebuhr would have us begin ethical reflection, though, by describing actual relationships and interpreting them interpersonally, sociologically and theologically.¹⁹

Niebuhr’s framework has guided my reflections in this essay throughout, but the professional relationship has been evaluated primarily in interpersonal terms and with reference to the duties entailed in interpersonal relationships. A sociological assessment of this scenario, though, might follow up on the insipient critique of professional roles above. These roles are shaped by the expectations of those social institutions which we represent: courtrooms, ecclesia, and clinics. Hopefully the conversation within this symposium as a whole will also attend to an ethical analysis of this broader level of institutional expectations governing our professions. A theological assessment of this scenario might attend in deeper detail to the nature of the spiritual community alluded to above; it would also explore further the relationship between theological reflection and moral discernment. Such would be promising directions for further thought as we reflect together about the nature of moral responsibility for ourselves as persons in relationship, as institutional representatives, and as children of God.

¹⁷ H. RICHARD NIEBUHR, *THE RESPONSIBLE SELF: AN ESSAY IN CHRISTIAN MORAL PHILOSOPHY* 60–61 (1963).

¹⁸ *Id.*

¹⁹ *Id.* at 108–11.