



### **Prayer Before Studying Ethics:**

Almighty God, unto whom all hearts be open, all desires known, and from whom no secrets are hid: cleanse the thoughts of our hearts by the inspiration of thy Holy Spirit, that we may perfectly love thee, and worthily magnify thy holy name; through Christ our Lord. Amen.

--Book of Common Prayer

### **Week #3b: Ethics in Hearing Confessions and Providing Counseling: Confidentiality and Disclosure**

Given that we often find ourselves to be unfaithful, we have a regular need to ask the forgiveness of God and other people. Part of pastoral care and discipleship involves helping people learn how to

- discern their own wrong or questionable motives and
- seek forgiveness in appropriate ways

so that they might move toward healing and new life.

(Review of 3 elements of repentance [contrition, confession and restitution] based on NT/Ethics/Virtues handout.

Note that

- contrition [=grieved at having offended God and having a desire to turn away from sin which is motivated by a love for God and a desire to be reconciled to God, which are themselves evoked by grace] excludes the future intention to sin/harm as not representing a preeminent desire to be restored to God
  - contrition to be contrasted with attrition, which is sorrow for sin arising from a fear of the consequences arising from disclosure of one's sin (e.g. punishment, humiliation, loss of reputation, etc.). In the Roman Catholic church, attrition is viewed as sufficient to approach the sacrament of reconciliation and engage in confession, since the sacrament itself (including its related penance) can move one to contrition (*ex attrito fit contritus, vi clavium*).
- in confession one does not withhold, edit or deny the truth or try to shift the blame but confesses the truth and takes responsibility for the offense
- sincerity may need to be evidenced by working toward restoration (e.g. through counseling, participation in a professionally supervised accountability group, etc.)

For Protestants, private verbal (auricular) confession in the presence of a minister/representative of the Gospel is not required but can be helpful for those who have

- limited or partially incorrect knowledge of the Church's teaching on forgiveness;
- have sensitive or uneasy consciences;
- are anxious in the face of sickness, suffering or the approach of death,

so that they might be able to have an assurance of the forgiveness of sins in Christ.

For Protestants, this ministry can also be performed by a layperson and is not to involve the interrogation of the penitent; on confession, forgiveness and absolution in Protestant teaching, see Ted Kober's *Confession and Forgiveness: Professing Faith as Ambassadors of Reconciliation* (St. Louis: Concordia, 2002) and for a more developed treatment, Uuras Saarnivara, *The Power of the Keys*, 2 enl. ed. (Hancock, MI: Finnish Lutheran Book Concern, 1945).

Seeking help in dealing with sin involves confiding in another and this disclosure makes one vulnerable. The disclosure/transmission of such knowledge should therefore be regulated and restricted in certain ways, so that such confidential information and the helping relationship may not be used to harm.

- Note that confidentiality is not confined to confession of sin, but is a function of some other forms of knowledge acquired through the pastoral role. Pastors regularly receive information that should be shared with few people or perhaps no else at all. One visits people in their homes and in the hospital and must resolve disputes between members (including marital conflict)
- Problems:
  - What to disclose to a counselor about a church member when making a referral;
  - What to disclose to spouse or family about material disclosed in counseling or concerning the nature of the referral;
  - Responding to a lawyer's request for information in a divorce, especially when the events that occurred and the information that was disclosed were part of private and confidential marriage counseling.
  - What/how much do you tell new staff members (or the pastor that replaces you) about the lives/struggles of church members;
  - What/how much do you tell laypeople/staff members about the lives/struggles of currently inactive church members you are asking them to contact/visit;
  - Should one use illustrations/stories in preaching/teaching which are based upon actual experiences of past or present church members?
  - Should confidential information affect your selection of candidates for church office and how much can/should/do you tell laypeople/staff members concerning this?

Confession traditionally rooted in a system of penance that emerged in the Middle Ages, where one's particular sins were confessed in private to a priest, who pronounced absolution (the Church's authoritative declaration of Christ's forgiveness of sins, which the priest pronounced in virtue of his office; cf. Jn. 20:22-23; Mt. 16:19; 18:15-18) to persons who

- showed a genuine and sincere sorrow for sin (if not contrition, at least an attrition that could lead one on to contrition) and
- were willing to provide satisfaction (=the willingness voluntarily and as an outworking of their sincere repentance and desire for amendment of life to undergo hardships/afflictions/dying to self which are necessary to set right the harm done by sin). (Protestants prefer to call this restitution or reparation, since the idea is to give back what was stolen, provide compensation for what was damaged, etc., however

Protestant and Catholic understandings of this matter are significantly different and this difference cannot be discussed here.)

The priest hearing the confession was under obligation not to reveal any sin confessed to him but to maintain silence about all such matters (the “seal of confession”—seal of silence). This absolute confidentiality viewed as necessary to maintain the degree of trust and confidence necessary for parishioners to make regular use of the sacrament of penance and any priest who disclosed secrets learned in confession is to be excommunicated.

A description of the modern Roman Catholic view on this subject, as defined by canon law, can be found in the chapter of Gula’s book which deals with confidentiality. If I understand it correctly, the modern Roman Catholic view prevents one from disclosing information received in confession even to prevent ongoing or future harm (including criminal activities) and also requires the priest to affirm under oath in the courtroom that he does not have the knowledge in question.

- If the priest should need specialized advice from a spiritual director to properly advise a penitent, the priest may indicate the general nature of the situation to the spiritual director, but nothing that might identify the person or the specific circumstances of the offense.
- Nothing may be regarded as confidential that has been made known in the presence of others and can be known outside the rite of private confession.

Traditionally (up until about World War II) even mainline Protestant denominations took a relatively similar position in regard to a pastor’s not disclosing any matters discussed in private spiritual conversation with a member of their congregation. Although there was little support for this in English common law, American courts generally did not try to compel Protestant pastors to reveal such information in court prior to WWII.

In the second half of the twentieth century the situation changed and the Protestant clergy were compelled to testify in court about matters revealed in private spiritual conversation with a congregation member. Failure to do so could lead to being charged with contempt of court and possibly being jailed for a short time. The only clergy for whom English common law actually protects pastor-client confidentiality are those for whom the practice of confession is a sacramental rite, whose regular performance is an integral part of the office to which one is ordained in accordance with the official theological position of that Christian group (i.e. Roman Catholic priests only--even the Eastern Orthodox and Anglo-Catholics cannot meet this criterion). Furthermore, only information conveyed within the sacrament of penance itself is covered, not conversations in other contexts, and only where all elements of penance (e.g. genuine/sincere sorrow for sin, verbal confession and admission of wrongdoing, willingness to render satisfaction) are present.

Strangely, the notion of confessing one’s sins to someone they feel could give them absolution still has a certain appeal to some people, even very secular ones. (Cf. Dostoevski’s *Crime and Punishment*, where Raskolnikov confesses a murder he has committed to Sonia and she issues him a kind of absolution and prescribes for him a kind of penance, saying, “Stand up! Go at once this very minute, stand at the crossroads, bow down, first kiss the earth which you have defiled and then bow down to all the world and say to all men aloud, ‘I am a murderer!’ Then God will send you life again” (tr. Constance Garnett, New York: Macmillan 1948, p. 370)

At the same time, what these people generally assume is that the kind of absolute confidentiality (non-disclosure) which exists in the Catholic tradition will also be observed by Protestants. It is important to let them know at the outset that this is not the

case and that you may be required to testify under oath in a courtroom setting, have notes taken during the counseling session be subpoenaed, or may have a duty to disclose information to prevent serious future harm to them or someone affected by their actions. This also prevents the pastor from becoming complicit in the deceptions and/or crimes contemplated or committed by the counselee and/or being manipulated to help shield the perpetrator (who often minimizes or denies his culpability) from the consequences of his or her acts. It is prudent to ask to hear what confidentiality is being requested for and why confidentiality is being sought before promising restrictions on disclosure.

--Contempt of Court for Non-Disclosure When Subpoenaed to Testify and One Does Not Have Statutory Privilege Exempting One From Testimony

### When Disclosure Is Necessary

--Mandatory reporting legislation for child abuse and elder abuse (state-based legislation; changing regulations—MI currently requires reporting for clergy; mandatory reporting legislation typically gives a 48 hr. time window but does allow for mistakes in reporting to the wrong government authority/agency)

- The problem of low threshold reporting (including of information given privately in the context of pastoral care and counseling) and clergy conflict of interest (erodes trust; public disclosure of some sensitive information, e.g. in a divorce proceeding, can potentially harm third parties [e.g., children], fatally undermine marriage relationships or impair the free functioning of the press or the public's ability to hold elected officials accountable for their actions); assimilation of clergy to public educators and (especially) social workers
- Legal protection for clergy who engage in good faith (i.e. without malice or recklessness) reporting of incidents where abuse is not found—immunity from legal reprisals
- Note that mandatory reporting often extends to anyone who has regular contact with a child for educational purposes (including unordained staff members and possibly certain volunteers) or mental-health counseling

--The Duty of Care to Protect by Warning Others (Parents, School Officials, etc.):

Dealing with threats of serious harm

--to others (discernable threat of serious future harm to a third party, which could be averted by disclosure, e.g. undisclosed AIDS in one of two persons who are soon to be married).

- Reasonable efforts should be made to elicit voluntary disclosure, although one should also indicate that one will oneself disclose the necessary information if they do not, so that one does not oneself become party to the deception/harm/crime or help others evade responsibility

--to self (discernable suicidal intent or foreseeable serious self-injury, which could be averted by disclosure)=duty of due care when risk of harm is known

--in both of these cases, the need to disclose information that otherwise would be kept confidential is motivated by a forward-looking desire to protect vulnerable persons from future harm

--\*\*see case studies in handout\*\*

--Disclosure of Abusive Counseling Relationships to Limit or Prevent Harm (ex.—David W., United Church Minister, who routinely exploited and victimized female members of his congregation whom he saw in the course of his pastoral counseling practice)

--When Disclosure Is Necessary for Self-Defence/Self-Protection (Vulnerability of Pastoral Counselor to Significant Harm by Counselee Due to Exploitation of the Professional Requirement of Confidentiality)

--\*\*In Miller, “Dealing with Deception,” how did Ken’s pathological lies and manipulative behavior exploit routine practices of confidentiality and how did this ultimately subvert the peace and order of the church? How could this situation been better handled?\*