

APPLIED PROFESSIONAL ETHICS AND INSTITUTIONAL RELIGION: THE METHODOLOGICAL ISSUES

In the last several years, philosophical enthusiasm for applied professional ethics has spread from medicine to law, education, government, engineering, business, and to other professional and semiprofessional fields. Each involves an institutional structure within which professional practitioners provide specific services to those who seek them, and within which practitioner behavior in providing these services is regulated by both formal and informal institutional codes and conventions. Recent work in applied ethics has forced reinspection of these codes and conventions and of the moral features of the professional practices they govern—from client confidentiality to the exchange of fees—and has revealed characteristic dilemmas and conflicts which are endemic to these areas of professional activity. Indeed, in some cases—for instance, in the de-paternalization of medicine—the inquiries of applied professional ethicists have begun to produce quite striking changes in professional practice itself.

But there remains one area of institutional practice which has not yet come under the scrutiny of contemporary applied professional ethics: this is the provision of religious services, or, more generally, the institutional practice of religion. In this exploratory paper, I'd like to do two things: first, to show that because religious practitioners are in many important ways like professionals in other fields, we may expect their practices to generate the same sorts of issues discussed in other areas of applied professional ethics; and second, to consider the special methodological problems analysis of these moral issues might present.

Religious Practice as Profession

Vigorous recent debate over whether religious practice is a profession has produced both optimism and alarm: while some observers praise a heightened sense of professional identity in the ministry, others view increased professionalism as incorporating the worst features of modern managerial society.¹ Perhaps the whole of the ministry cannot be captured in a characterization of it as a profession, but at least many features of it can be described in this way, and this will provide a starting-point for the questions of professional ethics that we wish to ask. It is of course true that the clergy—indeed, the class of religious practitioners generally—are not a homogeneous group, unlike, say, the members of the legal profession, but

rather include a quite heterogeneous collection of priests, ministers, rabbis, and pastors, associated with a variety of denominations. It is also true that the boundaries of the profession are not very clear, since while it is quite plausible to treat the mainstream clergy as professionals, the characterization becomes increasingly strained the further out one moves into the fringe sects and cults. Such differences aside, however, there are a number of remarkably close parallels between religious practitioners and the professional of other institutions, sufficient not merely to regard institutional religious practice as a profession, but to invite critique by the applied professional ethicist.²

First, the secular professions are characterized by a requirement of training and credentialling before prospective practitioners are admitted to practice; the professions do not allow amateur practice. Similarly, in the mainstream religious groups, training for admission to the clergy may be quite extended, involving in most cases a number of years of postgraduate or seminary training. This often includes specific educational requirements, such as the study of Latin, Hebrew and other biblical languages, or training in pastoral counseling. The clerical candidate may be required to pass special examinations, or to produce (as for admission to the Bar) special recommendations of character, and the course of study culminates in the award of a degree. In some religious groups, particularly the cults or new religions, such training does not resemble academic or scholarly study, but rather involves an extended period of apprenticeship or discipleship before such titles as "master" are conferred and the individual assumes an authoritative role in the community. Nevertheless, particularly in the mainstream denominations where sustained formal schooling does result in the award of a degree, training and credentialling practices for the clergy strongly resemble those of the secular professions, and thus, we may expect, give rise to similar sets of moral problems. Is the training appropriate for the services to be rendered, for instance, and are the entry criteria for admission to training unbiased? Does the credential awarded serve as a reliable indicator of specific training or skills? While these questions may not initially seem to be profound ones, examination of them will reveal some quite provocative issues, as would similar investigation in fields like education or medicine.

Admission to institutional practice takes place with credentialling, usually known in the mainstream religious groups as ordination. Typically accomplished in a discrete, identifiable ceremony, ordination serves as licensure for practicing the rites and performing the services offered by that group. (This credential is not usually transferable from one group to

another; the ordained Episcopal priest is not thereby licensed to perform, say, Catholic religious services, although in the present spirit of ecumenicism he or she may be invited as a guest to participate in services common to both.) After ordination and assumption of a professional role, the practitioner or provider of religious services is usually readily distinguishable from recipients of those services, often on the basis of distinctive behavior, grooming, or clothing. Typically, the practitioner's church or religious group provides him or her with employment; it develops codes of conduct governing practitioner behavior (these may be informal or explicit, or both); it enforces malpractice standards and disciplines the practitioner; and to greater or lesser degree it controls the practitioner's methods and standards of practice. The practitioner, in return, gives his loyalty to the institution; he supports it in his public activities, and announces himself as a representative of it. In large measure, he derives his identity from his role within this institution. He supports the ends of this institution, and regards furtherance of this institution as among his own goals.

But inasmuch as the religious practitioner resembles other professional practitioners in functioning within an institutional setting, he is likewise confronted with similar moral problems, particularly involving conflicts between his obligations to the institution and his obligations to his clients. Are his primary obligations to promote the welfare of his particular parishioners, or to protect and augment the church? Ought he support the institutional church in policies he in conscience believes wrong, or engage in whistleblowing on other members of the clergy he views as corrupt? Does he incur special obligations to a religious group in virtue of his employment within it, and if so, what are they? Similar issues arise in medicine, education, government, engineering, business, and the law, and in each of these areas, as in religion, such conflicts can be very acute.

In addition, the relationship of the religious practitioner to the recipients of his services is much like that of the practitioner/client relationship in many other professions. In general, religious practice more closely resembles the consulting professions than the scholarly professions: the clergy provide an identifiable service to specific clients. Usually, the religious practitioner has direct contact with the recipients, both in groups ("congregations") and on an individual basis. Depending on the group and on the proportion of pastoral vs. ceremonial practice involved, the services rendered by the practitioner may be either relatively uniform or highly individualized to the needs and desires of the specific client. Some religious groups also involve offices or roles perhaps analogous to the scholarly professions—e.g., those with monastic orders or those which encourage in-

dependent theological research; often, though, these functions are less emphasized and less conspicuous than the much more numerous direct service functions the institution fulfills.

Relationships involving direct contact between practitioner and client, whether preaching, counseling, officiating at rites, or other functions, are as in other professions typically characterized by inequalities of authority and power. Indeed, the medical practitioner, as with the religious practitioner's authority and power over the client may in many cases be extreme. Of course some religious practitioners exploit this fundamental disparity with abuses of authority like manipulation, invasion of privacy, sexual harassment, and the like, but the more interesting issues concern the institution as a whole. Does the institutional structure of religious practice itself inherently produce disparities in authority, power, and status, and do specific activities it expects of its practitioners contribute to this? Are there ways in which individual practitioners might counteract this effect? Is client autonomy desirable at all in religious settings, or are inequalities of authority and power defensible if used for paternalistic ends?

The relationship between religious practitioner and recipient of services is characterized by another feature central to the professions: the recipient of services is the financial supporter of the institution and, with it, of the practitioners it employs. In both law and fee-for-service medicine, the economic relationship between practitioner and recipient of services is in its simpler forms direct: the client or patient pays the practitioner for those specific services which he receives. In some forms of religious practice, this relationship also appears to be quite direct: the believer in a healer's tent may contribute immediately to the preacher for the healing performed, or, more often, in order that it shall be performed. In the so-called "electronic church" contributions to the practitioner may also be direct and identified as associated with specific services, e.g., for broadcasting at a certain hour. Even in the mainstream Protestant, Catholic, and Jewish groups the officiating practitioner accepts a tip for performing specific services or rites such as baptisms, ritual circumcisions, and marriages (but not funerals); although most mainstream religious professionals are salaried. Differences between fee-for-service and salaried practice may generate a number of compelling moral questions, including those concerning the quality of service and access to services for those who cannot pay.

For the most part contributions are made to "the church," rather than to the individual religious practitioner, either during religious services ("the offertory"), by tithing, by mail contributions, or several of these. Different denominations have different procedures for the collection and distribution of these funds. Most commonly, both in the mainstream churches and in

those sects and cults which have national bodies or leaders, the receipts from individual contributions by parishioners or members are apportioned between the local group in which they are collected and the national organization. Distributive decisions concern what proportion of these funds should be used for, say, outreach or missionary work, what proportion for building maintenance and the establishment of new local churches, what proportion for investments, and what proportion should be used for the salaries of religious practitioners: in some groups, this is determined locally, in others, it is set by policies of the national organization. In some groups, the financial status of the organization and, with it, the individual practitioner is wholly dependent on contributions, but even in an age in which many of the largest religious groups are using the investment techniques of secular business to protect and augment their assets, they are still dependent at least to some extent upon the contributions of the rank-and-file. Numbers count, and the strength of a church is often measured both in the volume of its contributions and the size of its membership rolls. It is the naive religious practitioner who is not mindful of these, and the naive applied ethicist who fails to recognize the moral problems emerging here. Institutional religion too includes an element of practitioner accountability similar to that in the secular professions: the physician must attract a steady supply of patients, the attorney must bring to the firm a substantial number of clients, and the religious practitioner too must be able to attract and keep a satisfied congregation. What moral rules one must keep or break in order to accomplish this provides still further opportunity for ethical reflection.

Finally, the role of the religious practitioner in the community at large also bears strong resemblances to the roles of other professionals. Not only is the religious practitioner—at least those from the mainline churches—publicly recognized in his role and accorded social status commensurate with other professionals (though this has been under fairly rapid change since the previous century, and the formerly elevated status of the clergy has to some degree been eclipsed by gains in prestige of other professions, particularly medicine and science), but like other professionals the religious practitioner has an effective monopoly on the services he provides. This may not initially seem to be the case; indeed, in this respect religious practice may more nearly resemble the business world, where numerous competitors offer similar or identical services among which the customer may take his pick. In the United States there are some 218 Christian churches³—not including an estimated 2000-3000 cults and sects—from which the prospective believer can choose. Quite high levels of shifts in denominational preferences (especially characteristic of the mainline Protestant groups⁴) may seem to reinforce this commercialist model: the religious

customer can always shop around. But this is to overlook the inherently monopolistic character of the religious profession *per se*: within a given denomination, the practitioners do have a monopoly on the provision of services of that sort. Thus, Catholic priests have a monopoly on the provision of Catholic religious services: one can take communion from or be married by any one of a number of Catholic priests, but one cannot get a Catholic marriage or a Catholic communion from practitioners outside this institution. Viewed in this light, institutional religious practice, despite its diversity, is essentially monopolistic in character. If the client seeks religious services of a denominationally specific sort, he cannot shop around. This fact too has important moral consequences, particularly in the occasions for control it presents.

Thus, we see that the provision of religious services shares many common, central features with the secular professional fields. Of course, this may not be all there is to religious practice, and the devout believer may find our deliberately sociological account of the clergy as "religious practitioners" and as "providers of religious services" inadequate to describe what really goes on in religious practice.⁵ But regardless of the significance a community of believers may attach to the practices and structures within which they express their faith, these structures and practices do resemble those of the secular professions in important external ways, and thus at least in external ways can be addressed in the same terms and with the same conceptual apparatus as the secular professions. This is just to say that, at least to some extent, religious practices and structures are quite naturally subject to evaluation which does not depend on the beliefs of the people within the system, but on the common general body of moral reasoning which we also apply to other areas of human interaction.

If we undertake the general examination of institutional religious practice with the apparatus of applied professional ethics—that body of ethical thought, rooted in utilitarianism and Kantian deontology, which appeals to principles like beneficence, autonomy, and justice—we shall, I think, find that the institutional provision of religious services presents inherent, profound moral difficulties and dilemmas—whatever the denomination or group. It is the resolution of these difficulties and dilemmas which may be less satisfactory in some groups, more satisfactory from a moral point of view in others. For instance, the practice of confession presents dilemmas in confidentiality, whether in a Catholic church or in a fundamentalist sect, though these groups may resolve the problem in quite different ways. The practice of baptism poses dilemmas in consent and second-party consent, regardless of the specific ritual of the practice; and the attempt to proselytize, at least where the missionary seeks to convert the nonbeliever for

his own good, presents acute problems in paternalism—in every sect or denomination. Since even in a politically secular society organized religion remains a major force, directly affecting that proportion of the population who regularly attend churches (in 1981, 41% of the population of the United States claimed to do so in a typical week⁶) and indirectly affecting the entire society, we cannot simply ignore what may be some of the most pressing problems in professional ethics for contemporary society altogether.

It is often said that religion is the source of ethics; as an historical point, this is largely true. But this does not entail that religious practice is immune to examination with the secular descendents of a religiously-originated tradition, whether these descendents are utilitarian or deontological in character, or that secular ethical analysis cannot properly accommodate distinctively religious concerns. Religious practice is traditionally regarded as separate from secular life and hence to large extent screened off or protected from ordinary ethical scrutiny; thus, it will mark an advance if we can come to see that many of the problems institutional religion presents are very much like the problems which arise in secular professional fields, and that consequently they are subject—without injustice to religious faith—to similar secular ethical analysis and critique.

Methodological Problems

But there may be serious methodological obstacles to the scrutiny of religious practice with the apparatus of applied professional ethics, even if we grant that the provision of religious services is indeed a profession. These are methodological obstacles which do not arise in the other, secular professions, though they have to do with the sorts of claims and assertions which can appear in arguments concerning the morality of professional practices; religious practice presents methodological problems which seem to be unique.

Ordinary moral arguments include among their premises two kinds of claims, statements of fact and assertions of moral principle and rule, together with assertions derivable from conjunctions of these claims. Assertions of moral principle and rule are themselves grounded in appeal to moral theory itself. Which moral theories are admitted as bases for assertions in specific moral arguments of course fires much of the discussion in applied ethics, and the disputes between supporters of the various major camps—utilitarians, Kantians and other deontologists, modern Kantians and libertarians, divine-command and natural-law theorists, and so on—render fertile and lively much of the discussion in contemporary applied ethics.

Applied *professional* ethics adds the further claim that certain professional practices are, in the terminology of Alan Goldman, "strongly role differentiated"—that is, they are defended by appeal to the special goals, norms, and roles of the profession, which outweigh or override ordinary moral considerations. Thus, certain departures from ordinary moral rules may be morally permitted or required (e.g., the physician's withholding a dismal diagnosis from a patient, the attorney's refusing to reveal to a court information damaging to his client, the engineer's calculating in monetary terms the costs of human lives vs. construction expenses), even though such departures apparently cannot be defended on ordinary utilitarian and deontological grounds.⁷ Nevertheless, these practices are ultimately defended on the grounds that the institution itself, of which they are a necessary part, serves a vital moral function in society, and establishing this, in turn, requires appeal to the same basic moral grounds. Hence, even assertions of strongly differentiated professional principles or rules are ultimately of a kind with other moral principles and rules; they do not represent a new kind of datum in the moral argument.

However, the discussion of issues in the profession of religious practice must contend with an additional kind of assertion, which is neither a statement of fact nor an assertion of moral principle or rule. It does not immediately require independent justification, but nevertheless claims privileged status in moral argumentation.⁸ This additional kind of datum is *doctrine*, and it is assigning the correct logical status in moral argumentation to assertions of doctrine that I see as the central methodological problem in addressing moral issues in the professional practice of religion. In what follows, I shall pursue a single, extended sample—the issue of confessional confidentiality—to display both what the methodological problem is and how I think it can be resolved.

Much of the practice of religious professionals is doctrine-controlled. The practitioner is directed to do what he does—preaching, baptizing, hearing confessions, exacting the promises of marriage, inculcating religious belief in children, making converts, etc.—by the fundamental texts, teachings, doctrines, and semi-doctrinal regulations of his group. Attitudes and practices concerning the more general principles of autonomy, consent, paternalism, beneficence, and so on are also dictated in this way. But the fact that specific practices and general stances are doctrine-dictated is often taken to preclude any further moral discussion: it is the practitioner's obligation, it is often held, to obey the directives he is given as an adherent and protector of the faith by the scriptures, laws, and policies of his group. For instance, to attend to the particular example we shall be examining, *dilemmas* of confidentiality are said not to confront the Catholic priest in

the way that they confront physicians or lawyers. Rather, the priest is bound by Catholic doctrine—specifically by canons 889 and 890, which prohibit him from ever breaking the seal of confession even though he is not absolutely bound to keep secrets acquired in nonconfessional contexts.⁹ Since the canon law's prohibition of disclosure of confessional secrets is absolute and since it is to be held *de fide*, it is claimed, there simply is no further issue: it is clear what the Catholic priest, *qua* Catholic priest, must do. Considerations which might weigh in other professional contexts—say, possible harms to innocent third parties, unrectified past harms, violations of the law, damage to important social institutions, or prospective harms to the confessor or to the confessant—carry no weight here, for the doctrinal requirement is perfectly clear and perfectly absolute. The confessant may be planning a murder, harboring knowledge which would exonerate someone unjustly convicted of a crime, evading the law, or planning to kill the priest himself. Under the policies generally accepted and defended in other professions—for instance, medicine, law, and, after *Tarasoff*, in psychiatry—some or all of these circumstances would warrant breaking promises or expectations of confidentiality. But, under Catholic doctrine, there are *no* circumstances in which a confessional secret, once the seal of confession has been given, may be revealed.

This may seem to block all moral discussion at all, for if we simply accept these doctrinal claims at face value there is nothing to discuss, and if we reject them because they are doctrinal the edifice of religion crumbles. It is of course possible to critique religious practice in purely secular ways, asserting that religious doctrine is without significant content and that religious practice must be viewed as the spectacle of some persons spreading empty claims among others, encouraging or forcing them to engage in self-depriving behaviors which have no intrinsic merit. Doctrinal assertions about such entities as God, heaven, hell, sin, repentance, forgiveness, salvation, and the like are, on this view, all without reference, and have no place in moral argumentation. But although such critique is possible (and on metaphysical grounds may well be correct), I do not think it promotes either the most interesting or the most informative kind of moral analysis of religious practice. More revealing is an analysis which acknowledges religion's background, fundamental metaphysical claims, but still directly, unflinchingly addresses the moral issues posed by the practices religion pursues.

But if so, what specific status do we assign in moral argumentation to items of doctrine? What role, for example, should we assign to canons 889 and 890, which forbid the Catholic priest to reveal a confession in any circumstances at all, regardless of other moral principles or consequences?

Let us begin by examining such items of doctrine with reference to the institutional structures and practices from which they originate or within which they have developed; this is to examine them historically. If we trace their history, we find a continuing developmental process from the earliest period of church history to the church's present position. This history will provide a basis for assigning particular doctrinal assertions specific statuses in moral argumentation.

The biblical texts *James* 5:16, *Matthew* 16:19, and *John* 20:23 are considered within the Christian tradition to provide a scriptural basis for the practice of confession. However, the precise nature of this mandate is far from clear, and it is by no means evident precisely what kind or kinds of practice it directs. *James*, the most straightforward of these texts, simply directs, "Therefore confess your sins to one another," but does not specify whether this shall be done privately or openly, singly or in groups, nor does it say how explicit the confession shall be, or what the hearer or hearers shall do with the information received. (Similar foundational doctrinal assertions could be identified for other religious practices, including baptism, preaching, marriage, proselytizing, etc.)

Once the initial doctrine mandate is identified, however vague it may be, we then turn to the historical ways in which it has been interpreted within a given religious group. Relatively little is certain about the actual practice of confession in the earliest days of the Christian church; while it has long been believed that the earliest forms of Christian confession were public, and that the individual recited his sins before the assembled church community, some scholars now hold that the act of confession may have been predominantly private. Nevertheless, the acts of satisfaction—the evidences of one's status as a penitent—were clearly public: the individual wore a special penitential robe, the *cilicium*; he stood in a restricted area of the church, among the ranks of public penitents; and he did not participate in the sacrament. From these facts, of course, others could infer something of the nature and gravity of his sins. Strict continence was required; he could not marry, nor participate in military service or most forms of commercial activity. The period of penance lasted as much as several years (or more, during the era of Tertullian and Cyprian), and an individual was permitted to undergo it only once; if he repeated the infraction, he was excluded from the church.¹⁰

To what degree the details of confessions were also made public is not clear. However, a letter of Leo I, written in 459, provides evidence that some penitents were compelled to read in public an explicit list of personal sins; Leo rejects this practice as an abuse.¹¹ Some sources claim that Leo instituted private confession initially for priests and deacons in order to pro-

protect the church from the scandal that would otherwise arise, and that this practice was thereafter extended to the laity. More probably, it was the Celtic monks of the 6th century who introduced the new mode of penance, incorporating both secret confession to the priest and reconciliation without public penance, defamation, or legal consequences: one's sins became a private matter, not for public display.¹² Some of the more fanciful accounts, often from later antipapist sources, claim that with the establishment of private auricular confession, personal abuses of penitents by priests became rampant, particularly for female penitents.¹³ Indeed, some claim that the confessional booth was introduced (in Spain) in order to prevent such abuses: it prevented the confessor and penitent from direct vision and, more importantly, from touching. Whatever the details of its origin, however, the booth also provided, for the first time, virtual anonymity for the penitent (though he could still be seen entering and leaving the booth) and complete privacy for the act of confession. With this, the possibility of full confidentiality arose, as well as the possibility of violating confidentiality in circumstances which might seem to promise it. By the time of the Council of Trent (1551), the position articulated in canons 889 and 890, assuring complete confidentiality in all matters of confession, had been established, and has remained unchanged since.

Not all religious groups which treat *James*, *Matthew* and *John* as scriptural have developed private confessional practices. In some (particularly among fundamentalist groups), direct public confession is encouraged or required, and is not preceded by any form of private confession; here no guarantees of confidentiality are given or expectations of confidentiality raised: confession is made in front of the entire assembly. Other denominations, including most of mainline Protestantism, hold that confession can be made only directly by the confessor to the deity; these groups recognize no institutional practice of confession at all, and their closest approach is in pastoral counseling. In some groups, confession is purely formal: it involves reciting a general acknowledgment of sins, but includes no specific description of them. And in some groups, especially among the cults or new religions, we find what is probably best described as forced confession, where issues of confidentiality are entirely beside the point: while the circumstances are sometimes private, no guarantees of confidentiality are given or understood. But of those groups which have developed *private* confessional practice, all have faced the same ethical dilemma: what ought the religious professional do when revelation of the confessed material, obtained in private under expectations of confidentiality, would relieve or prevent serious harms to other persons or institutions? Differing groups answer this question in quite different ways. While the Catholics prohibit any

release, the Mormons, for example, permit and in some cases require divulging of confessional material to a church court, even when it is obtained in private.¹⁴ These two groups, both taking the same initial texts as scriptural, have developed opposite answers to the moral problem adherence to those texts raises.

Surveying the developmental history of confessional practices, however fragmentary the specific details may be, we are able to articulate a general methodological principle governing the study of ethical issues in religious practice. Once we see that a practice precedes the doctrinal solution which is put forth to resolve the ethical problem the practice itself raises, we are able to differentiate those doctrines or recognized policies which develop in response to an institutional practice from those which antecedently mandate that practice. The problem of confidentiality is not associated with religious confession *per se*, nor is it a direct consequence of the fundamental scriptural mandate to confess. Rather, the problem of confidentiality begins to arise only with the development of auricular confessional practices in which confession is made individually, in a private setting, without public evidence of penitent status; it is compounded when confession is made to a religious professional, rather than simply to another member of the group. The issue of confidentiality does not present itself with full force until after confession and satisfaction have become both wholly private and wholly professionalized. Hence, the doctrinal assertion that confidentiality must never be broken must be regarded in a quite different way from the doctrinal assertion mandating confession itself. The assertion requiring confidentiality represents a *conclusion* or answer to the moral problem which the practice of private auricular confession itself raises, not a premise in the moral argument concerning it.

This account may provide a general mechanism for treating doctrinal claims concerning a wide variety of religious practices. The essential point is that the logical status of a doctrinal assertion in moral argumentation is not invariant; it is relative to the practice with which it is associated, and to the problem it serves to resolve. Unlike matters of fact and assertions of moral principle and rule, doctrinal assertions cannot all be accorded the same status in moral argumentation; while some may function as premises, others cannot.

To determine what status a given doctrinal claim should be accorded, we must examine not only the basic texts, teachings, and pronouncements of the group, but the history of the development of these doctrines. First, we can identify those articles of doctrine which originally mandate certain kinds of actions, or prohibit certain kinds of actions; these may be called basic or 0-level doctrines, to suggest that they incorporate the fundamental

general directives of the faith, such as chastity, baptism, confession, monogamous marriage, charity, proselytism, and so on. These fundamental general mandates are often to be located in scriptural commandments, though many scriptural passages do not yield fundamental general mandates in this sense, and many fundamental general mandates are derived from sources other than scripture. Sometimes, such mandates are pronounced by prophets or sages within a tradition; sometimes they are articulated by later theologians or scholars examining the roots of a tradition; and sometimes they are nowhere stated explicitly, but must be inferred from peripheral, established doctrines, much as the constitutional right of privacy has been identified by the Supreme Court in the "penumbra" of the Bill of Rights. Most frequently, though, such mandates are to be found in scripture.

When a fundamental mandate of this sort is recognized by a religious group, the group then typically develops an institutional mechanism for eliciting and regulating the required action: it specifies how the fundamental general mandate is to be put into practice. This mechanism is encoded in what may be called first-order doctrine. The mechanism itself may develop and evolve over time, as the institutional practices of baptism and confession do, or it may be adopted in a relatively sudden way, as for instance when a church leader institutes a ruling. (Examples of the latter, often said to be based on visions or revelations, might include Mother Ann's prohibition of sexual activity to the Shakers, Joseph Smith's introduction of polygamy to the Mormons, or Sun Myung Moon's performing mass marriage in his Unification Church.) In both cases, nevertheless, it is the institutional mechanism itself—the practice—which brings with it characteristic moral problems, particularly when the practice is conducted and enforced by the professionals of the group. It is these problems which demand resolution. For instance, the doctrinally mandated institution of marriage, whether practiced in group, polygamous, or monogamous forms, gives rise to moral issues in contract and promise-keeping, which are accentuated as religious professionals admit or withhold marriage rites and extract specific marriage promises. Similarly, admission to monastic orders gives rise to issues of informed consent; and the practice of discipline, in forms such as penance or excommunication, gives rise to issues concerning the nature and purpose of punishment generally.

As such problems become increasingly frequent and acute in the growth of a religious group, the group then develops policies which serve as "answers" or solutions to them. These solutions are then in turn typically also codified in doctrine or church law. For instance, as an answer to the problems of promise-keeping and contract-making arising within

monogamous marriage, some groups have come to view the commitment as irrevocably binding, regardless of changing circumstances and of the desire of the parties involved, and doctrinal policies prohibiting divorce and/or remarriage have emerged. Other groups, reaching a different solution to the same underlying problem, do not view the commitment as irrevocable, and while observing the same institution of monogamous marriage, permit it to be dissolved. Similarly, facing the potential for coercive manipulation which, given severe need on the part of the recipients, the doctrinal imperative of giving charity poses, some groups repudiate simultaneous proselytism, while other groups do not, or work to ensure that receipt of charity is not conditional upon embracing the faith. Still other groups resolve the issue in the opposite way, and extend charity only to members or prospective members of their own group.

In all these cases, what is of interest to the contemporary ethicist, particularly to those familiar with the ethical issues which arise in other professional areas, are the "answers" or conclusions which have been developed to resolve institutionally generated moral problems, particularly as they regulate the activities of religious practitioners. We shall call these policies "second-order" doctrines to emphasize their different logical status; they are neither the primary requirements of the religious tradition nor the initial institutional directives, but serve rather to provide strategies for resolving the problems which those primary requirements and directives raise. But since they develop in order to resolve moral dilemmas, as ethicists we cannot give them privileged status in the moral argument, regardless of the status the religious tradition itself assigns them. To do so would be to beg the question the practice in question raises, not to reach a solution to it. Rather, as ethicists, we must consider whether these second-order doctrines could provide an adequate solution to the problems with which they are associated, and attempt to show why or why not. Thus, it cannot be held, at least morally speaking, that the Catholic priest ought never violate the confidentiality of the confessional because canons 889 and 890 forbid him to do so. Rather, since the ethical problem both historically and logically precedes the development of doctrinal answers to it, the applied professional ethicist concerned with the practice of religion must address the moral issue of confidentiality directly, without question-begging doctrinal appeal. Of course, the primary directives and doctrinal imperatives could also be subjected to ethical critique; but to do so is to question the profession altogether, not to address the inherent moral problems it generates. (One could of course question the foundations and legitimacy of the profession of religion altogether, as one may question the foundations and legitimacy, say, of the professions of psychiatry or business, but that is to exceed too soon the

limits of normative examination of institutional practices and policies so productive and informative in contemporary professional ethics. In applied professional ethics, we begin by fingering the tendrils, not chopping down the tree.)

But the analysis must be still more complex, for we may find still further elements of doctrine which bear on the behavior of religious professionals. For instance, to return to our example, although we may succeed in distinguishing the basic-level doctrinal mandate to confess, the first-order, evolved doctrines stipulating a mechanism of private, auricular confession to a religious professional, and the second-order doctrines encoded in canons 889 and 890 requiring strict confidentiality, we may discover still further teachings, doctrines, and regulations which have bearing on this issue. For instance, the priest who has knowledge from confession of a person's activities and who is compelled to testify in a court of law¹⁵ is required, under second-order doctrine, not to reveal this knowledge, and thus must deny (even under oath on the Bible) any knowledge of them.¹⁶ This may seem to involve both deliberate falsehood—lying—and violation of the law. Further, the priest is forbidden from intervening to prevent serious harms (say, a murder), even when he could easily and without risk do so, if this would require the revelation of confessional material; this would seem to violate duties to others. But these apparent breaches of moral principle are explained by the further doctrinal claim that the priest holds confessional knowledge "in God" or "as God," and does not know it in the ordinary sense at all.¹⁷ Thus he is said not to be morally complicit in any crime, even though he may appear to allow it to occur, nor to violate the law, nor to be morally responsible for lying.

This defense, however, we may recognize as itself another higher-order doctrine which has developed to resolve the ethical issues attendant upon a doctrinally-mandated practice: it too seems to announce itself as an "answer." Similarly, it too is an evolved response to the disturbing moral questions the practice of private confession raises. However, it is in an important way different from second-order doctrines: it does not simply dictate a policy requiring a specific course of action with respect to the problem at hand, but serves to *excuse* the residual objections which the adoption of a specific second-order doctrine had raised.

Of course, not only policies but excuses too are of interest to the applied ethicist. Insofar as the priest is capable of repeating the confession and understanding its meaning, he *does* know it (that is, he knows what the confessant has said, not that the confession is true), and cannot so easily elude moral critique. To claim that the priest cannot tell the truth or prevent a harm because he does not know the confessed information attempts to ex-

cuse him from moral expectations which may be very strong, and the applied ethicist will want to consider whether such an excuse is adequate. Like second-order doctrines which function as answers, third-order doctrines which function as excuses also cannot be accorded privileged status among the premises in the general moral argument concerning confidentiality without producing circularity, and it does not settle the issue to say that the priest cannot act or tell because he does not know. He *does* know, and the moral questions which confront him and those examining the practice of religion are these: Should he act? Should he tell? These are precisely the sorts of questions confronting practitioners in the other, secular professions, and simple appeal to second and third-order religious doctrines cannot protect the religious professional from similar moral critique.

On Related Problems

Conducting this sort of critique may also encourage us to reinspect those areas of applied professional ethics with which we are already familiar. Discovering that an applied ethics of religious practice is obliged to contend with a new kind of premise in addition to assertions of fact and assertions of moral principle and rule, we may begin to wonder whether there are analogous features in, for instance, medicine, engineering, education, or law. One might, for instance, suggest that intuitionist claims made by doctors about "experience" or "expertise" are not simply claims based in assertions of fact (as, for instance, empirical evidence from a large series of cases) perhaps together with assertions of moral principle or rule, but rather function in a way similar to claims made by religious practitioners about doctrine, an analogy perhaps inviting because these claims are often asserted with similar fervor. In law, one might wonder whether appeal to precedent should be assigned logical status similar to that of doctrine: if so, we would expect to recognize varying degrees of authoritativeness, such that while some precedent can serve, at least initially, as premise in a moral argument, other derivative or interpretive decisions, though perhaps occupying similar status in the law, cannot.

We may also want to point out that the critical program described here is in a substantial sense incomplete. In other areas of applied professional ethics the analysis of moral dilemmas at the levels which confront practitioners often reveals inconsistencies, or seeming inconsistencies, in the more central, underlying mandates within the field. In medicine, for instance, analysis of practical dilemmas in care-giving may reveal conflict between the fundamental mandates to relieve suffering and to prolong life, as similar analysis in law may reveal friction between obligations to defend the ac-

cused and to seek justice.¹⁸ If these foundational mandates are not merely simple matters of fact or claims about moral principle and rule, nor assertions derivable from a conjunction of such claims, we may ask whether they play roles in moral argumentation much like assertions of 0-level doctrine, as the basic, fundamental mandates of a tradition not immediately requiring independent moral justification. Yet the hard cases at the practical level force us to recognize friction among these fundamental mandates. Thus, we may perhaps expect the hard cases in institutional religious practice to reveal this sort of friction too: for instance, doctrinal mandates to respect free will may turn out to conflict with those encouraging the promotion of salvation, at least when challenged by hard cases involving belief-engendering paternalism in missionary practices designed to gain converts. Such conflict could presumably be resolved only by fundamental clarification of the concepts involved or by doctrinal revision, though it need not involve wholesale rejection of doctrine altogether. (The applied ethicist can not only finger the tendrils, so to speak, but disentangle or even prune the branches, still without chopping down the tree.) Fundamental clarification and doctrinal revision would of course be the proper work of the theologian, not the applied ethicist; but it is the issues raised by the ethicist which necessitate the theologian's work. At the prodding of the ethicist foundational criticism and analysis is already occurring in medicine, law, and the other professions; we may well expect similar consequences from professional-ethics scrutiny of institutional religion too.

In all of this, however, a crucial methodological point must remain clear. It is not the beliefs of the religious group which determine the logical status of a doctrinal requirement in moral argumentation, any more than doctor's beliefs determine right behavior in medical practice, though the beliefs of the religious group do determine a requirement's status as doctrine. It is the ethicist examining a religious tradition who must differentiate basic mandates—often though not always found in scripture—from first-order directives putting that mandate into practice, second-order strategies for resolving moral problems, and third-order excuses for the strategies adopted. This may require not only familiarity with the historical tradition and respect for the central commitments of a group, but the kind of good moral ear which can distinguish mandate from strategy from excuse, in whatever contexts they may appear. To the believer, assertions at all these levels may hold equal status as doctrine, and a kind of "sacred mantle" may seem to fall equally over all; to the ethical analyst this mantle must be lifted, though not destroyed, in order to recognize the very real problems beneath.

On Future Problems

If we now see that the provision of religious services resembles the secular professions, and if furthermore we have removed a principal obstacle to addressing this area with the critical apparatus of applied professional ethics, we may wish to consider what sorts of specific problems might be addressed. I've tried to suggest some of them; an exhaustive survey would be immense. But there is a further, fundamental problem, which will return us to the issues with which we began.

Among the characterizations of the professions there remains one crucial feature, universally counted among the necessary features of both the scholarly and the consulting professions, which is however most controversial when applied in the religious context. The professions, it is held, provide an *important* service, one which is crucial to the functioning of society as a whole.¹⁹ Furthermore, it is the very importance of this service which excuses ethical violations made in its name. Violations of ordinary morality—for instance, lying, or failing to prevent easily preventable serious harms—will be acceptable just if they are necessary to enable the practitioner to perform his or her central function, and those institutional practices will be favored which are maximally effective in providing the profession's services with minimal violation of ordinary moral rules. But if this is so, then we must ask what are the basic services conveyed in religious practice—presumably accomplished in such specific activities as baptism, confession, preaching, proselytism, and the like—, and are these services *important* ones? I shall hardly propose to answer these questions here. But I think we must keep in mind that these questions, though perhaps relatively easily answered in the secular professions, may prove much more difficult here. However, I do not think that the difficulty of answering them shows religious practice not to be a profession, or shows it to be one not accessible to the methods of contemporary professional-ethics critique. Rather, I think this shows the profession of religion to present a much more compelling, important problem. As a society, we are lavish consumers of religious services, as we are of services in medicine and in law, and we may wish to take some interest in the moral characteristics of the way in which these services are provided.

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NOTES

* Some of the material in this paper is drawn from my "Telling Confessions: Confidentiality in the Practice of Religion," *Sunstone*, vol. 8, no. 6 (Nov. - Dec. 1983), and other parts are drawn from a book in progress, provisionally entitled *Ethical Issues in the Practice of Religion*. I'd like to thank a number of my colleagues at Utah for vigorous discussion of these issues and for reading earlier drafts of this paper, including Virgil Aldrich, Peter Appleby, Mendel Cohen, Don Garrett, Bruce Landesman, Max Rogers, and Peter Windt.

1. See Clyde J. Steckel, "The Ministry as Profession and Calling," *Word & World*, vol. 1, no. 4 (Fall, 1981), for an informative summary of these disputes.

2. In drawing these parallels, I shall be relying on Michael D. Bayles's *Professional Ethics* (Belmont, CA: Wadsworth, 1981), especially the first chapter.

3. This figure represents the number of U.S. religious bodies for which the *Yearbook of American and Canadian Churches, 1983*, ed. Constant H. Jacquet, Jr. (Nashville, TN: Abingdon Press, 1983) reports data; it does not include sects or cults.

4. Howard M. Bahr, "Shifts in Denominational Demography," *Journal for the Scientific Study of Religion*, vol. 21, no. 2, June 1982, p. 106 and passim.

5. Steckel's paper, mentioned earlier, gives a good account of such shortcomings.

6. *Yearbook of American and Canadian Churches, 1983*, p. 270.

7. Alan H. Goldman, *The Moral Foundations of Professional Ethics* (Totowa, NJ: Rowman & Littlefield, 1980), esp. the Introduction.

8. Similar assertions may be made of alleged direct divine command, as in visions, voices, intuitions, prickings of conscience, etc., though I shall not discuss them here.

9. For an extended account of the doctrine, see Rev. John R. Roos, *The Seal of Confession*, The Catholic University of America Canon Law Studies No. 413 (Washington, DC: Catholic University of America Press, 1960), or, more succinctly, *The Catholic Encyclopedia* s.v. "Confession, Auricular," and s.v. "Confession, Seal of," in any recent edition. For a discussion of circumstances outside confession where a professional or other secret may be revealed, see Robert E. Regan, *Professional Secrecy in the Light of Moral Principles* (Washington, DC: Augustinian Press, 1943), esp. Chapter 12, "The Extra-sacramental Secret of the Priest."

10. For an account of these practices, see R. C. Mortimer, *The Origins of Private Penance in the Western Church* (Oxford: Clarendon, 1939), drawing on the earlier work of O. D. Watkins and B. Poschman.

11. See *The Catholic Encyclopedia*, s.v. "Confession, Auricular," ed. 1967, vol. 4, p. 132.

12. This development is traced in B. Poschman, *Die Abendlaendische Kirchenbuesse im Ausgang des Christlichen Altertums* (Munich, 1928), in English as *Penance and the Anointing of the Sick*, tr. and rev. F. Courtney (New York, 1964); see also Mortimer, n10 above, p. 3.

13. See, for instance, Count C. P. de Lasteyrie's *The History of Auricular Confession* (London: Richard Bentley, 1848), esp. vol. I, Chapter II, on "Seduction of Women in Spain, by Means of Confession."

14. For documentation of these claims, see my "Telling Confessions: Confidentiality in the Practice of Religion," *Sunstone*, vol. 8, no. 6 (Nov. – Dec. 1983), which examines confidentiality and confessional practices in Catholicism and Mormonism.

15. Unlike England, most of the states in the U.S. recognize the priest/penitent privilege, protecting the priest from being required to testify concerning matters learned in confession. In many states, this privilege is extended to communications to clergy which are not penitential in character, for instance, as in marriage counseling conducted by the clergy. However, in the U.S. the law varies widely from state to state. For an historical account of the development of English and American law, see Vincent C. Allred, "The Confessor in Court," *The Jurist*, vol. 13, no. 1, pp. 2–22 (January 1953); and for more recent summaries of statutes, Fred L. Kuhlmann, "Communications to Clergymen—When Are They Privileged?" *The Journal of Pastoral Care*, vol. 24, no. 1, pp. 30–46 (1970); and Tiemann and Bush, *The Right to Silence: Privileged Clergy Communication and the Law* (Nashville, TN: Abingdon Press, 1983).

16. See Roos, n9 above, p. 73.

17. See Roos, n9 above, p. 73: "[the confessor] actually has no human or communicable knowledge about the information being sought," and *The Catholic Encyclopedia*, s.v. "Confession, Seal of," ed. 1967, vol. 4, p. 134.

18. I thank Peter Windt for reminding me of this point.

19. This is argued by most writers on the secular professions, but disputed by Steckel with respect to religion. Steckel writes (p. 378) ". . . while the clergy are consistently judged to be very trustworthy in public opinion polls, there is no clear public need for ordained clergy which could compare with the need for physicians or lawyers."