

Ethics and Religious Counseling in a Pluralistic Environment

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Few issues facing military chaplaincy today are more pressing or challenging than the relationship between the chaplain's religious identity and the duty to offer care to all in a pluralistic environment. That relationship can become most strained in the context of counseling. Within the environment of the chaplain's own faith group, the content of counseling may appropriately reflect the religious commitments of the chaplain's endorsing body, as that community has formed the chaplain's religious conscience. But chaplains must also – and perhaps even more often – offer care, including counseling, within the pluralistic setting of a military unit. In that setting, the chaplain's endorsing body does not determine the content of counseling. Instead, the content is determined by the commitments and needs of the one who comes to the chaplain. This distinction between counseling inside and outside the chaplain's faith group is central to the idea of Professional Military Chaplaincy, and strongly supported by the legal norms that provide structure to the chaplaincy.

Let me start by clarifying some terms. First, "Pluralistic environment." For chaplains, the phrase is both descriptive and normative. The services are pluralistic environments in a wide variety of ways, but certainly in their religious dimension. The religious demography of the nation has changed significantly in my lifetime, and some of the most dramatic shifts have occurred over the last two decades. That is reflected in the composition of the military, and chaplains need to understand that diversity.

But the crucial normative significance of the phrase "pluralistic environment" comes from the promises that chaplains and their endorsers agree to upon the chaplain's accession. For the military chaplain, a pluralistic environment is more than just the context for ministry. It provides the legal and ethical description of the men and women who will be recipients of the chaplain's care and concern. Professional Military Chaplaincy is justified, in both ethics and law, by how well it serves the needs of all entitled to the chaplain's care and concern.

In what follows, I will draw a very sharp line between the chaplain's role in providing faith-distinctive religious ministry (in which the

endorsing body ultimately defines the appropriate content), and the chaplain's other key functions – facilitating the religious needs of all; delivering care to all; and offering various forms of advice to command leadership, the chain of command, and individuals. Although what I'm saying has inevitable connections to the areas of facilitation and command advice, I will focus on the contrast between the duty of care for all – which has content that is or should be directed by the services – and the duty to provide for those who voluntarily attend religious activities led by the chaplain.

The second term the needs to be defined is "Religious counseling." If "religious counseling" means the counseling content directed by an endorser then we don't have a very interesting question – the endorser specifies the content. The chaplain provides pastoral care to those who voluntarily seek his or her ministry specifically for its faith content, and the chaplain provides counsel in a way similar to that of a parallel minister of that faith tradition outside the military.

But that's not the only way to understand "religious counseling," and indeed certainly does not reflect any of the "pluralistic environment" just discussed. Let's look at this from a different perspective: what if "religious" describes the person who performs the counseling, but not necessarily the content of the counseling? That move takes us out from the realm of a chaplain providing ministry to co-religionists, and into a realm in which the chaplain brings his or her whole identity into the pluralistic environment, and then makes care available to all in the relevant community, be it an airbase, ship, or forward deployment point where special forces come in to refit and prepare for the next mission.

I suspect at this point few would find anything to disagree with – and perhaps anything interesting – so I'll try to change both. The key to legal and ethical counseling in pluralistic community is the chaplain's willingness to subordinate the content of the chaplain's faith, and open him or herself to the needs of the other. This ministry in the pluralistic context is most certainly not, as I have heard some chaplains describe it, "being among my congregation." While I think I understand what they're trying to say, it's at best mistaken, and at worst a symbol of one of the most destructive challenges to professional military chaplaincy.

First, even the work of providing faith-distinctive religious services is

a command religious program, not something owned by the chaplain. That sounds like a mere point of technicality, but it cuts right to the heart of our main issue. The chaplain is only present because Congress, DoD, and that particular service decided that the best way to accommodate the religious needs of service members is to use chaplains. As Chip Lupu and I put it in a law review article, Chaplains are “instruments of accommodation.” They are means to achieving a set of governmental objectives, not the beneficiaries or purpose of chaplaincy.

So what does all this have to do with religious counseling? Again, outside the context of faith-specific ministry, if we use “religious” to modify the counselor and not necessarily the content of counseling, we can return the proper focus of counseling to the person in need. That is my main, and perhaps only, point. The Professional Military Chaplain meets the other in need with care, concern, and respect for the dignity of the other. That includes respect for whatever religious views the other might hold, or the lack thereof. Any chaplain who presumes that the other has come to hear how the chaplain’s religious tradition views the concerns motivating the visit has betrayed the core of chaplaincy. I’ll speak later about the NDAA and its apparent protections for chaplains, but those are simply irrelevant to the exchange I just described.

Instead, the chaplain’s task here is to listen – actively, of course, because it will often take time and trust-building to elicit the reason for the visit – but the entire focus is on the other, and the needs and emotions that the other expresses. The chaplain’s training and continuing professional education must attend seriously to this mode of counseling, otherwise the leadership among service chaplains have failed in their most basic responsibility. Acute concerns may surface in the conversation, such as the experience of sexual assault or suicidal thoughts. Although some contexts will offer professionals who can give more expert help in such situations, the chaplain is often the first confidential counselor available to the service member and must be prepared to act appropriately. The chaplain is also the only counselor with whom the member has complete confidentiality, thus often making the chaplain the preferred confidante through whom additional referral can occur.

Referrals to professionals who have more specialized training is optimal practice. But chaplains need to internalize the idea that any referral is a continuing act of the chaplain’s care, and the service member who has come for assistance deserves the chaplain’s support if there is an interim period before the other professional can act – not unusual in deployments – and continuing expressions of concern even after the referral. In other words, referral should never be seen, no matter how tempting, as an opportunity to clear one item off the “To Do” list.

This is just one instance of a much broader point – the chaplain must

see and treat the other who comes for assistance as a person, not as a problem that needs to be solved. Chaplains are not the only professionals who need to be reminded of this; lawyers and doctors face the same temptation, and in many instances that exclusive focus on problem solving, rather than the broader person, can be self-defeating. Those who are entrusted with care of a person’s deepest emotions, fears, or secrets, need to attend to the whole person and the context in which he or she lives. Only then is it possible to work with the person to address their needs.

Back to referrals in counseling because they have come up in other contexts, where emotions among chaplains, their endorsing bodies, and even Congress, have been strongly expressed. I’ve talked already about chaplains who believe that there is only one form of religious counseling, and that form requires the chaplain to share his or her faith perspective with the other – even when the other has not asked for that, and even when the chaplain’s sharing amounts to proselytizing or denigration of the service member’s belief (or non-belief). Such conduct must be disavowed by the services, and disavowed in language that leaves no room for ambiguity. There is, and must be, a line between provision of faith-specific services (based on an expression

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of voluntary choice by the service member), and care delivered in the pluralistic environment of a military unit.

In more recent years, of course, the primary conversation has shifted due to the repeal of DADT and the Supreme Court's subsequent decision in *Obergefell* holding that the Constitution requires states and the federal government to recognize same-sex marriage. Many chaplains have been suddenly faced, perhaps for the first time, with a situation in which the official position conflicts with beliefs that they and their endorsing bodies hold about human sexuality and the institution of marriage. Let me do a bit of quick ground-clearing before returning to the issue of counseling:

Chaplains have no duty to marry same-sex couples, or any couples for that matter. Religious marriage is an act performed squarely within the zone of faith-specific worship, with content – including determinations of who is eligible – dependent on decisions by the chaplain and the endorsing body. In this respect, marriage is like baptism or confirmation in the Christian tradition – the government may not instruct a chaplain to perform a baptism or confirmation. The same applies to pre-marital or any other explicitly religious counseling of a couple.

But what about the service member, in a remote deployment, who comes to the chaplain deeply troubled by developments in a same-sex relationship with someone stateside. Assume that the chaplain's faith tradition regards same-sex relationships as inherently sinful. Consider the chaplain's initial response, at least on determining that the service member does not seek faith-specific counseling. This other deserves exactly the same care, concern, and respect that the chaplain would give to any other service member. Think about how the chaplain would deal with an unmarried service member who says she is pregnant, or a service member who says he has been unfaithful to his spouse. I can't recall talking with a chaplain who said that he or she would turn such a person away, or pronounce judgment from within the theology of the chaplain's faith tradition. In each instance, those chaplains have said they have listened with care and concern, and sought to help the service member reflect on that crisis by reference to his or her own set of values, whether religious or not.

We should expect no less from a chaplain who encounters a service member in a troubled same-sex relationship, or one wrestling with his or her sexuality. Even where it is possible to refer the service member to a chaplain from a faith tradition that recognizes same-sex marriage, the referring chaplain retains a duty of care for the service member – ensuring that he or she has been able to make contact with the other chaplain, and following up to see how the service member is doing. Why all that? To reinforce – for both the service member and the chaplain – that the referral was not a means of dispensing with a problem, but rather an attempt to offer the other with the best available care.

Now to the chaplain in a deployment faced with this same situation, yet no realistic chance of referral. Put yourself in the place of the one who seeks out the chaplain for counseling. Why would he or she do that rather than simply confide in a friend? If the chaplain has been doing a good job, the chaplain will have developed a relationship with many in the unit – walking around and talking, and where permitted, sharing their risks by being present in training and on deployment – all of which ultimately build trust. Moreover, the chaplain may be the sole person in that place with whom the service member can have a confidential conversation. So based on the trust engendered by the chaplain, as well as the legal protection of confidentiality, the other willingly makes him- or herself vulnerable to the chaplain by divulging feelings, secrets, experiences, that the service member may not ever have put into words. The chaplain has induced that self-exposure, and must respond with respect and compassion. To do otherwise would represent a betrayal.

I will leave to others more experienced in the methods of counseling the various techniques one can use as a Professional Military Chaplain. My only point here is that a chaplain may not refuse to offer respectful, caring counsel to any eligible person, whether or not the chaplain's own faith tradition finds the relationship or conduct inherently sinful.

Now to the strictly legal side. Those who disagree with the perspective I've offered here will cite two sources in objection. I believe that neither provides a valid excuse for departing from this perspective on counseling as a Professional Military Chaplain.

First, the 2014 NDAA provides that “Unless it could have an adverse impact on military readiness, unit cohesion, and good order and discipline, the Armed Forces shall accommodate . . . the sincerely held beliefs of a member of the armed forces reflecting the conscience, moral principles, or religious beliefs of the member and, in so far as practicable, may not use such expression of beliefs as the basis of any adverse personnel action, discrimination, or denial of promotion, schooling, training, or assignment . . .”

Using that standard, how should we regard a chaplain's refusal to offer appropriate care because of a service member's sexual orientation? If I were representing the military – and I do not – I would think it fairly easy to show how the refusal could negatively impact unit cohesion, and by extension, military readiness. Once word gets around that the chaplain cannot be trusted, the chaplain's usefulness to the unit is destroyed. In addition, a chaplain who announces that his or her endorsing body forbids any counseling of those whose conduct is incompatible with the body's fundamental beliefs must dramatically limit the chaplain's availability for assignment – especially those that involve the highest level of personal risk to the chaplain. That limitation certainly has an adverse impact on military readiness.

Second, I've seen a fair number of arguments based on the Religious Freedom Restoration Act, which requires the government to accommodate sincere religious objections that substantially burden the believer, unless the government has a compelling interest that can be achieved by no less restrictive means. Again, were I to represent the government, I would start with the promise made at the time of accession – that the chaplain understands what it means to function in a pluralistic environment. If chaplain candidates fail to understand that promise, it means their basic formation for Professional Military Chaplaincy is seriously deficient.

Next, I would look to the NDAA as an expression of the government's compelling interests - military readiness, unit cohesion, and good order and discipline – and invoke the same arguments made earlier. Finally, and most importantly, I would point to the potential for serious harm to the intended beneficiaries of the chaplain's services if chaplains are permitted to decide who deserves their care. One collateral feature of the law of religious accommodation is attention to possible injury to the rights of third parties if the requested exemption is granted. In this situation, that injury is almost inevitable.

Before concluding, I want to try and offer a response to a pointed question asked by several MCA members in the audience following this talk. The question took a variety of forms, but made the same basic point: if all chaplains are required to conform to this model of chaplaincy, the requirement will directly conflict with some endorsing bodies' express limits on their chaplains' conduct. Such a conflict, if not accommodated, would require chaplains of those faith groups to resign. And if those chaplains resign, service members of those faith groups would be deprived of access to religious services the chaplains would have provided. The argument is a strong one and appeals especially to the ideas of religious diversity and pluralism. To be more specific, why should those who have deep religious commitments to traditional notions of human sexuality not have chaplains who share those same religious commitments?

Like the question, my response is multi-layered. One, the military has not imposed limits on the religious preaching or teaching of the chaplains; instead, the endorsing body has imposed limits on the conduct of chaplains outside the context of faith group practice. In that respect, the endorsing body – not the military – is solely responsible for the withdrawal of its chaplains. Faith groups are certainly free to decide that service as a military chaplain is inconsistent with the doctrines or practices of the religious body. But that decision could not be the basis for a claim by service members that the military has failed to adequately accommodate their beliefs. And, indeed, it is highly unlikely that all chaplains who share that faith commitment would leave the services.

Two, I believe that faith groups' threat to withdraw chaplains rests

on a fundamental mistake about counseling in the pluralistic environment. Such counseling does not require a chaplain to endorse a service member's sexual orientation or same-sex relationship, or even imply that a chaplain who counseled a service member about those matters has done so. This distinction should only fail to satisfy a faith group that requires its clergy to declare judgment on the sins of all with whom they come into professional contact. Perhaps some faith groups do demand that standard of all clergy, but such a requirement seems patently inconsistent with the chaplain's duty to care for all in a pluralistic environment.

I'll conclude by reiterating a point made earlier. Once chaplains start demanding religious accommodations, the concept of Professional Military Chaplaincy is in deep trouble. Such accommodations reflect a fundamental contradiction: the chaplaincy exists solely as an instrument to accommodate the needs of service members. When the accommodators seek their own accommodations, the entire institution needs to be re-examined. And in a time of severe budgetary constraints, I don't think a fundamental re-examination would serve the interests of chaplains or the beneficiaries of their care and concern.

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