

Clergy Sexual Misconduct: An Issue of Ethics and Justice

BY ANNE UNDERWOOD

Regardless of denomination or tradition, most congregants assume that their place of worship and religious study is a safe space for children, adults in crisis and all who enter. Most would aver that their faith community promotes justice and is administered ethically. Yet religious institutions are human enterprises led by clergy and laity subject to missing the mark the same as leaders of any institution. The pursuit of the Holy does not itself make everyone holy.

All religious leaders have power¹ within their community. A few misuse it. Acknowledging the misuse of power by some religious leaders is painful but necessary. This is as true for Jewish denominations as for Boston Catholics, even though it is the sins of the latter's clergy leaders that have received the broadest publicity.

Misuse of power by religious leaders — in this article, specifically, rabbis and cantors — may be financial, emotional, spiritual, physical or sexual. None is simply a personal harm done privately between the rabbi/cantor and another. Each misuse violates the trust of an individual, the families of both,

the congregation, the professional association and the ordaining/investing body.

Power Abuse

Any form of power abuse by clergy tears the fabric of the community. Property crimes, like embezzlement (abusing access to synagogue funds to steal), can be criminally prosecuted, but usually are not. Congregational leaders are often loath to shame their clergy publicly or to be the object of negative publicity.

Transgressions against persons are often beyond the scope of civil or criminal law, unless the physical abuse of minors is involved. Accusations of personal harm are often cases of “he says, she says,” and frequently involve people marginalized from community power.

The primary example of personal harm is sexual misconduct, which encompasses all forms of misuse of power sexually: abuse of minors, sexual malfeasance with adults and sexual harassment. This is the example used throughout this article to discuss abuse-of-power issues.

Justice and ethics are inseparable. *Pirke Avot* 1.10 admonishes, “love la-

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bor and hate [the abuse of power]. . .” (The Hebrew word translated as [abuse of power], *rabbanut*, is the modern Hebrew word for the rabbinate.² How one uses power demonstrates one’s commitment to the ethical life. How one holds others accountable for their use of power demonstrates one’s commitment to justice. For most religious people, the second mandate concerning others is more difficult to confront than the first.

Sex, Power and Religious Leaders

Historically, sex and power often intertwine. The potential for misusing power always has been present in relationships between religious leaders and laity. American religious history, for example, is replete with stories of Protestant clergy-congregant sexual liaisons. Three thousand years ago, the prophet Nathan rebuked King David for fulfilling his lust with the wife of a soldier and then using his royal power to order the man killed in battle (Samuel II: 11-12).

Until recently, the term “sexual indiscretion” described and often excused such behavior. Sexual indiscretions were tolerated because male religious and political leaders were viewed as “entitled” to sexual prerogatives, or were pitied as victims of female temptresses within their communities.

In the 1980s, a new perspective emerged. Leadership entitlement (the “King David Syndrome”) and male vulnerability (the “Potiphar’s Wife Trap”) were reconceptualized. “Sexual indiscretion” received a different name:

sexual misconduct. Faith communities urged clergy to accept responsibility for faithfulness to partnered commitments — their own and those of others. Recognition spread that sexual relations were inappropriate with congregants, counselees and employees.

Societal Changes

The change in religious communities corresponded to changes in the larger society. Both acknowledged the fresh perspectives on human relationships articulated in the 1986 U.S. Supreme Court case, *Meritor v. Vinson*.³ There, for the first time, sexual harassment (in the workplace) was acknowledged as a legal theory on which a claim for harm could be made.

The Court gave three guidelines for determining if a sexual liaison in the work place constituted harassment. First, a voluntary liaison (no gun held to one’s head, no threat of economic loss or loss of status) does not automatically create a “welcome” liaison. It must be shown that the relationship was welcomed by both parties. If it was not, it might constitute harassment.

Second, when determining if the liaison was welcome, the fact-finder must look to the impact of the alleged behavior on the alleged victim, not the intent of the accused. This turns upside down the traditional analysis in criminal and tort law where the *mens rea* (mind-set) of the accused is the focus, usually to the exclusion of a victim’s perception or experience.

Third, the Court said that when

there is an imbalance of power, consent to a voluntary liaison cannot be assumed. Consent is a matter of fact to be determined at trial. Each guideline confirms the prophetic call to heed the voice of the most vulnerable — to honor the view of those with lesser power.

The Court in the Meritor case held that employers (and, in a later decision, schools) are responsible for the actions of those whom they employ in positions of authority. Further, there must be written and publicized policies regarding appropriate conduct and procedures for addressing complaints. The 1990s saw the creation of sexual-misconduct policies, and modifications to existing professional ethics codes, specifically to address sexual behavior.

Leaders' Fiduciary Duty

As codes were refined, so too was the understanding of "sexual misconduct." Applying concepts from the legal and financial world to human relationships, ethicists in the mid 1990s spoke of religious leaders' fiduciary duty to those served. Fiduciary means holding something of value in trust. The holding creates the responsibility to act in the other's best interest. The relationship of a cantor and bar mitzvah student, for example, exists for the sole purpose of addressing and protecting the needs of the student.

Because of the rabbi's position as a trusted leader of the community, s/he often has access to the details and dreams of congregants' lives. The community's selection of a rabbi con-

fers on that person honor and power. Individuals trust the rabbi to be a person of integrity as well as a religious leader. When the rabbi breaks the confidentiality of a couple in marital counseling, or uses private insights about someone's health to keep that person off of the board of directors, or returns the flirtations of a conversion candidate, fiduciary duty is breached. The rabbi has not held sacred something in her or his care.

This breach of duty is also a betrayal of trust. When trust is broken by a religious leader, the result for the person betrayed is often alienation from the Holy and bitter departure from the faith tradition. The ramifications of each cascade throughout the entire community — either as direct knowledge is shared, or as rumors are spread.

Imbalance of Power

In pastoral counseling, it is always the duty of the rabbi to monitor transference.⁴ The rabbi is responsible for maintaining the integrity of the relationship because the rabbi holds greater power in the context of the religious community.⁵ A congregant may be a powerful financial broker, an influential attorney, or esteemed surgeon. (In such congregants' professional lives, they have their own fiduciary duty to clients and patients.) But within the synagogue, it is the rabbi who holds the "professional" power within individual relationships.

Professional power comes from the special knowledge and expertise of the position. The professional, whether

doctor, lawyer or rabbi, knows the patient, client or congregant in ways the patient, client or congregant does not know the professional. There is mutuality of consent to the relationship, but no mutuality of access to information about each other within the relationship.

If “knowledge is power,” it is clear that one person holds more of both. In addition to this real power differential, most people ascribe power to the professional, whether or not the professional has actual power in a given encounter. This applies particularly to clergy of all faith traditions. “Numinosity” is the special name for the kind of “transcendent,” “connected-to-the-Holy” power ascribed by laity to those who are ordained or invested. Theology and ecclesiology aside, numinosity is as real for the religious Jewish lay person as for the Irish Catholic or Sunni Muslim.

No matter how much power a person has outside the religious setting, within it, the expectations and realities of the rabbinical status create an imbalance of power in favor of the rabbi vis-à-vis individual congregants in counseling, crisis or life-cycle ceremonies.

Are Peer Relationships Possible?

Can there ever be occasions when a rabbi sheds his or her rabbinic power for an authentic peer relationship with a congregant? Until very recently, the conventional wisdom has been “no.” Once a rabbi ascends to the *bimah* as liturgist and teacher of Torah, the rabbi

is set apart — elevated in both function and person within the congregation.

A few voices, mine included, are now proposing rare and limited situations where the power imbalance can be acknowledged, the difference it creates negotiated, and a friendship of peers formed. However, this will never be true if there has been a counseling relationship between the rabbi and the congregant or the congregant’s family. And, there can never be an assumption of meaningful consent to a sexual relationship.

Boundaries: What and Why?

For the rabbi/cantor, two ethical questions emerge: How does one recognize, own, value and use wisely one’s power while remaining fully human and non-arrogant in a professional relationship? How does one use one’s own needs and abilities to benefit and complement the needs and abilities of the others with whom one stands in a “power” relationship?

These questions align with the concept of “boundaries.” Webster’s dictionary defines a boundary as something that sets a limit. Ethicist Marie Fortune says that “boundaries are a means to attend to our relative power and vulnerability in any relationship without doing harm.”⁶ Boundaries (limits) can be viewed as boarders or barriers to separate the rabbi from the congregant. Or, they can be seen as safe points of contact, points where both can meet but that allow the rabbi to maintain the separation necessary to focus solely

on the best interests and needs of the congregant, rather than on the rabbi's own issues and desires.

Observing boundaries does not mean showing no warmth or engagement with those served. One psychologist says, "Boundaries do not mean 'detached neutrality.' Boundaries are about passionate but trustworthy engagement."⁷ Boundaries mark a path along which two people, rabbi and congregant, can travel safely and with ethical integrity in spiritual and intellectual intimacy.

Policies and Professional Codes

Understanding power differentials and respecting professional boundaries are personal steps that rabbis, cantors and congregants can take to contribute to the ethical environment of a congregation. The congregational body needs also to study the issues of use and abuse of professional power and to formulate its own policies and procedures for responding to allegations of injustice, whether financial or personal. Policies should cover not only the ordained/invested, but all employees and lay members as well. Since the focus of this article is sexual misconduct, it is policies particular to those charges that are discussed.

Most denominational sexual-conduct policies follow the Equal Employment Opportunity Commission's definition of sexual harassment which includes: unwanted touching, unwelcome attentions, assault and rape.⁸

The First Amendment removes ministerial conduct in religious forums

from the purview of secular law.⁹ Therefore, faith communities have an ethical obligation to create and enforce their own policies in order to provide the same level of safety in their communities as that required at the supermarket or the department store. Rabbinical and cantorial codes and policies generally prohibit any sexualized contact between rabbis or cantors and congregants, students, counselees and employees. Synagogue policies should include religious school teachers, vendors and volunteers.

Holding Clergy Accountable

Having a policy is not enough; it must be publicized. More importantly, people must be willing to use it when necessary. Acknowledging that religious leaders sometimes miss the mark and engage in inappropriate sexualized conduct is painful. Communities can be split apart by allegations and findings, and holding religious leaders accountable is emotionally wrenching. Perceptions of clergy can become conflicted and contradictory. The rabbi who is charged with having molested three congregants is the same rabbi who has supported thirty others through the final days of loved ones. The cantor who makes some bat mitzvah students uncomfortable with his jokes and hugs possesses the voice that so many find emotionally moving at High Holy Day services.

The most difficult lesson from the secular world for religious communities to comprehend is that numerous great and good deeds for many cannot

outweigh the damage of inappropriate sexualized behavior to a few. No group of professionals likes to hear of a colleague's misdeeds. No group of professionals is comfortable disciplining peers. For clergy, it is especially disconcerting, since it is uncomfortable and difficult to presume to sit in judgment of another person. In my experience, congregants understand more readily than do colleagues the importance of acting on allegations of clergy misconduct. Sometimes, the congregation must take the lead in seeking justice from the offender's professional association.

When *Teshuvah* Is Not Possible

Clergy and lay people of all faith traditions believe in the power of remorse to produce reconciliation and reform (*teshuvah*). The unfortunate reality is that for many religious leaders who offend, true *teshuvah* does not happen. They are incapable of fundamental change. Psychological evaluations of sex offenders often show people with a pervasive character disorder. They cannot control their impulses, or comprehend the impact of their actions. The only just response for them and for congregants (current as well as potential) is removal from opportunities for leadership or further rabbinic/cantorial work. Their own denial, coupled with the natural resistance to "congregational messes," makes covering up the situation or blaming the complainants the easiest response. Neither is just or ethical.

Clear guidelines for acceptable be-

havior, coupled with a straightforward and fair process for investigating and adjudicating allegations of misconduct, are the only antidote.¹⁰ Communities are accountable to their members for an ethical environment in which justice is upheld with compassion. However painful, *tikkun olam* requires the ethical community to hold accountable a leader who has missed the mark of justice in community relationships.

1. Power here means the ability to influence or control one's environment and the people in it.

2. *Pirke Avot: A Modern Commentary on Jewish Ethics*, edited and translated by Leonard Kravitz and Kerry M. Olitzky, UAHC Press, 1993. The observation on *rabbanut* and its modern counterpart is noted by the editors.

3. *Meritor Savings Bank v. Vinson*, 477 U.S. 57 (1986). A bank teller terminated a lengthy sexual relationship with her supervisor. After being fired, she sued the bank, claiming that the relationship was not consensual and that she had felt harassed by the supervisor's attentions. The court ruled that harassment constitutes discrimination under Title VII of the Civil Rights Act of 1964, and that an employer could be found liable for the conduct of its supervisory employees.

4. Transference and counter transference (often involving erotic feelings or emotional fantasies) frequently occur in counseling. Professionals who counsel should be trained to recognize, use and diffuse these feelings to address the issues of the person with whom they are working.

5. Two works containing excellent discussions of power differentials in professional relationships and giving specific note to the

kinds of power inherent within clerical relationships are: *Ethics in Pastoral Ministry* (Paulist Press, 1996) by Richard Gula, SS, and *At Personal Risk: Boundary Violations in Professional-Client Relationships* (Norton, 1992) by Marilyn Peterson.

6. Marie Fortune, "The Joy of Boundaries," in *Boundary Wars, Intimacy and Distance in Healing Relationships*, Katherine Hancock Ragsdale (The Pilgrim Press, 1996), 80.
7. Miriam Greenspan, "Out of Bounds," in *Boundary Wars, Intimacy and Distance in Healing Relationships* Katherine Hancock Ragsdale (The Pilgrim Press, 1996), 134.
8. EEOC definition: "Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitutes sexual harassment when (1) submission to such conduct is made

either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such an individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment," 29CFR 1604.11. Educational institutions add "educational" to employment situations.

9. Courts interpret the First Amendment's religious freedom and separation clauses to prohibit their interference with the training, hiring, retention or firing of people with "ministerial" functions within a religious institution.
10. The author has written elsewhere about the contents of such policies and procedures.