

Epikeia Controversy



R. J. M. I.

By

The Precious Blood of Jesus Christ,
The Grace of the God of the Holy Catholic Church,
The Mediation of the Blessed Virgin Mary,
Our Lady of Good Counsel and Crusher of Heretics,
The Protection of Saint Joseph, Patriarch of the Holy Family,
The Intercession of Saint Michael the Archangel
and the cooperation of

Richard Joseph Michael Ibranyi

To Jesus through Mary

*Judica me Deus, et discerne causam meam de gente non sancta
as homine iniquo et doloso erue me*

Ad Majorem Dei Gloriam

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Abbreviation: HNUE: “*The History, Nature, & Use of Epikeia in Moral Theology*,” Fr. Lawrence Joseph Riley, A.B. S.T.L., Imprimatur +Ricardus Jacobus Cushing D.D., May 7, 1948, The Catholic University of America Press

Note: my book *Exceptions to the Law* goes into detail regarding these topics and should be revised by the end of August or early September.

Patrick Henry's errors regarding epikeia

1) Epikeia Does not Apply to Invalidating Laws

Patrick teaches that epikeia does not apply to “invalidating laws” also known as “negative laws.” This is utterly false.

RJMI Comment:

HNUE, p. 382: “*Ballerini*: ...Suffice it here to call attention to his insistence that the fact that a law is invalidating does not exclude the possibility of the subject's resorting to the use of epikeia in regard to it.”

HNUE, pp. 409-401. Fr. Riley: Now, in point of fact, there are times when it is beyond the power of a human legislator to urge the obligation of human invalidating law. It follows, then, that there are times when a human invalidating law ceases to bind

2) Epikeia Does not Apply to Any Divine Laws

Patrick teaches that epikeia cannot be used for any “divine laws” and this is also false.

RJMI Comment:

HNUE, pp. 299, 301: “*Henno*. The theologian asserts unhesitatingly that the use of epikeia in reference to divine law is lawful ...It is the contention of Viva that epikeia... may be used in reference to the divine law.”

2a) One of the reason some say divine laws can never be exempted from is because God foresees all things and therefore He would have included the exception within the divine law.

RJMI Comment:

Yes, God does foresee all things, but nevertheless, he does allow exceptions for His divine laws that do not deal with faith or morals. Jesus Christ proved this when he healed on the Sabbath Day, when his apostles picked corn on the Sabbath Day, and by justifying the work of circumcision when the eighth day of an infant fell on the Sabbath Day, when He allows for an ox to be pulled out of a pit on the Sabbath Day. None of these exceptions were included in the law by God. It cannot be said that God did not foresee these exceptions, rather, He did not include the all the exceptions because he did not want to make the law burdensome, and also to test His chosen to see if they understood not just the letter of the law, but also the spirit, and thus weed out the true Pharisees.

HNUE: “Viva. Epikeia... may be used in reference to the divine law, not insofar as the mind of God is concerned, but only in relation to the words of the law. As a clarification of this final clause, Viva explains that a universal divine positive law may be deficient in a particular case, not because God cannot foresee such a case (as might be verified if there were question of a merely human legislator), but rather owing to the fact that it would be incongruous to express in His law the countless particular cases liable to arise.”

RJMI Brief Discourse

Truths regarding epikeia

- 1) It cannot be used to exempt from laws that deal with faith (dogma) or morals, which includes the form, matter, and intention of the Sacraments. These laws admit to no exceptions under any circumstances.
- 2) It can be used for any other law, laws not dealing with faith or morals. These laws deal with the discipline and government of the Church and can, and have changed.
- 3) Divine laws are laws that God directly commands to be obeyed. Divine laws deal fall into two classes, those that deal with faith and morals and those that deal with discipline and government. Divine laws that deal with discipline and government can, and have changed. Epikeia applies to the divine laws that do not deal with faith or moral, that deal with discipline and government.
- 4) Human laws are laws that popes and competent Church authorities make. Human laws only deal with discipline and government, and thus they can, and have changed. Epikeia applies to all human laws.
- 5) Epikeia can only be used by, and justify Catholics, or penitent non-Catholics who abjure their errors and in so doing enter the Catholic Church.

The Principle of Epikeia

Epikeia, meaning equity (fairness) allows a subject, who either has no recourse to one in authority, or recourse would be difficult, to be exempted from a law in extraordinary situations that would be harmful and wrong if one was to follow the letter of the law.

HNUE, p. 52: "In cases where it is certain that the lawmaker would be unwilling to urge obligation, *epikeia* may always be used without recourse to authority; in cases of doubt, an authority with power to dispense must be consulted if time allows, otherwise the words of the law are to be observed; in cases of probability, an authority must be resorted to; but if this is impossible, *epikeia* may be used."

Only Catholics and Penitent non-Catholics who abjure can be justified by epikeia

Only Catholics, or penitent non-Catholics who abjure their errors when no one in authority is available to accept their abjuration, can use *epikeia*. One who qualifies does not need to know of *epikeia* to use it, to be justified by it. The spirit of the law is considered when epikeia is invoked. There are circumstances that may arise that the law had not foreseen and would not have intended to apply in extraordinary (particular) cases, or did not include in the law for the sake of brevity. The canonists and theologians teach that epikeia can be used with laws not dealing with faith or morals, because these laws are general, universal, and ordinary, and that they can be deficient in a particular and extraordinary situation. This, they say, is because of two reasons:

Reason 1) The lawgiver, being human, when enacting human laws that can change, cannot foresee all the exceptions that might arise in the future. No human lawgiver can foresee all the exceptions that might arise, because he is not God.

Reason 2) The lawgiver is aware of many exceptions that can take place, but it would be burdensome to include them in the law, because they would literally take up a huge volume of space for each law, with almost endless possibilities arising.

For both of these above reasons the use of *epikeia* is admitted when a legitimate exception arises. Thomas Aquinas (+1274) teaches both of these reasons as to why a universal law is deficient.

Here is reason 1:

Thomas: “No man has wisdom so great that he can take into consideration all individual cases; and therefore he cannot adequately express in words all those things that are fitting for the end which he has in mind.”

Here is reason 2:

{Cont.} “And if the legislator were able to consider all cases, it would not be fitting that he mention all, in order to avoid confusion; but he should formulate the law according to what is the most usual occurrence.”¹

Reason 1:

HNUE. pp. 19-12: “The reasons for the existence of such a concept [*epikeia*] is to be found in the fact that laws are, of their very nature, universal. Lawmakers legislate for the general run of cases, and not for any particular concrete instance. But particular details and circumstance are almost limitless in number and nature; it is clear that no legislator in the act of framing of a law, can foresee all the variable circumstances which may arise. Taking into account what usually and ordinarily happens, he enacts his law. He is not, however, ignorant of the possibility that his law, though just and good in general, may be deficient in particular cases. On the other hand, an individual may find himself confronted with a case which, although it is included in the law insofar as the words are concerned, nevertheless is not comprehended in the general law, if the intention of the legislator, and not merely the verbal formula, be scrutinized. And so, he *emends* or *corrects* the law; he prudently judges that if the lawmaker had foreseen this particular case, he would not have wished to bind his subject; and so the subject does not observe the law as it is written. In other words, *epikeia* is used.”

The principle of *epikeia* has been confirmed by the Catholic Church and used by Catholics. Canon 18 of the 1917 Code confirms the principle of *epikeia*.

Canon Law a Text and Commentary: “Canon 18. *Epikēia* is an interpretation exempting one from the law contrary to the clear words of the law and in accordance with the mind of the legislator. It is evidently a very exceptional thing. It may be used with prudent discretion, and is justified, only in a particular case where: a) the strict interpretation of the law would work a great hardship; and b) in view of the usual interpretation it may be prudently conjectured that, in this particular case, the legislator would not wish the law to be strictly applied.”²

Epikēia Applies to invalidating laws

(Excerpt from my Book Two)

As already proven above (See: *Epikēia and the Sacrament of Penance*” and “*Epikēia and the Sacrament of Matrimony*”) by the Holy Office, invalidating laws can also be exempted from by the principle of *epikeia*. There were a few theologians who did not admit to this. They did admit that these laws do not always bind a subject, but for

¹ Thomas, *Sum. Theol.*, I-II, q. 96, a. 6, ad 3.

² Bouscaren and Ellis, *Canon Law a Text and Commentary*, p.33, on can. 18

different reasons other than *epikeia*. The following is a sample of the common consensus regarding invalidating laws and how *epikeia* applies to them also.

HNUE, p. 382: “*Ballerini*: ... Suffice it here to call attention to his insistence that the fact that a law is invalidating does not exclude the possibility of the subject’s resorting to the use of *epikeia* in regard to it. For...the underlying basis of *epikeia*, as such—namely, that laws, being sometimes deficient by reason of the universality of their expression, cannot include each and every possible case—applies to invalidating laws no less than to other laws. And consequently, whenever the observance of an invalidating law would become ‘injurious or intolerable’ the use of *epikeia* in regard to it becomes lawful.” p. 383: “*Leroux*: Leroux... admits however, that it is generally taught that an invalidating law can cease by the lawful use of *epikeia* on account of common necessity—when, for example, it was impossible for people in general living in some region to have access to a pastor for the celebration of marriage [ed. under the “*Tametsi*” Decree in Trent]. Continuing, he observes that some authors maintain that even in a case of particular necessity which is most urgent, *epikeia* may be applied to an invalidating law.” p.383-4: “*Wouters*: It is the opinion of Wouters that any human law will admit to *epikeia* in its regard. Extreme rigor on the part of the legislator is not to be presumed. The law must not be deemed to extend to each and every case which, if the matter be considered strictly, the lawmaker could justly include in his law. To these general principles invalidating laws form no exception”

I will now present a quote from Fr. Riley, the author of the above book, *History, Nature, and Use of Epikeia*. He confirms the teaching that *epikeia* must also apply to human invalidating laws. This, he teaches, is the only possible teaching, after all views are considered.

HNUE, pp. 409-410, 412-414: “(Fr. Riley) It would seem to be indisputable that any human law ceases to bind when it would be beyond the power of the legislator to urge its obligation. Now, in point of fact, there are times when it is beyond the power of a human legislator to urge the obligation of human invalidating law. It follows, then, that there are times when a human invalidating law ceases to bind... It cannot be denied that no lawmaker may impose an obligation, compliance with which would be either impossible or disproportionately difficult. This conclusion extends to invalidating as well as other laws. Secondly, no legislator may demand that his law be obeyed if such an observance would transgress, or necessitate the transgression of, a higher law. This is obviously true even when there is a question of invalidating laws... It is clear that a law ceases to bind once it commences to defeat the very purpose for which all law exists... It can sometimes happen that circumstances give rise to an encumbrance extrinsically connected with the observance of an invalidating law, which encumbrance is entirely out of proportion with the good intended, and with the gravity of the precept. This is possible cannot be denied. Nor is it any less incontrovertible that in such an instance the legislator would in justice be unable to demand observance of his law. As a result, the invalidating law would cease...”³ It is indisputable that it would exceed the power of a human legislator to demand the observance of his invalidating law if to exact obedience would necessarily infringe upon a higher law, or right. There is no sound reason why what has been said above in regard to this principle, insofar as it concerns human laws in general, should not be true where human invalidating laws are concerned.”

Those who held the minority opinion, that denied the use of *epikeia* for human invalidating laws, did not deny that a subject can be freed from the obligation of obeying the letter of the law in extraordinary situations, but justified their opinions in different ways. They taught that the subject was not bound to human invalidating laws in

³ RJMI Comment: You can see how this applies to Pope Pius XII’s, *Ad Principes*, dealing with Episcopal Consecrations, which is a human invalidating law. It can be exempted from in an extraordinary situation that would make it harmful if one obeyed the letter of that law when there is no hierarchy to approve bishops. It is the mind of the Church to have Catholic bishops who can assist in saving souls.

extraordinary circumstances, not because of an exemption due to **epikeia**, but because the law **ceased** to bind in a particular case, or is **suspended**, or is the law is **interdicted**. But, the author and other canonists make the point that if the law ceases to bind in a particular case then this can only happen by the principle of epikeia. We will read the opinion of *De Smet* regarding this topic.

HNUE, pp. 402-403: “De Smet believes that authors agree as, to the solution proposed in this last case, but differ as to the juridical explanation of it. Some maintain that the ecclesiastical law ceases by reason of *epikeia* insofar as it is prohibiting, but not insofar as it is invalidating. Such and opinion De Smet deems to be startling, incomplete and defective. He himself follows the view that in such extreme necessity the law of the Church ceases by reason of *epikeia* not merely insofar as it is prohibiting, but even as invalidating.”

And lastly, as proven above in the example on “Epikeia and the Sacrament of Matrimony,” the Holy Office, as well as Pope Pius X confirmed the use of *epikeia* for human invalidating laws.

Epikeia Applies to Certain Divine Laws

Excerpt from Book Two

God Foresees Exceptions: Epikeia and Divine Laws

Therefore, we see that God’s own law, to not work on the Sabbath Day, did not include circumcision, healing, feeding animals or pulling them out of a pit, although God did not mention these exceptions in the law. In these situations, were Jesus Christ had used *epikeia* to be exempted from His own law, it cannot be said that He, Almighty God, did not foresee these exceptions, for God knows all things before they come to pass. God did not include these exceptions into the letter of the law for the sake of brevity and also as a test to see if His chosen comprehended the spirit of the law, to break the pride of those who followed only the letter of the law without reference to its spirit, is true meaning and reason.

HNUE, p. 301: “*Viva*. It is the contention of Viva that epikeia... may be used in reference to the divine law, not insofar as the mind of God is concerned, but only in relation to the words of the law. As a clarification of this final clause, Viva explains that a universal divine positive law may be deficient in a particular case, not because God cannot foresee such a case (as might be verified if there were question of a merely human legislator), but rather owing to the fact that it would be incongruous to express in His law the countless particular cases liable to arise. Consequently, the divine law may be corrected, not in relation to the divine mind, but rather in relation to the words of the law.”

The deficiency of the law that occurs because God or a human legislator did not want to include a foreseeable exception for the sake of brevity, as stated in reason 2 above, is more accurately a curtailment of the law instead of a deficiency. A deficiency would occur due to reason 1, when the human legislator did not foresee the exception.

HNUE, p. 300: “*Salmanticenses*. According to the opinion of the Salmanticenses, epikeia may be used, with regard not only to human law, but also to divine positive law. The basic reason for their view arises from the fact that they believe that divine positive law, like human law, may be deficient owing to the universality of its expression, and hence require correction by epikeia. Furthermore, it is not necessary to suppose, as a basis for epikeia, the lawgiver’s limitation of

knowledge which prevented his foreseeing all possible cases.⁴ This condition obviously can apply only to human legislators. But, it is quite possible—and for this statement the Salmanticenses cite the Angelic Doctor—that in order to avoid prolixity and confusion in his law, the legislator was unwilling to express in particular all the cases he wished to exempt, even though actually he foresaw them. That this is the situation which is verified in the case of divine positive laws the Salmanticenses strongly maintain. For God well understood that making use of the virtue of epikeia, men could correct a universal or general law when the occasion presented itself, and could interpret His Will in accordance with circumstances as they arose. In support of this position, the Salmanticenses allege the instances of David's partaking of the loaves of proposition, and the Machabees' interpretation that they were not obliged to observe the Sabbath by abstaining in all circumstances from the shedding of blood."

Divine Laws are laws given by God to men through revelation, and also consist of the natural law upon all men's hearts. Divine Laws that deal with faith or morals cannot change, nor can one be exempted or dispensed from obeying them under any circumstance. Divine Laws that do not deal with faith or morals, such as discipline, ritual, and government, can change and thus one can be exempted or dispensed from obeying them under certain circumstances. The divine laws that can be changed are changed by God speaking through His representative on earth, prophets before the coming of Christ, and popes after the coming of Christ under the New Covenant.

Human laws regulating God's chosen, are laws not revealed by God. Human laws that do not touch upon faith or morals—many of the Church's laws dealing with discipline, ritual, and government—can change and thus be exempted or dispensed from.

It is a divine law revealed by God that men cannot work on the Sabbath Day. This divine law does not deal with faith or morals, and if it pleased God He could change this law. God could also allow men to work on the Sabbath Day if He wanted because it is not in violation of a divine law dealing with faith or morals. It is not a sin, in and of itself, to work, the sin incurred when one works on Sunday is disobedience to a command from our Lord. Another example is the eating of pork under the Old Covenant that was forbidden by a divine Law from God, but under the New Covenant this divine law was abolished and pork can now be eaten. Pork, in and of itself, is not evil. To eat, or not to eat pork, is not a matter of faith or morals, but a discipline that God had imposed upon His people by divine command to test their obedience, and it can, and has been changed by God. God had also change the Sabbath Day from Saturday under the Old Covenant to the Lord's Day on Sunday under the New Covenant.

A divine or human law that deals in part with discipline, ritual, or government and also in part with faith or morals incorporated into the same law, cannot be changed in the areas of the law that deal with faith or morals (known as the essentials), but it can change in the areas that do not deal with faith or morals. Again, as stated above, theologians attest to this truth, the epikeia applies not just to human laws, but also divine positive laws that do not deal with faith and morals.

HNUE, pp. 298-9: *Cajetan*. Although Cajetan does not explicitly state that the use of epikeia in a matter concerning divine positive law is licit, nevertheless, one may easily derive this conclusion from his statement that epikeia is the direction of law—any law, natural or positive—when such law becomes deficient by reason of its universality... *Henno*. The theologian asserts unhesitatingly that the use of epikeia in reference to divine law is lawful... First, he points to the

⁴ HNUE, Footnote 42: "This view of the nature of epikeia must obviously be taken by all who admit the applicability of epikeia to divine positive law. Cf., e.g., Wouters, loc. cit.: Van den Berghe, art. cit., Coll. Brug., VII, 363; Leroux, 'De Epikeia,'..."

fact that the Machabees believed themselves excused from the observance of the Sabbath when their lives were in danger (1Mach. 2:41)... Finally, he declares that God, Whose ‘yoke is sweet and burden light’ is not to be deemed desirous of binding us to the fulfillment of any precept which is morally impossible. Hence, when there arises a grave difficulty in observing a law we can assume that it is not God’s intention to urge obligation in such a case.

Epikeia Applies to the Public Teaching of the Catholic Faith

Excerpt from Book Two

Under normal circumstance, as taught by the letter of the law, a Catholic priest or laymen, needs to be authorized by a superior to publicly teach the Catholic faith.

1917 Code of Canon Law: “c. 1384. The Church has the right to demand that Catholics shall not publish any books without first submitting them for her judgment and approval, and to forbid for a good reason the reading of books published by anyone. Whatever is prescribed under this title regarding books, shall be applied also to newspapers, periodicals, and all other published writings, unless the contrary is certain.”

1917 Code of Canon Law: “c. 1385 1. Without previous ecclesiastical approval, even laymen are not allowed to publish: (1) the books of Sacred Scripture, or annotations and commentaries on the same: (2) books treating of Sacred Scripture, theology, church history, canon law, natural theology, ethics, or other religious or moral sciences... c. 1385 2. The permission to publish books... in this Canon may be given either by proper local Ordinary of the author, or by the local Ordinary of the place where the books... are published, or the local Ordinary of the place where they are printed... Religious authors must also obtain the permission of their major superior before publication.”

Those who violate these laws in letter and spirit, regarding the public teaching of the Catholic faith, are *ipso facto* excommunicated.

Canon 2318.2: Authors and publishers who without the proper permission procure the printing of books of the Sacred Scriptures of annotations or commentaries on the same incur ipso facto non-reserved excommunication.”

This required authorization also applies to Catholic priests. They too need authorization to publicly teach the Catholic faith and to preach sermons—to preach sermons he also needs jurisdiction from a superior (See: Preaching Sermons).

Pope Gregory XVI, Mirrari Vos: “8. ...Nor may the priests ever forget that they are forbidden by ancient canons to undertake ministry and to assume the tasks of teaching and preaching ‘without the permission of their bishop’”

If Catholic priests or laymen are to write of the Catholic faith and make their work available to the public they need the imprimatur of a Catholic Bishop before they can publish it; make it available to the public. They also need to be approved if they give speeches or make tapes.

There is now no Catholic superior who can authorize the public teaching of the Catholic faith, and therefore, if the faith is to survive, and we know it will—“Going therefore, teach ye all nations: baptizing them in the name of the Father and of the Son and of the Holy Ghost. Teaching them to observe all things whatsoever I have commanded you. And behold I am with you all days, even to the consummation of the world. (Mt. 28:19-20) Heaven and earth shall pass away: but my word shall not pass away.” (Mk. 13:31)—then *epikeia* is needed for a Catholic priest or layman to be justified

in the public teaching of the Catholic faith and be exempted from the Church laws that require them to be authorized by a superior. It is the principle of *epikeia* that allows a Catholic priest and laymen to publicly teach the Catholic faith by being exempted from Canon Law 1385.1. If it were not for *epikeia* the Catholic priest and laymen would violate this law in incur the penalty of automatic excommunication mentioned in Canon 2318.2. A distinction must know be made as to the differences between the public and private teaching of the Catholic faith.

Public vs. Private Teaching of the Catholic Faith

All Catholics can privately teach the Catholic faith without authorization from a superior, as the primary obligation that is inherent to all Catholics. They must refer to, and use only approved books.

Private teaching: This entails a layman's duty to witness to, and teach the Catholic faith, to his everyday acquaintances. Such as, a parents duty to teach the faith to their children; a layman's duty to teach the faith to his neighbor or those whom he comes into contact with during his every day life; a layman's duty to defend the Catholic faith when he is confronted with someone who is denying it. A layman who teaches in his private capacity must use, and refer only to books and tapes that have been approved by the competent authority (with imprimaturs). He cannot write his own books, make his own tapes in an attempt to teach the Catholic faith, unless he has the approval (imprimatur) from the local ordinary (c. 1385).

Public teaching: If a layman starts his own apostolate and begins to propagate to the general public, material teaching the Catholic faith, either by means of mail order, newspaper advertising, door to door evangelizing, than this falls under the category of public teaching. If a layman writes his own books and puts out his own tapes, then this falls under the category of public teaching, and requires an authorization and/or an imprimatur from the local bishop.

Sapientiae Christianae and 1Peter 3:15 does not allow Unauthorized Public Teaching

Pope Leo XIII's encyclical *Sapientiae Christianae* does not allow an unauthorized priest or layman to publicly teach the Catholic faith.

Pope Leo XIII, *Sapientiae Christianae*: "14. ...But, when necessity compels ... Each one is under obligation to show forth his faith, either to instruct and encourage others of the faithful, or to repel the attacks of unbelievers."... 15. The chief elements of this duty consist in professing openly and unflinchingly the Catholic doctrine, and in propagating it to the utmost of our power... 16. No one, however, must entertain the notion that private individuals are prevented from taking some active part in this duty of teaching, especially those on whom God has bestowed gifts of mind with the strong wish of rendering themselves useful."

Pope Leo XIII is not undermining the authority of the bishops and priests over laymen. It was not the mind of Pope Leo XIII to allow a layman to publicly teach the faith without approval from one in authority, or to publish works without an imprimatur. *Sapientiae Christianae* is in agreement with canon law 1385.1. Pope Leo XIII is referring to the inherent right of Catholic laymen to privately teach the Catholic faith. In this capacity the laymen must only refer to books that are authorized and cannot publish their own works without the approval of one in authority. The same applies to 1Peter 3:15: "*Being ready*

always to satisfy every one that asketh you a reason of that hope which is in you.” This verse does not allow unauthorized Catholics (clerics and laymen alike) to publicly teach the Catholic faith. It allows them to privately teach the Catholic faith. A Catholic cannot appeal to this verse to write and publish works on the Catholic faith without the approval of a superior. Only a protestant would interpret this verse so as to undermine the teaching authority of the Catholic Church. Therefore, a Catholics justification to publicly teach the faith, in these days when no superior is available to get approval, comes from the principle of *epikeia*, not from Pope Leo’s *Sapientiae Christianae*, or 1 Peter 3:15, or any other Scripture verse. It is *epikeia* that exempts that Catholic from the letter of Canon Law 1385.1.