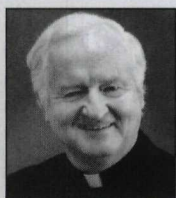


Considering Exemptions Requires Cautious Approach

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Often the question is posed: Are there ever occasions when canon law does not oblige in conscience? In other words, is there room for adaptation of canon law in particular cases?

Although canon law obliges usually (*per se*) in the moral order, the moral obligation does not apply in several instances (*per accidens*). This may come as something of a surprise to those who live under Anglo-Saxon law, as we do in North America. In Canada and the United States, a division of political power among administrative, legislative and juridical offices exists. Thus, there is no exemption from a written law afforded in the law itself. Adaptation or mitigation of the written law must come through a new act of the legislature or the judgment of a court. Thus, we pride ourselves on living according to the rule of law.

In canon law, however, there are several ways in which one might be exempted from a written law. Canon law is modeled upon Roman law with three aforementioned powers usually united in one person. For the most part, the bishop fills this role in canon law. Moreover, keep in mind the purpose of law is to foster peace and equity in the community for the common good. It may happen that, in order to fulfill the purpose of law, a particular person or community will need to be exempted from the written law or to have it mitigated to some extent. Ordinarily, this act of exemption or adaptation pertains to the person who has the power to govern the community.

DISPENSATIONS AND PRIVILEGES

The most common way for a person or community to be exempted from the written law is through a *dispensation*, which is defined in the *Code of Canon Law* (c. 85) as the relaxation of an ecclesiastical law in a particular case. The diocesan bishop, the code tells us (c. 87), has the power to dispense his own subjects from disciplinary laws "for

their spiritual good," but not from procedural or penal laws. Thus, the local bishop often dispenses from the laws of abstinence from meat (c. 1251) or attending Mass on Sunday (c. 1247), but is not able to dispense from penalties attached to specific violations of the law (c. 1364 and those immediately following).

The code also allows for an exemption from the law to be granted through a *privilege* (c. 76). The main difference between a privilege and a dispensation is that a privilege is permanent, while a dispensation is usually for an isolated event or a brief period of time. The canons do not state that the privilege must be granted for the spiritual welfare of the recipients, but this seems to be presumed, given the purpose of the law of the church.

There is described in the code another method of granting exemption from the written law, a remnant of Roman law. During the centuries in which Roman law flourished, and even in the era of the church's early development, getting access to the person who could grant dispensations from the law was not always possible. In such cases, a custom contrary to the law might grow within a particular area or community. The present code retains the possibility of such a custom emerging. But, given our better access to church authority, it does not seem likely that customs contrary to law would be tolerated by church authorities in our time. Of interest is the fact that the code for the eastern churches states that customs—by implication, even customs contrary to law—result from "action of the Holy Spirit."

EPIKEIA

Authorities on moral theology recognize yet another method of exemption, in addition to those mentioned in the code. This method is known as an act of *epikeia* (equity), which is a benign interpretation of the written law resulting



from an effort to fulfill the purpose of the law, protection of the common good.

St. Thomas Aquinas in the *Summa Theologica* (2-2, q. 120) presents *epikeia* as a virtue and gives an example. A moral norm of justice holds that we should return to others the things we have borrowed, or that have been placed in our care, when those things are requested. Suppose that someone has loaned you a gun, or placed it in your care for safekeeping. The person who owns the gun asks you to return it. But you fear, because of certain remarks he has made, that he is going to use the gun to kill his brother. The virtue of *epikeia* would prompt you to retain the weapon so that its owner would not be able to harm his brother.

We use this virtue at other times when, although the law requires a particular action, we realize that non-observance of the law would not, in fact, harm anyone. For example, we know the written law states that drivers should stop at a red light and wait until the light turns green. But, at five in the morning, when there is no traffic on the road, would it necessarily be harmful for the driver to proceed across the intersection before the light changes?

The problem with *epikeia*, of course, is that people may invoke it whenever a law seems to impose a burden. But all laws place a burden upon us insofar as they limit our individual freedom in order to foster the common good. Thus *epikeia* is a valid means of acting contrary to a written law, but should be utilized only with extreme caution. ■

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We work to bring alive the Gospel vision of justice and peace. We answer God's call to foster healing, act with compassion, and promote wellness for all persons and communities, with special attention to our neighbors who are poor, underserved, and most vulnerable. By our service, we strive to transform hurt into hope. 🕊

As the church's ministry of health care, we commit to:

- Promote and Defend Human Dignity
- Attend to the Whole Person
- Care for Poor and Vulnerable Persons
- Promote the Common Good
- Act on Behalf of Justice
- Steward Resources
- Act in Communion with the Church

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