

# STRICT INTERPRETATION HELPS AVOID HARSHNESS

A very interesting canon found in the Code of Canon Law is canon 18. It says, “laws which establish a penalty, restrict the free exercise of rights, or contain an exception from the law are subject to strict interpretation.”



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We find a somewhat parallel norm in canon 36.1: “In doubt, a strict interpretation is to be given to those administrative acts which concern litigation or threaten to inflict penalties, restrict the rights of persons, harm the acquired rights of others, or run counter to a law in favor of private persons; all other administrative acts are to be broadly interpreted.”

The term “strict” is a term of art which should not be identified with “restrictive” or some other expression denoting a form of harshness. Rather, the canon is based on an old legal maxim stating that favorable things are to be given a broad interpretation, while odious ones are to receive a strict interpretation.

Odious things are those that restrict rights, impose penalties on persons or allow for exceptions contrary to the established legislation.

Exceptions are considered odious because they go against the prevailing norm; although exceptions are said to confirm the rule, too many render the law ineffective.

In the case of penalties, a strict interpretation means that before a penalty can be validly imposed, it must be shown that all the conditions described in the law truly exist. If one or more of them is missing, then the penalty doesn’t apply, or existing rights remain intact as to their eventual exercise.

This leads to a number of very practical consequences. For instance, for someone to be subject to a penalty, there must be grave matter, full knowledge and full consent. In addition, the law must address directly the situation envisaged,

not something that is rather similar to it. This is a great protection against abuse of authority.

A few examples might help here. For instance, the canonical legislation provides a penalty of excommunication for procuring an abortion. However, if the fetus lived, then there was not an actual abortion, even though the intention to abort was there. So, the penalty foreseen for procuring an abortion would not apply (although other norms might be applicable). Or, secondly, if a physician was trying to do everything possible to save a child’s life before birth, but there was an accident and the fetus died, this would not be an abortion in the canonical sense of the term, because there was no intention of doing wrong. No penalty could be imposed. In a third area, we have recently seen examples of penal remedies designed to protect minors and vulnerable adults against sexual abuse. But, to apply these same penalties to someone who was involved with a consenting adult would not be appropriate, even though both situations are morally wrong. To provide otherwise would certainly open the door to arbitrary, and even abusive, decisions.

As to the restriction of rights, probably the most common example we face today is the denial of Holy Communion to a person. Canon 925 of the *Code* is very precise on this point: “Those upon whom the penalty of excommunication has been imposed or declared, and others who obstinately persist in manifest grave sin, are not to be admitted to Holy Communion.” Each term in this canon is to be weighed and verified before the canon is applied. Again, if one or more of the four conditions is missing, the person, in accordance with the provisions of canon 912, is to be admitted to Holy Communion.

Three situations come to mind immediately.

First of all, we have the situation of divorced and remarried Catholics. It would be necessary here to make certain distinctions. Some did not even bother to apply for a declaration of nullity of the previous union; or, if they did apply, received a negative decision because of the presumed validity of their first marriage, but went ahead anyway with the second marriage. Because of their objectively sinful situation, they are unable to be admitted to Holy Communion. However, we have to recognize that not every divorced and remarried Catholic necessarily falls under this heading. For instance, in many countries today, there still are no functioning marriage tribunals, and Catholics

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who wish to have their marriage situation examined are unable to do so, through no fault of their own. It could be asked whether, in such circumstances, the four conditions truly exist and whether a strict interpretation of the law in relation to the eventual restriction of their rights would not be called for.

A second situation is that of Catholic officials whose public statements and political actions are contrary to church teachings. Not every political statement contrary to the opinion of a church authority implies that the person making it is obstinately persisting in manifest grave sin. There must be a careful analysis of the situation before any decision is made. For instance, some issues are doctrinal, while others are political in nature. Holding a different position on a purely political issue does not constitute manifest grave sin. Of course, the difficulty lies in distinguishing between the two. The law prohibiting the reception of communion must indeed be carefully applied to individual cases before any restriction is invoked.

In a third related matter, a baptized child who is ready to receive First Communion should not be deprived of this sacrament because his parents did not attend one or more of the preparation classes. The child has a right to the sacrament.

Among the laws that restrict rights, we could refer to those which apply to marriage impediments. These are subject to a strict interpreta-

tion, and, therefore, truly doubtful cases do not establish the impediment (for example, if we are uncertain as to whether the couple are indeed first cousins). We also find some local laws that appear to deprive people of their natural right to marry because of some other external circumstance (for instance, not allowing a couple to marry because they did not attend all of the marriage preparation course sessions). Laws such as this would have to be very carefully evaluated.

On the other hand, a broad interpretation can apply to a number of points. For instance, while the law is quite clear that religious life begins with profession, nevertheless, novices who have not yet made profession but are experiencing life in the religious community are considered to be sharing in the benefits of consecrated life.

Another example can be helpful. The *Code* contains many discretionary canons, in the sense that it is left up to the person legitimately applying the norm to determine whether a sufficient reason exists. Thus, for instance, canon 918 begins by “strongly recommending” that the faithful receive Holy Communion in the course of a Eucharistic celebration. But if, “for a good reason,” they ask for it outside of Mass, they have a right to receive it. It should be recognized, then, that because the law speaks of a “good” reason, it does not require a “grave” or a “very grave” one to allow the person to receive communion. In other words, a broad interpretation of the norm would readily justify distributing communion outside of Mass if no priest were available to celebrate at that time. When the law provides a favorable approach, we should not be doing whatever we can to restrict its application and impose additional burdens on persons.

To apply a broad interpretation is not to falsify the meaning of the norm. Rather, this implies applying the norm as the legislator intended it to be put into practice. Of course, there can be certain limitations placed on a favor that is granted. If, for instance, Peter received a dispensation to marry Louise because she was non-baptized, but then instead decided to marry Patricia who was also non-baptized, the dispensation granted for the wedding to Louise does not apply to the other one.

Canon 980 gives another practical application when referring to the sacrament of reconciliation: “If the confessor is in no doubt about the penitent’s disposition and the penitent asks for absolution, it is not to be denied or deferred.” The penitent’s right to the sacrament prevails over any unsub-

stantiated opinion the confessor might possibly have about the person's unworthiness because of sin committed in the past or because of the confessor's particular dislike of a certain sin.

We can see from these examples how the canons try to temper any temptation to rigidity or harshness on the part of those who are applying the church's legislation. This is an attitude that we should keep in mind when it comes to delicate sit-

uations and not jump too quickly to conclusions about facts that are not proven. This is what we mean when we speak of a pastoral application of the canonical norms.

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