

Exemptions from the Law



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

*Júdica me, Deus, et discérne causam meam de gente non sancta:
ab hómine iníquo, et dolóso érue me*

Ad Majorem Dei Gloriam



Pull the ox out of the pit or let it die!

“We are... fit ministers of the new testament,
not in the letter, but in the spirit.
For the letter killeth, but the spirit quickeneth.”
(2 Corinthians 3:6)

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Abbreviations

- **c.** – Canon Law: The canon laws quoted in this book are from the *1917 Code of Canon Law* unless otherwise stated.
- **CTC** – *Canon Law a Text and Commentary*, by Bouscaren and Ellis
- **D.** – *The Sources of Catholic Dogma*, by Henry Denzinger
- **HNUE** – *The History, Nature, & Use of Epikeia in Moral Theology*, by Fr. Lawrence Joseph Riley, A.B. S.T.L.
- **PCC** – *A Practical Commentary on the Code of Canon Law*, by Woywod and Smith

Warning

The *Catholic Encyclopedia* and *The History, Nature, & Use of Epikeia in Moral Theology* and the Canon Law Commentaries contain heresies and other errors. I never use books that contain heresy as a definitive source. For want of other English sources, I use them when the teachings conform to dogmas or to doctrines that belong to the ordinary magisterium or to refute the arguments or to expose the heresies in these books.

Definitions

- **Jurisdiction:** Jurisdiction is necessary to make religious acts legal and in some cases to make them valid. All jurisdiction comes from Jesus Christ, the supreme Head of the Catholic Church, and then through the pope, the head of the Catholic Church on earth. Hence the pope has supreme jurisdiction on earth over all Catholics. When the Holy See is vacant, the jurisdiction comes through the vacant Chair of Peter. Jurisdiction then comes from the pope to the bishops and others whom the pope appoints to offices to which ordinary jurisdiction is attached. Jurisdiction that is attached to an office is called ordinary jurisdiction. Those who have ordinary jurisdiction then delegate jurisdiction to those under their authority, such as parish priests, which enables their religious acts to be legal and in some cases valid. Delegated jurisdiction is jurisdiction that is not attached to an office. Delegated jurisdiction can be obtained from a person with ordinary jurisdiction or from the law itself or from epikeia.

Laws That Cannot Change and Laws That Can Change

The Catholic Church has two general kinds of laws: dogmatic laws and non-dogmatic laws.

(1) Dogmatic laws (also known as dogmas) are infallible laws on faith and morals and hence these laws cannot be abolished, changed, or modified.

(2) Non-dogmatic laws are disciplinary and governmental laws and hence these laws can be abolished, changed, or modified.

Dogmatic laws cannot change

Dogmatic laws on faith and morals can never change and must always be strictly believed and obeyed under pain of sin:

Pope Pius IX, *Gravissimas Inter*, 1862: “Dogmatic definitions have always been and are necessarily an unchangeable rule of faith.”

Pope Pius IX, *Vatican Council*, 1870: “[The] understanding of [the Catholic Church’s] sacred dogmas must be perpetually retained, which Holy Mother Church has once declared; and there must never be recession from that meaning under the specious name of a deeper understanding.”¹

Jesus said that laws on faith and morals are eternal and thus He did not come to abolish these laws but to fulfill them:

“Do not think that I am come to destroy the law, or the prophets. I am not come to destroy, but to fulfil. For amen I say unto you, till heaven and earth pass, one jot, or one tittle shall not pass of the law, till all be fulfilled.” (Mt. 5:17-18)

Therefore Old Covenant laws that deal with faith and morals passed into the New Covenant without any change because they are eternal and must be believed and obeyed without any exceptions. (See my book *Catholic Dogmas: Dogmas Can Never Change Their Meaning*.)

Natural laws are dogmatic and hence unchangeable

Divine laws, which consist of the natural law and the divine positive law, are given directly by God to men through revelation. Natural laws are God’s divine laws that He places in every man’s heart. Because these laws deal with morals and natural articles of faith, they are unchangeable and hence men can never be exempted from observing them.

Disciplinary laws can change

However, Jesus did abolish the disciplinary laws of the Old Covenant, which included the rituals and ceremonies of the Synagogue, and replaced them with disciplinary laws for the New Covenant, which includes the rituals and ceremonies of the Catholic Church. St. Paul teaches that the disciplinary laws of the Old Covenant were insufficient to give justification and salvation and hence the new disciplinary laws of the New Covenant were needed to make justification and salvation possible: “*For if that former had been faultless, there should not indeed a place have been sought for a second.*” (Heb. 8:7)

¹ *Vatican Council*, 1870, sess. iii, chap. iv; D. 1800.

Catholic commentary on Heb. 8: “Ver. 7. *For if that first testament had been faultless: if it had not been imperfect, and all those sacrifices and ceremonies insufficient for the justification, salvation, and redemption of mankind, there would have been no need of a second.*”

Because disciplinary laws do not deal with faith and morals, they can be and have been changed by competent religious rulers. The rulers of God’s Church, which was the Synagogue during the Old Covenant era and is now the Catholic Church, have the power to abolish, modify, or make new disciplinary laws. Hence disciplinary laws are not written in stone like laws that deal with faith or morals. The history of the Catholic Church records the making of new disciplinary laws and the abolishing or modifying of existing disciplinary laws.

It must be noted that the essential parts of the form and the matter of the Catholic sacraments are not disciplinary laws but dogmatic laws that deal with the faith.

Exemptions from Non-Changeable Laws Are Forbidden

Because dogmatic laws on faith or morals can never be abolished or modified, Catholics are always bound to these laws and hence can never be exempted from them for any reason. For example, a Catholic can never be exempted from the faith law that Christ is God so that the Church would allow him to deny that Christ is God. And a Catholic cannot be exempted from the moral law that forbids adultery so that the Church would allow him to commit adultery. The same applies to all dogmas on faith and morals.

Exemptions from Changeable Laws Are Allowed

Because disciplinary laws and governmental laws can be abolished or modified, Catholics and catechumens are not always bound to these laws and hence can be exempted from them under certain conditions. There are two ways that Catholics and catechumens can be exempted from disciplinary laws: (1) by a dispensation from a competent authority or (2) by the principle of epikeia when no competent authority is available.

Exemptions by dispensation

When a competent authority exempts an individual Catholic or catechumen from a current disciplinary law, this exemption is known as a dispensation:

“Canon 80. A dispensation is a relaxation of the law in a particular case: it can be granted by the legislator, by his successor in office, by a superior legislator and by a person delegated by the foregoing.”

A Practical Commentary on the Code of Canon Law [hereafter PCC], commentary on Canon 335: “The bishop must urge the observance of the laws of the Church, and he cannot dispense with the common law except in so far as Canon 81 allows. (That Canon rules that the bishop cannot dispense unless the law or a special concession gives him power: in emergencies, however, where the good of souls requires immediate action, he may dispense

in those laws in which the Holy See usually dispenses, if recourse to the Holy See is difficult, e.g., because of great distance and the consequent delay in getting the dispensation.)”²

A competent authority, then, can exempt a Catholic from observing a disciplinary law by giving the Catholic a dispensation.

Exemptions by epikeia

There are certain circumstances in which a disciplinary law becomes burdensome or harmful to a Catholic or catechumen who does not have access to a competent authority in order to obtain a dispensation. In this case the Catholic or catechumen is exempted from the disciplinary law by the principle of epikeia and not by a dispensation:

The History, Nature, & Use of Epikeia in Moral Theology [hereafter HNUE]: “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.”³

Epikeia, meaning equity or fairness, is invoked by common sense in reference to the spirit of the law and not just the letter of the law. From the birth of the Catholic Church, certain Catholics and catechumens under certain conditions were exempted from disciplinary laws by the principle of epikeia. A commentary on Canon 18 teaches about epikeia:

Canon Law a Text and Commentary [hereafter CTC], commentary on Canon 18: “Epikeia 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...”⁴

In cases in which epikeia applies, the disciplinary laws cease to bind because the laws are either burdensome, harmful, or unreasonable:

CTC, commentary on Canon 20: “... [Cessation of the Law] A law may cease to bind in two ways: either by repeal, which is called extrinsic cessation, or by becoming inoperative without repeal, which is called intrinsic cessation. It is common doctrine that a law ceases to bind without repeal in two cases: first, if the circumstances are such that the law has become positively harmful or unreasonable; second, if the purpose of the law has entirely ceased for the entire community.”⁵

HNUE: “As to the extent of *epikeia*, Billuart lists three categories of cases in which it may be used: first, when literal observance of the law would be harmful to the common good;

² *A Practical Commentary on the Code of Canon Law* [hereafter PCC], Woywod and Smith, by Rev. Stanislaus Woywod, O.F.M., LL.B. Revised by Rev. Callistus Smith, O.F.M., J.C.L. Nihil Obstat: Fr. Felician Berkery, O.F.M. Imprimi Potest: Fr. Thomas Plassmann, O.F.M., Minister Provincialis. Nihil Obstat: John Goodwine, J.C.D., *Censor Librorum*. Imprimatur + Francis Cardinal Spellman, D.D., Archbishop of New York, Nov. 14, 1957. Commentary on Canon 335, v. 1, p. 136.

³ *The History, Nature, & Use of Epikeia in Moral Theology* [hereafter HNUE], Fr. Lawrence Joseph Riley, A.B. S.T.L. Imprimatur + Ricardus Jacobus Cushing, D.D., May 7, 1948. The Catholic University of America Press. Chap. 2, art. 1, sec. 3, p. 52.

⁴ *Canon Law A Text and Commentary* [hereafter CTC], T. Lincoln Bouscaren, S.J., and Adam C. Ellis, S.J. *Imprimi potest*: Daniel H. Conway, S.J. *Nihil obstat*: Silvester F. Gass, I.C.D., *censor deputatus*. Imprimatur: + Moyses E. Kiley, S.T.D., Archiepiscopus Milwaukiensis, Die 18 Augusti, 1951. The Bruce Publishing Company, Milwaukee, WI. Second Edition, first printing, 1951. Commentary on Canon 18, p.33.

⁵ CTC, on Canon 20, p. 34.

secondly, when it would involve a notable detriment to the subject observing it, in health, reputation or fortune—since this would redound against the general welfare; thirdly, when observance of the positive law would be contrary to the natural law, or to some superior human law, or when its observance would be evil or very difficult.”⁶

When epikeia exempts a Catholic or a catechumen from disciplinary laws, these laws are still in force and apply to the general masses. The law only ceases to bind these individuals under the extraordinary circumstances they find themselves in. As soon as they are able to observe the law they were exempted from, they are then bound to observe that law.

Letter and spirit of the law

The spirit of the law is considered when epikeia is invoked. Because disciplinary laws can change according to unique circumstances of time and place, the spirit of these laws must be considered as well as the letter of these laws. A disciplinary law can be beneficial for most times and places but not for *all* times and places. Hence, in certain times and places it can actually be burdensome or even harmful. That is why disciplinary laws change because they become either burdensome or harmful or no longer necessary to the general mass of people in a given time and place.

Disciplinary laws consist of two elements, the letter and the spirit. The letter is the words of the law. The spirit is the reasons for the law. If the spirit of the law is not understood, then the law is actually dead to those who keep it. The evil Pharisees in our Lord’s day followed the letter of the law while not understanding the spirit of the law (the reasons for the law) and thus deceptively broke the law, fell into mortal sins, and eventually lost the faith. St. Paul teaches that those who know only the letter of the law but not the spirit of the law are killers of souls: “*Who also hath made us fit ministers of the new testament, not in the letter but in the spirit. For the letter killeth: but the spirit quickeneth.*” (2 Cor. 3:6)

Epikeia is not a liberal interpretation of the law

Epikeia is not a liberal interpretation of the law but an *exemption* from the law. Disciplinary laws are always strictly interpreted. There is no such thing as a liberal interpretation of a law. An exemption from a disciplinary law by a dispensation or by epikeia does not give the law another meaning or diminish the law but merely exempts one from observance of that law. If a disciplinary law needs to be abolished or modified, only a competent authority can do that. And the new or modified disciplinary law that he makes must then be strictly interpreted.

Epikeia is not license to ignore Church law

Epikeia is not license to disobey disciplinary laws. Catholics and catechumens cannot be exempted from disciplinary laws unless the laws are burdensome or harmful to them. Epikeia is used in reference to the letter of the law that it is appealing to for an exemption. The spirit of the law is always considered in reference to the letter of the law. If a disciplinary law can be observed, then it must be observed. When epikeia is used, the law is not being judged as a bad law but only that the law did not include a valid exception:

⁶ HNUE, chap. 2, art. 3, p. 94.

Summa: “**Reply to Objection 1.** He who in a case of necessity acts beside the letter of the law, does not judge the law; but of a particular case in which he sees that the letter of the law is not to be observed.”⁷

Summa: “**Reply to Objection 2.** It would be passing judgment on a law to say that it was not well made; but to say that the letter of the law is not to be observed in some particular case is passing judgment not on the law, but on some particular contingency.”⁸

HNUE: “When a subject in an emergency case acts *praeter verba legis*, actually there is no judgment made about the law itself, but rather about the individual case in which the words of the law are not to be observed. This is a fine and all-important distinction. It represents the individual subject of the law hard-pressed by circumstances which probably the lawmaker did not foresee, or at least did not desire to mention in his law. He must make an immediate decision. He knows what the law states. He is keenly aware of the instant nature of the case at hand. Now, he does not debate as to the merits or expediency of the law itself—he accepts as true that the law exists, that it is good, that it binds in general: ‘He makes no judgment about the law itself.’ But his attention is centered upon the case which confronts him. Obviously it falls under the words of the law. Does it, however, fall under the law itself—the law being essentially what the lawmaker intended, and not necessarily and in every case what the words state; for it is not to be supposed that human language always accurately and infallibly expresses what the legislator actually had in mind, or would have had in mind if he had been aware of the case now confronting the individual. This, then, is the problem to be solved—what action to take in this particular case: ‘He makes a judgment about the individual case.’ Observance of the law will be injurious to the general welfare; immediate action is necessary; there is no time to consult an authority who can dispense from the law. And so, the subject settles the problem by deciding that in this case the words of the law are not to be observed. In an earlier work St. Thomas insists with even greater emphasis on the importance of the legislator’s intention, as distinguished from the words of the law. The intention of the lawmaker is so much more essential than the words of the law, that actually it would be a greater transgression to observe the words and not the intention, than to act in the contrary way. The same idea is repeated in the *Summa Theologica*.”⁹

Beware of the evil Pharisees and the liberals

Both the letter-of-the-law Pharisees on the right who deny the need for epikeia and the liberals on the left who appeal to epikeia to violate disciplinary laws that can be observed will be confounded: “*Decline not to the right hand, nor to the left: turn away thy foot from evil.*” (Prv. 4:27) “*Take courage therefore, and be very valiant: that thou mayst observe and do all the law, which Moses my servant hath commanded thee: turn not from it to the right hand or to the left, that thou mayst understand all things which thou dost.*” (Josue 1:7)

Liberals on the left have no use for the law whatsoever and only pretend to obey the law in order to deceive. They rebel without true reference to the letter of the law and are in complete opposition to both the letter and the spirit of the law. They are rebellious, perverse, chaotic, and foolish.

The evil Pharisees on the right are over just and hence have no room for epikeia and thus lack true wisdom and charity. They obey the letter of the law with no understanding of the spirit of the law. They do not take heed to Jesus’ warning to “*Judge not according to the appearance: but judge just judgment.*” (Jn. 7:24) By not understanding the spirit of the law, they judge according to appearances only and not by true judgment that sees the heart of the law. The evil

⁷ *Summa*, I-II, q. 96, a. 6.

⁸ *Summa*, II-II, q. 120, a. 1.

⁹ HNUE, chap. 2, art. 1, sec. 3, p. 29-30.

Pharisees exceed true justice and hence become unjust and full of bitter zeal and pride that blind them to the truth. To the degree that they persist in wickedness, they become eccentric, vain, bloated, puffed up, foolish, and stupid: “*Be not over just: and be not more wise than is necessary, lest thou become stupid.*” (Ectes. 7:17) “*For I say, by the grace that is given me, to all that are among you, not to be more wise than it behoveth to be wise, but to be wise unto sobriety and according as God hath divided to every one the measure of faith. ...Be not wise in your own conceits.*” (Rom. 12:3, 16) To learn how Jesus refuted these evil Pharisees, see in this book [David ate the loaves of proposition](#), p. 20, and [Working on the Sabbath Day](#), p. 20.

Beware of liberals’ false charge of Pharisaism

Be careful of the liberals who unjustly denounce just men as evil Pharisees for observing the letter of the law when it can be observed. Therefore one must be careful not to use or take heed to the liberals’ ploy to do away with obedience to Church law by labeling as Pharisees those who demand strict obedience to disciplinary laws that can be observed. Liberals use this ploy because they love sin and rebellion and thus hate just laws that can and must be observed. Hence they calumniate good Catholics by calling them Pharisees for strictly observing all laws that they can and must observe.

Exemptions apply to divine disciplinary laws and human disciplinary laws

Disciplinary laws are made by God or men. Disciplinary laws made by God are known as divine disciplinary laws. Disciplinary laws made by men, God’s religious rulers, are known as human disciplinary laws. Because both are disciplinary laws, both are changeable laws and hence subject to dispensations and epikeia. For instance, under the Old Covenant it was a divine disciplinary law that Jews were forbidden to eat pork. However, God changed this law for the New Covenant era by abolishing it. For instance, under the New Covenant it is a human disciplinary law that Catholics are forbidden to eat meat on Fridays. Because this is a changeable law, Catholics can be exempted from observing this law by a dispensation or by epikeia. (For examples of exemptions from divine disciplinary laws by epikeia, see in this book [Divine disciplinary laws are incomplete due to brevity and to test God’s people](#), p.16, and [Epikeia applies to divine positive disciplinary laws](#), p. 50.)

Exceptions to the law are not the same as exemptions from the law

Exceptions can exist to a disciplinary law that are contained either in the same law or another law. Exceptions to a law differ from exemptions from a law in that exceptions are written into the law itself while exemptions are not.

Exception contained within the same law

An exception to the disciplinary law Canon 755 is contained within that canon itself:

“Canon 755. Baptism shall be given solemnly, except in the cases spoken of in Canon 759.”

You would know by reading this law alone that there is an exception to Canon 775 contained in Canon Law 759. Canon 759 states that anyone can baptize a candidate who is in danger of death.

Exception contained in a separate law

An exception to Canon 879 is contained in another law within the Code:

“Canon 879. For the valid hearing of confessions, it is necessary that jurisdiction shall have been explicitly granted either in writing or orally.”

Here is the exception to Canon 879 contained in Canon 882:

“Canon 882. In danger of death all priests, though not approved for confessions, can validly and licitly absolve any penitent from any sins and censures, although reserved and notorious.”

In this case one would not know that this exception exists unless he reads all the canons that relate to confession.

Only Catholics and catechumens can use epikeia

Only Catholics and catechumens can use epikeia. For instance, Greek Schismatics and Anglicans can never use epikeia because they are outside the Catholic Church and hence united to non-Catholic sects; and religious acts of non-Catholic sects can never be legal.

Reasons Why Disciplinary Laws Are Not Comprehensive

The reason Catholics and catechumens can be exempted from a disciplinary law is that a disciplinary law can be beneficial for most times and places but not for *all* times and places. Hence in certain times and places the law can actually be burdensome or even harmful, which is why disciplinary laws are abolished or modified when they become either burdensome or harmful or no longer necessary to the general mass of people in a given time or place.

When competent Catholic authorities modify or abolish or make disciplinary laws, they do so for the ordinary circumstances of the general masses but not for the extraordinary circumstances of particular persons for which these laws would actually be burdensome or harmful or even sinful to observe:

Summa: “**I answer that**, As stated above (I-II, 90, 2; I-II, 98, 2,6), general precepts are framed according to the requirements of the many. Wherefore in making such precepts the lawgiver considers what happens generally and for the most part, and he does not intend the precept to be binding on a person in whom for some special reason there is something incompatible with observance of the precept. Yet discretion must be brought to bear on the point. For if the reason be evident, it is lawful for a man to use his own judgment in omitting to fulfil the precept...”¹⁰

Disciplinary laws made by humans are not comprehensive for two reasons:

- (1) There are circumstances that may arise that the lawgiver did not foresee.
- (2) The lawgiver did not include the exceptions for the sake of brevity.

¹⁰ *Summa*, II-II, q. 147, a. 4.

Because of unforeseen circumstances

When enacting disciplinary laws, a human lawgiver cannot foresee all the exceptions that might arise in the future. No human lawgiver can foresee all the exceptions that may arise because he is not God:

Summa: “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.”¹¹

HNUE: “The basic reason 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 circumstances are almost limitless in number and nature; it is clear that no legislator in the act of framing 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.”¹²

For the sake of brevity

When enacting disciplinary laws, the lawgiver is aware of many exceptions that can take place but does not include all of the exceptions because it would make the laws burdensome and lengthy:

Summa: “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.”¹³

HNUE: “*The Salmanticenses* (1665-c. 1725). The *Salmanticenses* insist that the reason for the justification of *epikeia* is to be found in the fact that law is deficient owing to its universality. However, this defect is not in all instances to be traced to the inability of the lawmaker to foresee all future possible cases—such is true only in reference to the human legislator. With regard to the Divine Legislator His knowledge of the future is in no way limited; yet, He was unwilling to make specific provision for particular exemptions, due to the profuseness and confusion which would inevitably result from the incorporation into the law of mention of all future exceptions. Rather, He provided that by the use of *epikeia* men could correct defects arising from the universality of law.”¹⁴

Summa: “**I answer that**, As stated above (I-II, 96, 6), when we were treating of laws, since human actions, with which laws are concerned, are composed of contingent singulars and are innumerable in their diversity, it was not possible to lay down rules of law that would apply to every single case. Legislators in framing laws attend to what commonly happens: although if the law be applied to certain cases it will frustrate the equality of justice and be injurious to the common good, which the law has in view.”¹⁵

¹¹ *Summa*, I-II, q. 96, a. 6, ad 3.

¹² HNUE, chap. 2, art. 1, sec. 1, pp. 19-20.

¹³ *Summa*, I-II, q. 96, a. 6, ad 3.

¹⁴ HNUE, chap. 2, art. 3, p. 86.

¹⁵ *Summa*, II-II, q. 120, a. 1.

Therefore epikeia can be used with disciplinary and governmental laws because these changeable laws are made for the general masses under ordinary circumstances but not for individuals under extraordinary circumstances not covered by the law for which following the law would be burdensome or harmful:

CTC, commentary on Canon 18: “Epikeia 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.”¹⁶

Epikēia, then, exempts individual Catholics and catechumens from observing disciplinary laws that under certain conditions of time and place are burdensome or harmful to them.

To test God’s people

Divine disciplinary laws are incomplete due to brevity and to test God’s people

Divine disciplinary laws are incomplete due to brevity and not because the lawgiver did not foresee future events since God is the author of divine disciplinary laws and God foresees all things! “*For all things were known to the Lord God, before they were created.*” (Eccus. 23:29)

HNUE: “*Viva*. It is the contention of *Viva* that epikēia... 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.”¹⁷

When God made the divine disciplinary law of no work on the Sabbath Day, He did not mention any exceptions to this law, such as pulling animals out of pits, picking corn to eat, and circumcising. Yet God Himself proved that these unmentioned exceptions were legitimate when He exempted men by the principle of epikēia from observing His law of no work on the Sabbath Day by allowing men to do the work of pulling animals out of pits, picking corn to eat, and circumcising on the Sabbath Day. (See in this book [Working on the Sabbath Day](#), p. 20.) It cannot be said that God did not know these legitimate exceptions would arise but rather that He did not include them for the sake of brevity and to test if His people comprehended the spirit of the law and not just the letter of the law, which exposes the pride of those who follow only the letter of the law without reference to its spirit, its true meaning and reason:

HNUE: “*Salmanticenses*. According to the opinion of the *Salmanticenses*, epikēia 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 epikēia. Furthermore, it is not necessary to suppose, as a basis for epikēia, the lawgiver’s

¹⁶ CTC, commentary on Can. 18, p. 33.

¹⁷ HNUE, chap. 7, art. 2, sec. 1, p. 301.

limitation of knowledge which prevented his foreseeing all possible cases.¹⁸ 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."¹⁹

The divine positive laws mentioned above are divine disciplinary laws and not divine dogmatic laws because divine dogmatic laws are unchangeable. The divine positive law is God's revealed law to men that they cannot discover by reason, which moves them to the supernatural end. The divine positive law consists of laws that cannot change and laws that can change.²⁰ Divine positive laws that cannot change are laws that deal with faith and morals and hence are dogmatic laws. Divine positive laws that can change are disciplinary and governmental laws, and hence one can be exempted from observing these divine laws by dispensation or epikeia:

HNUE: "*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 fact that the Machabees believed themselves excused from the observance of the Sabbath when their lives were in danger (1 Mach. 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."²¹

Epikeia Used in the Secular Realm

Stop at red lights

It is a secular law that drivers must stop their vehicles at red lights, and there are no other laws that allow for exceptions to this law. This law is made for the majority of cases under ordinary circumstances but not for particular cases in which extraordinary circumstances arise. Hence drivers can be exempted from observing this law by the principle of epikeia if an extraordinary circumstance arises in which it is impossible or harmful to observe the law.

¹⁸ 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.'"

¹⁹ HNUE, chap. 7, art. 2, sec. 1, p. 300.

²⁰ See my book *Revelation and Infallibility*: Revelation.

²¹ HNUE, chap. 7, art. 2, sec. 1, pp. 298-9.

Impossible and harmful to observe

This law would be impossible to observe if a red light is stuck on red and hence does not change to green. If a driver stops at a red light and sees that the light is not changing and cars are lining up behind him and then notices that the light is stuck on red, he can legally go through the red light by the principle of epikeia because under this extraordinary circumstance the law is impossible to observe. If the driver does not go through the red light, he will cause a great burden and harm to the common good by allowing a traffic jam to occur with no way out of it unless he goes through the light. If a policeman arrives and directs traffic through the broken red light, then the drivers are exempted from the law by a dispensation from the policeman.

Harmful if observed

A driver is taking a man who is bleeding to death to the hospital and must get him there as soon as possible. In this extraordinary circumstance epikeia exempts the driver from observing the law of stopping at red lights because to do so would greatly endanger the life of the bleeding man. If a policeman sees this driver apparently violating the law by going through red lights, he would pull him over and prepare to give him a ticket. However, as soon as the policeman sees the bleeding man, he would exempt the driver from this law by a dispensation and then escort the driver through the red lights to the hospital. Therefore before the policeman came, the driver was exempted from observing the law by epikeia; and after the policeman arrived, he was exempted from observing the law by a dispensation:

Summa: “**I answer that**, As stated above, every law is directed to the common weal of men, and derives the force and nature of law accordingly. Hence the jurist says [Pandect. Justin. lib. i, ff., tit. 3, De Leg. et Senat.]: ‘By no reason of law, or favor of equity, is it allowable for us to interpret harshly, and render burdensome, those useful measures which have been enacted for the welfare of man.’ Now it happens often that the observance of some point of law conduces to the common weal in the majority of instances, and yet, in some cases, is very hurtful. Since then the lawgiver cannot have in view every single case, he shapes the law according to what happens most frequently, by directing his attention to the common good. Wherefore if a case arise wherein the observance of that law would be hurtful to the general welfare, it should not be observed. For instance, suppose that in a besieged city it be an established law that the gates of the city are to be kept closed, this is good for public welfare as a general rule: but, if it were to happen that the enemy are in pursuit of certain citizens, who are defenders of the city, it would be a great loss to the city, if the gates were not opened to them: and so in that case the gates ought to be opened, contrary to the letter of the law, in order to maintain the common weal, which the lawgiver had in view.”²²

Return a sword to its owner

Sinful to observe if owner is insane

It was a secular law that a man must deposit his sword with the proper authorities before entering a city and then it was given back to him when he left. However, an extraordinary circumstance could arise in which it would be sinful to observe this law if one gave a sword back to an insane person. Hence, in this case, epikeia exempts one from observing this law:

²² *Summa*, I-II, q. 96, a. 6.

Summa: “**I answer that**, As stated above (I-II, 96, 6), when we were treating of laws, since human actions, with which laws are concerned, are composed of contingent singulars and are innumerable in their diversity, it was not possible to lay down rules of law that would apply to every single case. Legislators in framing laws attend to what commonly happens: although if the law be applied to certain cases it will frustrate the equality of justice and be injurious to the common good, which the law has in view. Thus the law requires deposits to be restored, because in the majority of cases this is just. Yet it happens sometimes to be injurious—for instance, if a madman were to put his sword in deposit, and demand its delivery while in a state of madness, or if a man were to seek the return of his deposit in order to fight against his country. On these and like cases it is bad to follow the law, and it is good to set aside the letter of the law and to follow the dictates of justice and the common good. This is the object of ‘epikeia’ which we call equity. Therefore it is evident that ‘epikeia’ is a virtue.”²³

HNUE: “This conclusion seems clear from a study of the two following examples. In the first case: to return a sword to an insane person is obviously contrary to the intention of the legislator, in spite of the law demanding that deposits be restored. Consequently, an individual who delays such a return performs an act of legal justice, in that he conforms to the will of the lawmaker. Indeed not only does he act in a more excellent way than if he returned the sword (for he obeys a higher law), but actually to do otherwise—that is, to observe the words of the law—would be sinful.”²⁴

Circumstances could also exist in which it would be sinful to observe a religious disciplinary law, and hence epikeia must be used in order not to sin. (See in this book [Observing disciplinary laws can be sinful](#), p. 28.)

Epikeia Used in the Religious Realm

God’s chosen people use epikeia when it applies. And God Himself in the divine person of Jesus Christ used epikeia.

Circumcision not observed

Under the Old Covenant it was a divine disciplinary law that all males must be circumcised:

Divine disciplinary law: “Again God said to Abraham: And thou therefore shalt keep my covenant, and thy seed after thee in their generations. This is my covenant which you shall observe, between me and you, and thy seed after thee: All the male kind of you shall be circumcised: And you shall circumcise the flesh of your foreskin, that it may be for a sign of the covenant between me and you.” (Gen. 17:9-11)

The principle of epikeia exempted the Israelites from observing this divine law for most of the forty years in which they wandered in the desert because they were constantly on the move:

“The people that were born in the desert, during the forty years of the journey in the wide wilderness, were uncircumcised: till all they were consumed that had not heard the voice of the Lord, and to whom he had sworn before, that he would not shew them the land flowing with milk and honey.” (Jos. 5:5-6)

Douay commentary on Josue 5: “Ver. 2. ... They were now to renew, and take up again the practice of circumcision; which had been omitted during their forty years’ sojourning in the

²³ *Summa*, II-II, q. 120, a. 1.

²⁴ HNUE, chap. 5, art. 1, sec. 3, p. 224-5.

wilderness; by reason of their being always uncertain when they should be obliged to march.”

David ate the loaves of proposition

It was a divine disciplinary law during the Old Covenant era that only Levitical priests were allowed to eat the loaves of proposition:

Douay commentary on Mt. 12:4: “‘The loaves of proposition’... So were called the twelve loaves which were placed before the sanctuary in the temple of God.”

Divine disciplinary law: “And Aaron and his sons shall eat it. The loaves also, that are in the basket, they shall eat in the entry of the tabernacle of the testimony... A stranger shall not eat of them.” (Ex. 29:32)

However, David, who was not a priest, ate the loaves of proposition because he was hungry and had no other food: “*The priest therefore gave him [David] hallowed bread: for there was no bread there, but only the loaves of proposition, which had been taken away from before the face of the Lord, that hot loaves might be set up.*” (1 Ki. 21:6) In this extraordinary circumstance, David was exempted from this divine disciplinary law by the principle of epikeia. Therefore David did not violate this law but was instead exempted from observing it in this extraordinary situation. And Jesus confirms David’s use of epikeia! When the Pharisees had accused Jesus of violating disciplinary laws, Jesus invoked the principle of epikeia and compared His actions to David’s use of epikeia:

“And the Pharisees seeing them, said to him: Behold thy disciples do that which is not lawful to do on the sabbath days. But he said to them: Have you not read what David did when he was hungry, and they that were with him: How he entered into the house of God, and did eat the loaves of proposition, which it was not lawful for him to eat, nor for them that were with him, but for the priests only?” (Mt. 12:2-4)

Catholic commentary on Mt. 12: “Ver. 3. *What David, &c.* Christ shews them that the law need not always be taken according to the bare letter. ... To refute this calumny of the Jewish leaders, Jesus reminds them of the conduct of David when pursued by Saul, who, reduced to the like extremity, eat of that bread which the priests alone were allowed to touch.”

“And he said to them: Have you never read what David did when he had need, and was hungry himself, and they that were with him?” (Mk. 2:25)

Catholic commentary on Mk. 2: “Ver. 25. *When he had need.* In necessity many things are done without sin, which in other circumstances it would be unlawful to do.”

Working on the Sabbath Day

During the Old Covenant era it was a divine disciplinary law that God’s chosen people were not to work on the Sabbath Day:

Divine disciplinary law: “The seventh day shall be holy unto you, the sabbath, and the rest of the Lord: he that shall do any work on it, shall be put to death.” (Ex. 35:2)

The Machabees fight on the Sabbath Day

However, when the last vestiges of God’s faithful chosen people were attacked on the Sabbath Day, the army of the Machabees did the work of fighting against the enemy so that God’s faithful chosen people would not become extinct:

“And every man said to his neighbour: If we shall all do as our brethren have done, and not fight against the heathens for our lives, and our justifications: they will now quickly root us out of the earth. And they determined in that day, saying: Whosoever shall come up against us to fight on the sabbath day, we will fight against him: and we will not all die, as our brethren that were slain in the secret places.” (1 Mac. 2:40-41)

In this extraordinary circumstance the army of the Machabees was exempt from the divine disciplinary law of no work on the Sabbath Day. Therefore those who fought did not violate this law but were instead exempted from observing it in this extraordinary situation:

HNUE: “In Holy Scripture too he (St. Antoninus, +1459) finds an instance of the use of *epikeia*. For it is there related that many of the army of the Machabees had submitted to the sword of the enemy rather than battle on the Sabbath. But after consultation with the more prudent, Mathathias realized that an act of self-defense was not a violation of the Sabbath; and consequently, by the use of *epikeia* it was decided: ‘Whoever shall come up against us to fight on the Sabbath day, we will fight against him.’ (1 Mach. 2:41)”²⁵

HNUE: “If, however, one does not observe [a precept] in some case in which it can be believed with probability that, if the legislator were present, he would not be willing to bind him, such a one is not to be deemed a transgressor of the precept.”^{26,27}

Jesus heals and Jews pull animals out of pits on the Sabbath Day

Invoking the principle of *epikeia*, Jesus was exempted from the divine law of no work on the Sabbath Day when He did the work of healing on the Sabbath Day. When the evil Pharisees accused Jesus of violating this divine law, Jesus proved their hypocrisy by pointing out the fact that they allowed Jews to do the work of pulling animals out of pits on the Sabbath Day:

“And it came to pass, when Jesus went into the house of one of the Pharisees, on the sabbath day, that they watched him. And behold, there was a certain man before him that had the dropsy. And Jesus answering, spoke to the lawyers and Pharisees, saying: Is it lawful to heal on the Sabbath day? But they held their peace. But he taking him, healed him and sent him away. And answering them, he said: Which of you shall have an ass or an ox fall into a pit and will not immediately draw him out, on the Sabbath day? And they could not answer him to these things.” (Luke 14:1-6)

Therefore if Jesus violated the divine law of no work on the Sabbath Day by healing, then the same Pharisees who denounced Jesus were also guilty of violating this divine law by allowing Jews to pull animals out of pits on the Sabbath Day. However, if the Pharisees claimed that *epikeia* exempted them from this divine law in regard to pulling animals out of pits, then the same, indeed, applied to Jesus for healing men—and more so, because Jesus’ work involved the welfare of humans:

Catholic commentary on Lk. 14: “Ver. 3. *Is it lawful?* Jesus knew their thoughts, and that they would blame him as a sabbath-breaker: yet he healed the man, and confounded them by the example and common practice of pulling an ass out of a pit on the sabbath-day. Ver. 5. By this example Christ convicts his adversaries as guilty of sordid avarice, since, in delivering beasts from the danger of perishing on the sabbath-day, they consult only their own advantage, whilst he was only employed in an act of charity towards his neighbour; an action they seemed so warmly to condemn.”

²⁵ HNUE, chap. 2, art. 1, sec. 3, p. 55.

²⁶ [Footnote 96] Sent. IV, dist. 15, q. 3, a. 1, sol. 4, ad 3. Cf. note 62 supra.

²⁷ HNUE, chap. 2, art. 1, sec. 2, p. 44.

Jesus heals and rabbis circumcise on the Sabbath Day

Under the Old Covenant it was a divine disciplinary law that male infants must be circumcised on the eighth day after their birth:

Divine disciplinary law: “Again God said to Abraham: And thou therefore shalt keep my covenant, and thy seed after thee in their generations. This is my covenant which you shall observe, between me and you, and thy seed after thee: All the male kind of you shall be circumcised: And you shall circumcise the flesh of your foreskin, that it may be for a sign of the covenant between me and you. An infant of eight days old shall be circumcised among you, every man child in your generations: he that is born in the house, as well as the bought servant shall be circumcised, and whosoever is not of your stock.” (Gen. 17:9-12)

If the eighth day on which a male infant was to be circumcised fell on the Sabbath Day, one of these two divine laws could not be observed. If the rabbis observed the divine law of no work on the Sabbath Day by not circumcising the male infant, they would then not be able to observe the divine law of circumcising on the eighth day. If the rabbis observed the divine law of circumcising on the eighth day, they would then not be able to observe the divine law of no work on the Sabbath Day. In this case they had no choice but to use epikeia in order to be exempted from one of the divine laws. The rabbis chose to observe the law of circumcising on the eighth day and hence be exempted from the Sabbath-Day-no-work law by doing the work of circumcision on the Sabbath Day. Jesus used this fact to expose the hypocrisy of the Pharisees who accused Him of violating the Sabbath-Day-no-work law when He healed a man:

“Jesus answered, and said to them: One work I have done; and you all wonder: Therefore, Moses gave you circumcision (not because it is of Moses, but of the fathers;) and on the sabbath day you circumcise a man. If a man receive circumcision on the sabbath day, that the law of Moses may not be broken; are you angry at me because I have healed the whole man on the sabbath day?” (Jn. 7:21-23)

If Jesus violated the Sabbath-Day-no-work law by doing the work of healing on the Sabbath Day, then the rabbis likewise violated the Sabbath-Day-no-work law by doing the work of circumcision on the Sabbath Day. However, if Jesus was exempted from the law of no work on the Sabbath Day when He did the work of healing on the Sabbath Day, then the rabbis likewise were exempted from the law of no work on the Sabbath Day when they did the work of circumcision on the Sabbath Day. The latter was the case.

Apostles pick and eat corn on the Sabbath Day

The evil Pharisees accused Jesus’ disciples of breaking the Sabbath-Day-no-work law when the disciples picked and ate corn on the Sabbath Day:

“At that time Jesus went through the corn on the sabbath: and his disciples being hungry, began to pluck the ears, and to eat. And the Pharisees seeing them, said to him: Behold thy disciples do that which is not lawful to do on the sabbath days. But he said to them: Have you not read what David did when he was hungry, and they that were with him: How he entered into the house of God, and did eat the loaves of proposition, which it was not lawful for him to eat, nor for them that were with him, but for the priests only?” (Mt. 12:1-4)

Invoking epikeia, Jesus proves that His disciples did not violate the Sabbath-Day-no-work law but instead were exempted from observing it because they were hungry and had no other food, just as David when he ate the loaves of proposition that only the priests were allowed to eat. (See in this book [David ate the loaves of proposition](#), p. 20.)

Epikeia and the sacrament of penance

We will first learn about the letter of the law regarding the sacrament of penance and then see when epikeia applies so that a Catholic priest can be exempted from the letter of these laws in extraordinary circumstances.

Canons 872 and 879 and ordinary or delegated jurisdiction

To legally and validly hear confessions, a Catholic bishop or Catholic priest must have jurisdiction, either ordinary jurisdiction or delegated jurisdiction:

Council of Trent, Session 14, Chapter 7: “Therefore, since the nature and essence of a judgment require that the sentence be imposed only on subjects, there has always been the conviction in the Church of God, and this Synod confirms it as most true, that this absolution which the priest pronounces upon one over whom he has no ordinary or delegated jurisdiction has no value.”

It is a dogma of faith that a priest cannot validly hear confessions without jurisdiction:

“Canon 872. For the valid absolution of sins, the minister requires, besides the power of Orders, either ordinary or delegated power of jurisdiction over the penitent.”

Under normal circumstances, a Catholic bishop or Catholic priest who does not have ordinary jurisdiction needs delegated jurisdiction from a competent authority to legally and validly hear confessions. A bishop or other superior who has ordinary jurisdiction must give him this approval and delegated jurisdiction to validly hear confessions and absolve, which is known as faculties to hear confessions:

“Canon 879. For the valid hearing of confessions, it is necessary that jurisdiction shall have been explicitly granted either in writing or orally.”

Hence under normal circumstances a Catholic priest cannot legally and validly hear confessions unless he gets the approval and delegated jurisdiction from a bishop or superior who has ordinary jurisdiction. And this approval and delegated jurisdiction must be given orally or in writing.

Canon 882 and delegated jurisdiction supplied by the Church

However, there is an exception to this law contained in the law itself. A Catholic priest can legally and validly hear the confessions of Catholic penitents who are in danger of death without being approved for confessions, which means without faculties and hence without ordinary jurisdiction or delegated jurisdiction from a competent authority:

“Canon 882. In danger of death all priests, though not approved for confessions, can validly and licitly absolve any penitent from any sins and censures, although reserved and notorious.”

In this case the Catholic Church Herself directly supplies the Catholic priest with delegated jurisdiction to legally and validly hear confessions:

Catholic Encyclopedia, Excommunications, 1907: “(3) In Danger of Death - It is a principle repeatedly set forth in canon law that at the point of death all reservations cease and all necessary jurisdiction is supplied by the Church. ‘At the point of death’, says the Council of Trent (Sess. XIV, c. vii), ‘in danger of death’, says the Ritual (tit. III, cap. i, n. 23), any priest

can absolve from all sins and censures, even if he be without the ordinary faculties of confessors. (Holy Office, 29 July 1891)”

This upholds the dogma that priests must have jurisdiction to legally and validly hear confessions. This law proves that the Catholic Church Herself can directly supply delegated jurisdiction for want of delegated jurisdiction from a competent authority.

It is important to note that Canon 882 refers only to Catholic priests and hence not to non-Catholic priests for two reasons:

(1) because the canons on confession are directed to Catholic priests and hence not to non-Catholic priests, and thus the “all priests” in Canon 882 refers only to Catholic priests;

(2) because it is a dogma that Catholics are banned from receiving sacraments from non-Catholic priests and hence the “all priests” in Canon 882 cannot refer non-Catholic priests.

WARNING: Canon Law 882 is a sinful but not heretical law for allowing excommunicated Catholic priests to administer the sacrament of penance. (See my book *Faith Before the Sacraments*.)

Canon 239, § 1, n. 2, and delegated jurisdiction supplied by the Church

“Canon 239, § 1, n. 2. Besides other privileges given to Cardinals in various canons of the Code, all have the following faculties from the time of their promotion in consistory: ... (2) to choose a confessor for themselves and the members of their household. If this confessor should not have jurisdiction, he obtains it automatically by his choice as confessor...”

Canon 2261, §2, and delegated jurisdiction supplied by the Church

There is another exception to the law that a Catholic bishop or a Catholic priest needs ordinary jurisdiction or delegated jurisdiction from a competent authority to legally and validly hear confessions. This exception is contained in another law, Canon 2261, §2. A Catholic bishop or Catholic priest who has been automatically excommunicated and is still Catholic can be supplied with delegated jurisdiction from the Church Herself to legally and validly hear confessions if the faithful ask him for the sacrament and have a just cause for their request:

“Canon 2261, §2. Except as provided in 2261.3, the faithful can for any just cause ask for sacraments or sacramentals of one who is excommunicated, especially if there is no one else to give them; and in such cases the excommunicated person so asked may administer them and is not obliged to ask the reason for the request.”

Because it is a dogma that Catholics are banned from receiving any sacrament from a non-Catholic priest, Canon 2261, §2, only applies to priests whose automatic excommunications do not place them outside the Church; that is, priests who remain Catholic after their excommunication. Certain sins of immorality and disobedience excommunicate a Catholic priest while he remains Catholic. At one time these were known as minor excommunications:

Priests' Problems, p. 397: “It is remembered that an excommunicated person as such does not normally cease to be a Catholic, it is evident that the content of Canon 2261 relates chiefly to Catholics who may be excommunicated for a variety of reasons.”

The only just cause for which the faithful can ask for the sacrament of penance from excommunicated priests that are still Catholic is if the faithful do not have access to a Catholic bishop or Catholic priest who has not been excommunicated:

PCC: “Canon 2261 desires that the people do not request them to administer the Sacraments if there is anyone else at hand who can do so. [Footnote 20: ‘Blat, *Comm. Jur. Can.*, III, 30.’]”²⁸

However, Catholics are forbidden to receive any sacrament from a Catholic bishop or Catholic priest who has been excommunicated and is still Catholic if he has been excommunicated by a condemnatory or declaratory sentence:

“Canon 2261, §3. From a minister who is an *excommunicatus vitandus*, or who has been excommunicated by a declaratory or condemnatory sentence, the faithful may ask for sacramental absolution in accordance with Canons 882 and 2252 only in danger of death.”

WARNING: Canon Law 2261 is a sinful but not heretical law for allowing excommunicated Catholic priests to administer the sacraments. (See my book *Faith Before the Sacraments*.)

Canon 209 and delegated jurisdiction supplied by the Church

There is one exception mentioned in the law itself by which a non-Catholic priest can validly hear the confessions of Catholic penitents. In this case the Catholic penitent must have good reason to believe that the priest is a Catholic priest who has faculties to hear confessions. In this case the Church Herself supplies delegated jurisdiction to the non-Catholic priest for the confessions he hears of Catholic penitents who think he is a Catholic priest with faculties to hear confessions:

“Canon 209. The Church supplies jurisdiction both for the external and the internal forum: (1) in common error; (2) in a positive and probable doubt whether of fact or law.”

If Catholics have good reason to believe that a priest is Catholic and has ordinary or delegated jurisdiction from a competent authority to hear confessions even though the priest does not and even if he is a non-Catholic priest, the Church does not penalize these invincibly ignorant Catholics and thus supplies delegated jurisdiction to these priests in order to validly and legally administer the sacraments to these Catholics:

PCC, commentary on Canon 209: “Common error consists in the erroneous belief of all or nearly all the people, parish, community, that a man has jurisdiction. The fact that the person knows that he has not jurisdiction does not interfere with the validity of his acts if by common error he is believed to have jurisdiction... in the case of common error, no matter how created, the Church supplies the jurisdiction for the benefit of the people. The Church likewise supplies jurisdiction in a positive and probable doubt.”²⁹

For example, a Greek Schismatic priest sneaks into an Eastern Rite Catholic church to hear the confessions of the Catholic penitents. The Catholic penitents have good reason to believe that he is a Catholic priest with delegated jurisdiction from a competent authority because he is hearing confessions in a Catholic church. Now even though this non-Catholic priest does not have ordinary or delegated jurisdiction from a competent authority to validly hear confessions,

²⁸ PCC, v. 1, commentary on Canon 742, p. 373.

²⁹ PCC, vol. 1, commentary on Canon 209, p. 94.

the Catholic Church supplies him with delegated jurisdiction to validly hear the confessions of the unsuspecting Catholic penitents for their sake.

Epikēia and delegated jurisdiction supplied by the Church

The canon laws on or related to confession make no provision for the following extraordinary circumstance in which Catholics may find themselves, and hence epikēia would apply. Catholics are in an isolated area that has a Catholic priest in good standing but without faculties to hear confessions and hence without ordinary jurisdiction or delegated jurisdiction from a competent authority. And this area contains no Catholic bishops or Catholic superiors. Hence there is no way for this Catholic priest to get delegated jurisdiction from a competent authority to legally and validly hear confessions according to Canon Laws 872 and 879. And he cannot get jurisdiction by Canon 882 to legally and validly hear the confessions of the Catholic penitents who are not in danger of death because this canon only applies to Catholic penitents who are in danger of death. And he cannot get jurisdiction by Canon 2261, §2, because he has not been excommunicated. And he cannot get jurisdiction by Canon 209 because the Catholics know he does not have faculties and delegated jurisdiction from a Catholic bishop or Catholic superior. Consequently, there are no canon laws that would allow this Catholic priest to legally and validly hear confessions of the Catholic penitents who are not in danger of death. This is a perfect example in which epikēia applies because these Catholics find themselves in an extraordinary circumstance in which they would be deprived of a great good to their souls if they observe the canon laws that relate to confession. That great good is the sacrament of penance administered by a Catholic priest whom they have access to. Thus epikēia would exempt this Catholic priest from observing the laws regarding confession and would supply him with delegated jurisdiction from the Catholic Church in order to legally and validly hear the confessions of the Catholic penitents who are not in danger of death. The spirit of the laws dealing with the sacrament of penance is that no Catholic shall be deprived of going to confession to a Catholic priest for want of ordinary or delegated jurisdiction from a competent authority.

For instance, a Catholic priest is in prison during wartime and is not in his diocese where he has faculties from his bishop to hear valid confessions and he has no access to the local bishop where the prison is located to get faculties and delegated jurisdiction from him to hear confessions. Therefore according to the laws on the sacrament of penance, he cannot get delegated jurisdiction to legally and validly hear the confessions of the Catholic prisoners who are not in danger of death. This is a clear case in which *epikēia* exempts this Catholic priest from the necessity of faculties and delegated jurisdiction from a competent authority and supplies him with delegated jurisdiction from the Church to legally and validly hear the confessions of the Catholic penitents who are not in danger of death.

Epikēia and the sacrament of baptism

Under extraordinary circumstances epikēia must be used regarding the laws on the sacrament of baptism. First we will present the laws regarding the sacrament of baptism. A Catholic minister must solemnly baptize candidates unless they are in danger of death. If the candidate is in danger of death, a Catholic minister may non-solemnly administer baptism. And if the candidate is in danger of death and has no access to a Catholic minister, the candidate can be baptized by anyone (*even a pagan*), which is known as private baptism:

- Baptism must always be solemnly conferred except in the danger of death. (c. 755.1)
- Solemn baptism must be administered by a canonical pastor. (c. 738.1)
- Solemnly blessed baptismal water must be used for a solemn baptism. (c. 757.1)
- Solemn baptism may only be exempted if there is a danger of death. (c. 759.1)
- The Ordinary is forbidden to allow private baptism outside the danger of death. (c. 759.2)

None of the current laws that relate to the sacrament of baptism make provision for baptizing candidates who do not have access to an authorized Catholic minister and are not in danger of death. Therefore the use of epikeia is necessary to be exempted from the current laws on baptism in order that candidates who are not in danger of death can be legally baptized in areas where there are no Catholic ministers. If the current laws on baptism were observed in this extraordinary circumstance, the souls of the candidates who are not in danger of death would have no way to be baptized and hence have their sins remitted and enter the Catholic Church, which would cause great harm and danger to these souls. Here is a case in which it would be sinful to observe the current laws on the sacrament of baptism. (See in this book [No way for certain infants and catechumens to get baptized under current laws](#), p. 30.)

Epikeia and the sacrament of matrimony

***Tametsi* decree of 1563 and Holy Office letter of 1625 and *Ne Temere* decree of 1907**

From the time of the Council of Trent in 1563 until a Holy Office decree in 1625, the laws regarding marriage state that Catholics must get married before an authorized Catholic minister and two witnesses or their marriage is null and void. And there are no other laws that allow for exceptions to this decree. This law, known as the *Tametsi* decree, is a human invalidating law that was promulgated in the Council of Trent:

Council of Trent, “*Tametsi*,” On the reformation of matrimony, Session 29, Chapter 1, 1563: “Those who shall attempt to contract marriage otherwise than in the presence of the parish priest, or of some other priest by permission of the said parish priest, or of the Ordinary, and in the presence of two or three witnesses; the holy Synod renders such wholly incapable of thus contracting and declares such contracts invalid and null, as by the present decree It invalidates and annuls them.”

By the force of this *Tametsi* decree, a Catholic could not get married without a Catholic minister and two witnesses. If a Catholic attempted to get married without a Catholic minister and two witnesses, his marriage was no marriage. It was null and void! Epikeia, then, must apply in the extraordinary case where Catholic priests cannot be accessed or else Catholics could not get married in those areas. The saints, theologians, and canonists discussed how the *Tametsi* decree relates to lands where the *Tametsi* decree was in force and where it was impossible or very difficult to have access to a Catholic priest to get married. Almost everyone agreed that epikeia must apply. Fr. Riley summarizes the majority opinion:

HNUE: “Now, it cannot be denied that in some instances invalidating laws, if they should continue to be possessed of obligating force, would despot certain subjects of basic human rights. Suppose, for example, that, in a region where the regulations of the Council of Trent regarding clandestine marriages had been promulgated, all the priests had been slain because

of a persecution of the Church. If there was no possibility of any priests re-entering the territory for an indefinitely long period, then to insist upon the binding force of the decree *Tametsi* would be equivalent to the confiscation of the natural right to marry.”³⁰

The few theologians who were reluctant to admit that exemptions apply to human invalidating laws had to admit that epikeia does apply to human invalidating laws when they studied this dilemma regarding marriage. When this dilemma was put before the Holy Office in 1625, the Holy Office decreed that private marriages without a Catholic priest could take place in the presence of two witnesses when a priest could not be foreseeably accessed within one month:

The Holy Office, Common Law Marriage, 1625: “If it should eventuate that two Catholics desirous of marriage should not be able to find a parish priest or bishop within their reach, and such a condition were to last for a month, in such cases consent expressed before two witnesses would suffice for a valid marriage (S.C. de Prop. Fide, 13 iun., 1625—*Ius Pontificium*, I, pars 2 n. 15.)”

This decree proves that the spirit of the *Tametsi* law is not to make it impossible for Catholics to get married in areas where there are no Catholic priests. Hence this Holy Office decree justified Catholics who used epikeia to get married without Catholic priests in areas where there were no Catholic priests from the time of the *Tametsi* decree until the promulgation of this Holy Office decree in 1625. After the Holy Office decree allowed this exception in 1625, there was then no need for epikeia in order to be exempted from the *Tametsi* law because the law itself included this exception.

In 1907 Pope Pius X’s *Ne Temere* decree also emended the *Tametsi* decree by allowing for private marriages when no access to an authorized Catholic priest was possible within a one-month period of time:

Pope Pius X, *Ne Temere*: “VIII. If it happens that in some region the pastor or ordinary of the place or priest delegated by them, in the presence of whom marriage can be celebrated, cannot be had, and this condition of things has lasted now for a month, the marriage can be validly and licitly entered upon after a formal consent has been given by the betrothed in the presence of two witnesses.” (D. 2069)

Observing disciplinary laws can be sinful

Just as the observance of good secular laws can be sinful under extraordinary circumstances, so also the observance of good disciplinary laws can be sinful under extraordinary circumstances. (See in this book [Return a sword to its owner](#), p. 18.) Hence one sins if epikeia is not used in these extraordinary circumstances:

Summa, q. 120, a. 1.: “**Reply to Objection 1.** ‘Epikeia’ does not set aside that which is just in itself but that which is just as by law established. Nor is it opposed to severity, which follows the letter of the law when it ought to be followed. To follow the letter of the law when it ought not to be followed is sinful. Hence it is written in the Codex of Laws and Constitutions under Law v: ‘Without doubt he transgresses the law who by adhering to the letter of the law strives to defeat the intention of the lawgiver.’”³¹

³⁰ HNUE, chap. 8, art. 3, sec. 1, pp. 416-17.

³¹ *Summa*, q. 120, a. 1.

Conflicting disciplinary laws regarding the Divine Office and extreme unction

Epikēia has to be used when two disciplinary laws conflict with one another, when only one of the laws can be observed but not both:

HNUE: “Epikēia has place where the law cannot be observed except by violating another precept which is more grave, where the observance of the law would be an impediment to a higher virtue...”³²

For example, one disciplinary law decrees that priests must pray the Divine Office (the seven daily prayers in the Roman Breviary) before midnight or they commit mortal sin. Another law decrees that Catholic priests must administer the sacrament of extreme unction to dying Catholics. An extraordinary situation arises in which a Catholic priest has been hearing confessions all day and waits until 11:30 p.m. to recite Compline, the last prayer of the Divine Office for the day. He gets a phone call at 11:30 p.m. from a parishioner who is on his deathbed and asks for the sacrament of extreme unction. If the priest goes to administer the sacrament, he will not be able to complete the prayers of the Divine Office for that day and will violate the law by which he is bound to pray the whole Divine Office before midnight. But if the priest does not immediately visit the dying man and give him the sacrament of extreme unction, the man may die without the sacrament and hence his soul would be placed in great danger. What is the priest to do? He is faced with two conflicting laws, his obligation to administer the sacrament of extreme unction to his dying parishioner and the finishing of his daily office. In this case it only takes common sense to know that the first obligation of the priest is for the salvation of the soul of the dying parishioner, and thus the priest is exempted from the law that he must finish the Divine Office before midnight. However, if the priest did not forgo saying his last office and go as soon as possible to the dying man, he would commit a sin for endangering the soul of the dying man:

HNUE: “For this concept [epikēia], which was followed with exactness by practically all the Scholastic moralists, was of such a nature as to allow the use of epikēia whenever and wherever the law was deficient owing to this universality of its expression. Thus, its use was conceived as permissible when a legislator in demanding observance of his general law in a particular case, exceeded his legitimate power, or when a law could not be observed due to its being sinful, or to its being in conflict with a higher law, or when the obeying of the law would entail a grave inconvenience.”³³

No way for certain Catholics to get married under *Tametsi* decree

Under the *Tametsi* decree Catholics had to get married before a Catholic priest or the attempted marriage was null and void, no marriage. (See in this book [Epikēia and the Sacrament of Matrimony](#), p. 27.) Catholics whose vocation was to get married and bring Catholic children into the world would have sinned if they had observed the *Tametsi* decree in isolated areas where no Catholic priests were available. They would have sinned by not obeying God’s divine law regarding the right of man and woman to marry if they so choose and God’s divine law to procreate. And if a Catholic priest was not available for an extended period of time, as in Japan when there were no Catholic priests for 200 years, then the whole race or tribe of Catholics would become extinct for lack of children to carry on the line and the Catholic faith.

³² HNUE, chap. 2, art. 3, p. 83.

³³ HNUE, chap. 3, p. 104.

No way for certain infants and catechumens to get baptized under current laws

Under the current laws on the sacrament of baptism, a canonical pastor must baptize infants and catechumens unless they are in danger of death. (See in this book [Epikeia and the sacrament of baptism](#), p. 26.) Catholics would sin if they observed this law in areas where there is no access to canonical pastors to baptize. For want of such pastors, they would sin for not baptizing infants and catechumens who were not in danger of death. If they observed the laws on baptism in these areas, there would be no way for these infants and catechumens to get baptized and have their sins remitted and enter the Catholic Church.

Epikeia Is Needed during These Days of the Great Apostasy

Because there is no Catholic hierarchy

In these latter days of the Great Apostasy, there is no pope and there are no Catholic bishops or Catholic priests that I know of.³⁴ The Holy See has been vacant, without a pope, since the reign of the apostate Antipope John XXIII. Consequently, there is a great threat to souls who are now deprived of the very word of God, the Catholic faith. God Himself has allowed this curse, as prophesied by Amos:

“Behold the days come, saith the Lord, and I will send forth a famine into the land: not a famine of bread, nor a thirst of water, but of hearing the word of the Lord. And they shall move from sea to sea, and from the north to the east: they shall go about seeking the word of the Lord, and shall not find it.” (Amos 8:11-12)

God has ordained this Amos Curse to come to pass because fallen-away Catholics were and are worthy of such a punishment, just as the unbelieving and disobedient Jews were worthily punished with the Amos Curse under the Old Covenant when they rebelled. Under these extraordinary circumstances an emergency exists that endangers the salvation of souls. Hence epikeia is needed to become Catholic, to remain Catholic, to teach the Catholic faith, and to convert sinners because there are no Catholic bishops and no Catholic priests. Epikeia, then, is needed for laymen to teach the Catholic faith, to receive the sacraments of baptism and penance, and to compose a specific abjuration form. And if there were a Catholic bishop, he would need epikeia to preach sermons, hear confessions of penitents who are not in danger of death, bestow holy orders, rule his flock and those whom he ordains and consecrates, and compose specific abjurations.

Be sorry and weep, you apostate bishops and priests, for your idolatries, heresies, and blasphemies against the Catholic God and for the great loss of souls you have caused by your apostasy! Get rid of your pride and become humble so you can learn about the Catholic faith from simple laymen:

Catholic commentary on Ps. 17: “Ver. 46. ...The Jews had been long the objects of God’s peculiar favours: yet they fall away. Thus we often see priests outdone in piety by simple laics [laymen].”

Yes, you apostate shepherds must now learn from simple sheep whom God Himself has raised up by the power of His hand for lack of any faithful shepherds on earth. Get rid of your

³⁴ See my book *Where Are the Catholic Bishops and Priests?*

immense pride and rebellion in order to convert and abjure so that you may enter the Catholic Church and have a chance to save your souls and help save the souls of others.

I hope the time will come when some apostate bishops and priests will abjure and enter the Catholic Church and hence laymen will then have Catholic bishops and Catholic priests. These Catholic bishops will then need epikeia to preach sermons, hear confessions of those not in danger of death, accept abjurations, confirm, baptize, confer holy orders, and administer extreme unction and matrimony. They will need epikeia to do these things until the Catholic Church has a pope. In these final days, in these dry days, we can now see why Jesus Christ has placed so much emphasis on the use of epikeia; that is, on his chosen people being exempted from particular disciplinary laws under extraordinary circumstances. (See my book *The Catholic Church Survives Without Catholics*.)

To know and live the Catholic faith and hence save your soul

Without a proper understanding of epikeia, especially in these days of the Great Apostasy, one will find himself enveloped in confusion and never see the full truth and hence eventually lose the Catholic faith—if he ever had it in the first place. Epikeia is intimately connected with the virtue of charity, without which one cannot be truly wise. St. Paul teaches that a Catholic can have faith to move mountains but if he does not have charity he is nothing: “*And if I should have prophecy and should know all mysteries and all knowledge, and if I should have all faith, so that I could remove mountains, and have not charity, I am nothing.*” (1 Cor. 13:2) Hence a man that believes in the full deposit of the Catholic faith but does not have true charity is in a state of damnation. And one reason why such a Catholic does not have true charity is because he only knows the letter of the law and not the spirit of the law and hence is related to the evil Pharisees whom Jesus denounced. His faith is superficial. He does not have true wisdom in the faith he professes. He can be compared to a robot or a computer that just repeats dogmas and other laws but has no real understanding, appreciation, or true love of them. Eventually this type of man will lose the faith and profess heresy and also fall into schism, most likely falling into schism first and then losing the faith.

Epikeia tests a man to see if he has true wisdom because a man with true wisdom must not only understand and follow the letter of the law but also understand and follow the spirit of the law. To a Catholic who has true wisdom, the law is not just written in stone but in his heart. The Catholic who has true wisdom understands the whole purpose and meaning of the law. He understands that all the laws that can change, those that do not deal with faith and morals, are subservient to the laws that cannot change, those that do deal with faith and morals. He understands why laws that deal with faith and morals cannot change and hence why epikeia cannot apply to these laws. He also sees God’s purpose and reasons for these dogmatic laws, thus proving he understands the spirit of these laws and not just the letter of these laws. He also understands the same regarding laws that can change. By good will, common sense, and empirical evidence, he understands that epikeia applies to changeable laws; that is, he sees that these laws, such as disciplinary laws, have changed in the history of the Church.

To preserve the Catholic Church and faith

If it were not for epikeia, there could be no Holy Catholic Church in these days of the Great Apostasy and the gates of hell would have prevailed over the Catholic Church.

Franciscan prophecy proves the need of epikeia in these final days

A final-day prophecy from James of Massa, a brother of St. Francis of Assisi, proves that the very survival of the Catholic Church in these final days depends upon epikeia. He sees the Catholic Church being preserved and defended in an unprecedented way that depends upon epikeia for Her preservation:

The Little Flowers of St. Francis of Assisi: “76. ...The Holy Spirit will choose uneducated young men, and unsophisticated ordinary persons who are looked down upon. Without precedent, without teacher, in fact contrary to the training and personal character of those who teach, the Spirit of Christ will choose them and will fill them with a holy reverence and a very pure love of Christ. And when the Spirit has increased the number of such persons in various places, then it will send forth a wholly pure and saintly shepherd and leader, conforming to Christ. To the praise and glory, etc.”³⁵

James of Massa’s prophecy is being fulfilled before our very eyes. James of Massa sees the Catholic Church being preserved by Catholic laymen who have no formal education, no spiritual directors, and no prelates to authorize their teaching and preaching, and no pope (“no saintly shepherd and leader”)—not because these heroic Catholics shun these things but because the educational system is utterly corrupt, the pastors and spiritual directors are apostates and hence Catholic in name only, and the so-called popes of the Vatican II Church were and are apostate antipopes and hence there has been no true pope since Pope Pius XII. This New Covenant apostasy during these final days is even worse than the apostasy of God’s chosen people during the Old Covenant era when all the priests were also evil and faithless:

“There was no shepherd.” (Ezechiel 34:5) “The holy man is perished out of the earth, and there is none upright among men.” (Micheas 7:2) “All the chief of the priests, and the people wickedly transgressed.” (2 Par. 36:14) “For the children of Israel [Catholics] shall sit many days without king, and without prince, and without sacrifice, and without altar.” (Osee 3:4)

Hence the same apostasy mentioned by James of Massa occurred several times during the Old Covenant era. Speaking for God, the Prophet Jeremias tells of a great apostasy of the hierarchy and all the priests during the Old Covenant era, just as James of Massa foretold a similar apostasy during the New Covenant era. And in both apostasies God directly guides and instructs the laymen. And when enough laymen are converted and holy, God converts pastors to rule them:

“Woe to the pastors, that destroy and tear the sheep of my pasture, saith the Lord. Therefore thus saith the Lord the God of Israel to the pastors that feed my people: You have scattered my flock, and driven them away, and have not visited them: behold I will visit upon you for the evil of your doings, saith the Lord. And I will gather together the remnant of my flock, out of all the lands into which I have cast them out: and I will make them return to their own fields, and they shall increase and be multiplied. And I will set up pastors over them, and they shall feed them: they shall fear no more, and they shall not be dismayed: and none shall be wanting of their number, saith the Lord.” (Jer. 23:1-4)

The only way heroic Catholics can present the Catholic Church and teach the Catholic faith to others during these final days is by epikeia, which allows them to be exempted from disciplinary laws that are impossible or sinful to observe for want of Catholic bishops and Catholic priests. And every exemption is necessary to give glory to the Catholic God and to save souls.

³⁵ Translated by E.M. Blaiklock & A.C. Keys, cap. 76, p. 169.

To authorize the two witnesses in these final days

Why are the two witnesses of the Apocalypse needed to teach mankind in these final days?

“And I will give unto my two witnesses, and they shall prophesy a thousand two hundred sixty days, clothed in sackcloth. These are the two olive trees, and the two candlesticks, that stand before the Lord of the earth.” (Apoc. 11:3-4)

Catholic commentary on Apocalypse 11: “Ver. 1. Two prophets are promised, to teach mankind.”

There would be no need for the two witnesses of the Apocalypse to teach mankind if the bishops and priests remained faithful, if the hierarchy were still intact. If the two witnesses attempted to teach mankind with a hierarchy intact, they would be undermining the hierarchy whose duty is to teach mankind and hence the two witnesses would be schismatics. Therefore the need of the two witnesses to teach mankind in these final days proves that there is no Catholic hierarchy intact, all the offices are vacant. And if it were not for epikeia, the two witnesses could not legally carry out their mission by teaching the Catholic faith and evangelizing sinners.

Things Allowed by the Law during the Great Apostasy

The sacrament of matrimony is allowed by the law

Epikeia is not needed for Catholics to marry because the law itself makes provision for Catholics to get legally and validly married when they have no access to a Catholic minister to witness their marriage:

“Canon 1098. If the pastor, or the local Ordinary, or a priest delegated by either, who should according to Canons 1095 and 1096 assist at the marriage, cannot be had, or the parties cannot go to him without great inconvenience, the following rules are to be observed: (1) In danger of death, a marriage may be validly and licitly contracted in the presence only of two witnesses; even apart from the danger of death marriage may be thus contracted, if it can be prudently foreseen that this state of affairs (namely, the great difficulty of getting an authorized priest to witness the marriage) will continue for a month; (2) In both cases, if there is at hand another priest who can be present at the marriage, he should be called and should assist at the marriage together with the witnesses, without prejudice however to the validity of the marriage contracted only before the witnesses.”

The ministers of matrimony are the spouses themselves. The spouses are also the matter of the sacrament. When a Catholic priest is available, he must preside over the marriage as a witness to the marriage but not as the minister. (See my books *Matrimony, Legality and Validity* and *Sacraments Without a Priest: The Sacrament of Matrimony Without a Priest*.)

Private teaching of the Catholic faith is allowed by the law

All Catholics can privately teach the Catholic faith without authorization from a bishop or superior. This is a right that is inherent to all Catholics as part of their obligation to profess the faith and perform the spiritual works of mercy of admonishing and converting sinners. This entails a layman’s duty to teach the Catholic faith to his everyday acquaintances—such as a parent’s duty to teach the faith to his children, a layman’s duty to teach the faith to his neighbors or those whom he comes in contact with during his everyday life, and 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 Catholic works that have been approved by competent authorities or to Catholic works that have been allowed by epikeia when no Catholic authorities are available to approve the works.

Sapientiae Christianae and 1Peter 3:15 apply to private and not public teaching

1Peter 3:15 and Pope Leo XIII's encyclical *Sapientiae Christianae* teach that every Catholic has the right to privately teach the Catholic faith without approval from a bishop or religious superior:

“Being ready always to satisfy every one that asketh you a reason of that hope which is in you.” (1 Pt. 3:15)

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.”

But these teachings do not allow Catholics to publicly teach the Catholic faith without approval from a bishop with ordinary jurisdiction or a religious superior. 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 a competent authority, such as publishing religious works without an imprimatur. *Sapientiae Christianae* is in agreement with Canons 1384 and 1385. Pope Leo XIII, then, is only referring to the inherent right of Catholic laymen to privately teach the Catholic faith. Hence a Catholic priest or a Catholic layman cannot appeal to this verse to publicly teach the Catholic faith, which includes writing religious works without the approval of a bishop with ordinary jurisdiction or a superior of a religious order. Instead, he needs epikeia to publicly teach the Catholic faith in an emergency situation and for want of a bishop with ordinary jurisdiction or a religious superior to give him permission to publicly teach the faith.

The sacrament of penance is allowed by the law for penitents who are in danger of death

The law itself, Canon 882, allows all Catholic priests to hear the confessions of penitents who are in danger of death. This includes Catholic priests who do not have permission nor delegated jurisdiction from a competent authority, in which case the Church directly supplies these Catholic priests with delegated jurisdiction to legally and validly hear the confessions of penitents who are in danger of death. Hence epikeia is not needed in this case. (See in this book [Canon 882 and delegated jurisdiction supplied by the Church](#), p. 23.)

Taking abjurations is allowed by the law

Under normal circumstances abjurations must be taken before authorized Catholic bishops or their delegates. But the law allows converts to take abjurations before laymen when no Catholic bishops or priests are available, such as in missionary areas:

The Reception of Converts: “During the period between the Council of Trent (1545-1563) and the present Code (1918) the Sacred Congregation developed many aspects of the abjuration of heresy and the profession of faith through instructions and responses. Thus, on April 7, 1629, the Congregation of the Propagation of the Faith declared that apostates in missionary countries were under no obligation of making a public abjuration before infidels, but it was sufficient for them to make it before the faithful, provided that they discontinued wearing any garb indicative of apostasy, and that they took care that the infidels learned of their abjuration in due time either from themselves or from others, even if this entailed danger to their lives.³⁶ Ordinarily the abjuration was to be made before the bishop; but the Congregation of the Propagation of the Faith permitted a private abjuration³⁷ with only a few of the faithful present as witnesses under certain conditions.³⁸ If there was question of scandal, the abjuration necessarily had to be public. The Congregation insisted on this, even at the risk of the loss of temporal goods necessary for the sustenance of the convert and his family, when the retention of these goods connoted an implicit profession of heresy. At the same time, the Congregation declared that no one could be received into the Church if he wished to keep his Catholicity secret by publicly posing as a heretic.”³⁹

(See my book *Abjuration from The Great Apostasy*: Laymen Can Accept Abjurations.)

Priests ordained under Pius XII or before

If there were a Catholic priest during these days of the Great Apostasy who was ordained in the time of Pius XII or before, he could have delegated jurisdiction from a bishop with ordinary jurisdiction but only in the territory in which he was granted that jurisdiction. Outside of that territory he would get delegated jurisdiction directly from the Church by epikeia in order to legally and validly function as a Catholic priest. Epikeia would grant him this because during these days of the Great Apostasy there are no bishops with ordinary jurisdiction and hence no way to get delegated jurisdiction from bishops with ordinary jurisdiction.

Things Allowed by Epikeia during the Great Apostasy

Public teaching of the Catholic faith is allowed by epikeia

Epikeia is needed for Catholics to publicly teach the Catholic faith because there are no bishops with ordinary jurisdiction or superiors of religious orders to authorize them to teach the faith and give their books imprimaturs, which the law requires with no exceptions mentioned in the law. The law states that a Catholic priest or Catholic layman needs to be authorized by a

³⁶ Contained in the response of 28 Dec. 1770—*Fontes*, n. 4551. Cf. S.C.S. Off., 5 Sept. 1736, and ad 2—*Fontes* n. 790.

³⁷ RJMI comment: Private abjuration in this context means that it is taken before lay witnesses instead of before an authorized Catholic bishop or priest. The same applies to private baptisms which laymen can administer if no priest is available. Private in this context does not mean it is not public, as the next sentence in the decree proves: “If there was question of scandal, the abjuration [before laymen] necessarily had to be public.”

³⁸ S.C. de Prop. Fide, litt. (ad Ep. Limericen.), 8 apr. 1786. This response was confirmed by the Holy Office on March 28, 1900—*Fontes*, n. 1237.

³⁹ *The Reception of Converts*, A Dissertation, Rev. Joseph G. Goodwine, A.B., S.T.B., J.C.L. Imprimatur: +Franciscus J. Spellman, D.D., May 31, 1944. Catholic University of America Canon Law Series. The Catholic University of America Press. pp. 121-122.

bishop with ordinary jurisdiction or a superior of his religious order to publicly teach the Catholic faith, which includes getting approval to publish his religious writings:

“Canon 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.”

“Canon 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... Canon 1385, §2. The permission to publish books... 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.”

The law also decrees that Catholics who violate these laws are automatically (*ipso facto*) excommunicated:

“Canon 2318, §2. Authors and publishers who without the proper permission procure the printing of books of the Sacred Scriptures or 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 preach sermons. And to preach sermons, they also need jurisdiction from their bishop or religious superior:

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.”

During these days of the Great Apostasy, there are no bishops with ordinary jurisdiction or superiors of religious orders who can authorize the public teaching of the Catholic faith. Therefore, if the faith is to survive—and we know it will because Jesus said, “*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 a Catholic layman to publicly teach the Catholic faith so he can be exempted from the Church laws that require him to be authorized by a bishop with ordinary jurisdiction or a superior of a religious order. If it were not for epikeia, Catholic priests and Catholic laymen would violate Canons 1384 and 1385 when they publicly teach the Catholic faith and hence would incur the penalty of automatic excommunication mentioned in Canon 2318, §2. And if it were not for epikeia, the gates of hell would have prevailed over the Church by making it impossible for the Catholic faith to be preached and taught and hence impossible for souls to be saved.

Preaching sermons is allowed by epikeia

A Catholic priest cannot preach sermons unless he is sent, which means he must be sent by a legitimate superior:

Catholic commentary on Acts 15: “Ver. 24. *Some who went out from us, from Jerusalem, and pretended to speak our mind, and in our name, but we gave them no such commission.* (Witham) –A proper description of heretics, schismatics, and seditious preachers, who go out from their own superiors, and pretend to teach and preach without any mission, *et quomodo prædicabunt nisi mittantur*; how can they preach, unless they are sent? (Romans x. 15.)”

To be sent, a legitimate superior must give the priest permission and delegated jurisdiction to preach sermons. There are no exceptions to this law:

Unless They Be Sent, Fr. Augustine Rock, O.P., 1955: “The disciples, therefore, on the commission and by the example of the Master preach only as sent... by the mission the preacher is united to Christ. Confession heard without the necessary jurisdiction cannot lead to valid absolution. So, too, preaching without the necessary jurisdiction, which is conferred by the mission, is invalid. Preaching and hearing confession are dependant upon both jurisdiction and orders. ...St. Thomas... refers to ‘monks’ who presuming on their sanctity, by their own volition usurp the office of ministers of the Church, namely by absolving sinners and by preaching without the authority of the bishop, which is in no wise permissible to them.”⁴⁰

Pope Gregory XVI, *Mirrari Vos*, 1832: “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.’”

“Canon 1328. Nobody is allowed to exercise the ministry of preaching, unless he has received a commission from the legitimate superior, either by special faculty or by appointment to an office to which the duty of preaching is attached by the Sacred Canons.”

During these days of the Great Apostasy, there are no legitimate superiors to give a Catholic priest permission and delegated jurisdiction to preach sermons. Hence in this extraordinary and emergency situation, epikeia allows a Catholic priest to preach sermons and the Church directly supplies him with delegated jurisdiction. Preaching about the Catholic faith is the primary duty of Catholic priests, more than offering the Holy Mass and giving the sacraments to the faithful, because without the Catholic faith no one can be saved nor have their sins remitted no matter how many Masses they attend or sacraments they receive:

Pope Boniface VIII, Bull *Unam Sanctum*, 1302: “Outside the Catholic Church there is no salvation or remission of sin.”

Pope Pius X, *Editae Saepe*, 1910: “When the true son of the Church sets out to reform himself and others, he fixes his eyes and heart on matters of faith and morals. ...He [St. Charles Borromeo] yielded no ground on any matter that would endanger faith and morals.”

“Faith then cometh by hearing; and hearing by the word of Christ.” (Rom. 10:17)

Hence a Catholic priest would commit mortal sin if he observed the laws on preaching sermons during these days of the Great Apostasy and did not preach sermons for want of a legitimate superior to give him permission and delegated jurisdiction since he would be depriving the people of the greatest good, which is learning about the Catholic faith and how to be good Catholics.

⁴⁰ *Unless They Be Sent*, Augustine Rock, O.P., S.T.D., M.A. Blackriars Publications, London, 1955. pp.113, 121-122.

The sacrament of penance is allowed by epikeia for penitents who are not in danger of death

The law decrees that a Catholic bishop cannot legally and validly hear the confessions of penitents who are not in danger of death unless he has ordinary jurisdiction or delegated jurisdiction from a competent authority who has ordinary jurisdiction. During these days of the Great Apostasy there are no bishops or anyone else who has ordinary jurisdiction. Hence if there were a Catholic bishop during these days of the Great Apostasy, he would not have ordinary jurisdiction nor would he be able to get delegated jurisdiction from a competent authority who has ordinary jurisdiction. Thus according to the law this Catholic bishop could not legally and validly hear the confessions of penitents who are not in danger of death. And the same applies to Catholic priests during these days of the Great Apostasy because there is no way for them to get delegated jurisdiction from a competent authority who has ordinary jurisdiction. Hence epikeia exempts these Catholic bishops and Catholic priests from these laws and the Church directly supplies them with delegated jurisdiction so that they can legally and validly hear the confessions of penitents who are not in danger of death. (See in this book [Epikeia and the sacrament of penance](#), p. 23.)

Composing abjurations is allowed by epikeia

The law decrees that fallen-away Catholics must take a specific abjuration of their heresies and the heresies of the sect they belonged to and denounce the sect's heretical leaders:

The Delict of Heresy: "Absolution from Heresy - ... The heretic must make reparation from the scandal given by his delict by endeavoring to arrest the activities of teachers of heresy. To this end, he must denounce any such persons that he knows. Also, he must make known any Catholic clergy who were accomplices in his delict. Finally, he must recant his heresy and make this known to those who heard him manifest his doubts or denials of revealed truth. These denunciations and recantations must either precede the absolution, or else must be seriously promised by the penitent. Secondly, the penitent must abjure his erroneous tenets in the presence of the Bishop or the priest who absolves him. ... The Roman Ritual provides a formula of abjuration and profession of Catholic faith which is designed especially for converts. Delinquent Catholics would be held to make a more specific abjuration of the particular error which was involved in their delict. The essential necessity is that the delinquent abjure his particular error, and profess full belief in the opposite Catholic dogma, together with a sincere acceptance of the doctrinal authority of God and of the Church."⁴¹

(See my book *Abjuration from The Great Apostasy*: Fallen-away Catholics must specifically abjure.) The law also decrees that only competent authorities can approve the use of new abjuration forms that are needed for specific cases. In these days of the Great Apostasy, there *are* no competent authorities to compose and approve specific abjuration forms that apply to the specific heresies and heretical sects. In this extraordinary situation Catholics are faced with conflicting laws. One law decrees that fallen-away Catholics must take a specific abjuration to enter the Catholic Church and another teaches that only competent authorities can compose and approve new abjuration forms. In this case the former law must be observed and not the latter, or

⁴¹ *The Delict of Heresy*, In its Commission, Penalization, and Absolution, A Dissertation, by Rev. Eric F. MacKenzie, A.M., S.T.L., J.C.L., of the Archdiocese of Boston. Nihil Obstat: Patrick J. Waters, Ph.D., Censor Deputatus. Imprimatur: +William Cardinal O'Connell, Archbishop of Boston, Boston, June 3, 1932. Catholic University of America Canon Law Series. Chap. 8, pp. 108, 114.

one would commit mortal sin. The law of bringing fallen-away Catholics into the Catholic Church by specific abjuration deals with the salvation of souls and the common good of the Catholic community and thus takes precedence. Hence epikeia exempts Catholics from the law which decrees that only competent authorities can compose and approve new abjuration forms and thus allows Catholics to compose their own specific abjuration forms during these days of the Great Apostasy. (See my book *Abjuration from The Great Apostasy*: Laymen can compose specific abjurations.)

The sacrament of holy orders is allowed by epikeia

The sacrament of orders or holy orders makes priests and bishops. The sacrament of orders requires a valid bishop in order to make a layman a priest, and this process is known as ordination. The sacrament of orders requires a valid bishop in order to make a priest a bishop, and this process is known as consecration or episcopal consecration (sometimes referred to as ordinations). A valid bishop, meaning a true bishop, can make priests and bishops regardless if he is Catholic or not. However, non-Catholic bishops act illegally when they make priests and bishops and the priests and bishops they make are illegal on this count alone. Because epikeia can only be used by Catholics and catechumens, only *Catholic* bishops who find themselves in extraordinary circumstances can be exempted by epikeia from observing laws dealing with ordinations and consecrations so that their ordinations and consecrations will be legal. Hence under no circumstances can epikeia make the ordinations and consecrations done by non-Catholic bishops legal. This chapter, then, deals with the sacrament of orders in regard to Catholic bishops and when they can use epikeia to be exempted from observing laws regarding ordinations and consecrations in order to make legal priests and legal bishops.

Epikeia allows for legal consecrations without a papal mandate

The current disciplinary law states that a Catholic bishop must have a papal mandate, the approval of the pope, to legally consecrate bishops. A papal mandate or apostolic mandate means that the pope must explicitly approve of the consecration before it takes place. The only exceptions covered in the law are for areas specifically mentioned by the pope in which a papal mandate is not necessary:

“Canon 953. Episcopal consecration is reserved to the Roman Pontiff; hence, no Bishop is allowed to consecrate another Bishop unless he is certain that he has a papal mandate... This requirement is for the licitness of the consecration, not for its validity.”

A Catholic bishop who consecrates bishops without papal mandates violates this law and hence these consecrations are illegal although valid, meaning these bishops he consecrated are truly made bishops even though they are illegal. By violating this law, both the Catholic bishop and the man he makes a bishop become automatically excommunicated according to a Holy Office decree in 1951; and the bishop he makes is illegal:

“Canon 2370. The bishop who, contrary to canon 953, confers episcopal consecration and the assistant bishops or the priest taking their place, as well as the one who receives episcopal consecration without having obtained an Apostolic Mandate, are suspended *ipso jure* until the Holy See has granted a dispensation.”

A Holy Office decree in 1951 upgraded the penalty from automatic suspension to automatic excommunication:

PCC, commentary on Canon 2370: “The Holy Office by Decree of April 9, 1951, taking effect immediately upon promulgation, further punished with automatic excommunication reserved *specialissimo modo* to the Apostolic See the bishop of any Rite or dignity who consecrates to the episcopacy one not nominated or expressly confirmed by the Holy See, as well as the recipient of the consecration even though acting under stress of grave fear (cfr. Canon 2229, §3, n. 3).^{42,43}

This law requiring a papal mandate before a Catholic bishop consecrates a bishop is a disciplinary law and not a dogmatic law because it can and has changed. A papal mandate was not always needed before a bishop could be legally consecrated:

PCC: “[In] the history of the election of bishops...there have been many changes in the manner of election in the course of centuries, and even in the same century different forms of election have prevailed in the various countries. Generally speaking, the bishops of the ecclesiastical province had the principal part in the election, but the priests and the people of the diocese had also a voice in the election; this was the system in the Church for many centuries. The metropolitan or archbishop of the province had the right of confirming the election and of consecrating the new bishop with the assistance of two bishops of the same province. In the twelfth century the right of electing the bishop had passed into the hands of the Cathedral Chapters in many countries of Europe. In the thirteenth century we frequently find that the Supreme Pontiff reserved to himself the right of confirmation of the election by the Cathedral Chapters and the consecration of the new bishop.”⁴⁴

There was a time in the history of the Church when papal mandates were not needed because communication with the pope was not easy and in some areas impossible. In the early days of the Church, the first bishops, the apostles, found themselves in remote areas where they had no access to St. Peter, the first pope. To bring order and structure to the converts of those areas, they legally consecrated bishops without the pope’s knowledge and hence without a papal mandate. The Fourth Lateran Council refers to legal consecrations done without papal confirmation due to the great distance and time needed to contact the pope for a papal mandate:

Fourth Lateran Council, 1215: “Canon 26. Those who are immediately subject to the Roman pontiff shall, to obtain confirmation of their office, present themselves personally to him, if this can conveniently be done, or send suitable persons through whom a careful inquiry can be made about the process of the election and the persons elected. In this way, on the strength of the pontiff’s informed judgment, they may finally enter into the fullness of their office, when there is no impediment in canon law. For a time, however, those who are in very distant parts, namely outside Italy, if they were elected peaceably, may by dispensation, on account of the needs and benefit of the churches, administer in things spiritual and temporal, but in such a way that they alienate nothing whatever of the church’s goods. They may receive the customary consecration or blessing.”

And Pope Pius IX mentions the same thing:

Pope Pius IX, *Quartus Supra*, 1873: “34. The Apostolic See has at times tolerated elected patriarchs using their power before being confirmed by the See. It has done so because their districts were so distant or because the journey was dangerous or because of the reverses threatening more and more frequently from the predominance of schismatics of the same rite. This dispensation has been granted even in the west to those who are very far away because of the needs and benefits of the churches (Lateran Council IV, canon 26). But it is fair to remind you that such reasons are no longer valid since travel is much easier and since the

⁴² Footnote 6a: Acts, Ap. Sedis, XLIII, 217-18.

⁴³ PCC, v. 2, commentary on Canon 2370, p. 558.

⁴⁴ PCC, v. 1, commentary on Canon 953, p. 562.

Catholics have been delivered from the civil power of the schismatics by the kindness of the supreme Ottoman emperor.”

Consequently the need of a papal mandate to legally consecrate a bishop is a disciplinary law that thus can and has changed and therefore is subject to epikeia. For example, epikeia would exempt a Catholic bishop from observing this law in an area that is in extreme need of Catholic bishops and where it is impossible or very difficult to access the pope for a papal mandate. However, epikeia would not be needed if the pope made a law exempting the Catholic bishops in that area from getting papal mandates before they consecrate. The law itself would then allow these Catholic bishops to legally consecrate bishops in that area without a papal mandate.

In these days of the Great Apostasy when there has been no pope since Pope Pius XII, access to the pope is impossible. And the last pope, Pope Pius XII, never made a law allowing legal consecrations without a papal mandate in all areas throughout the world. Hence it is epikeia that allows a Catholic bishop to legally consecrate Catholic bishops without a papal mandate in these days of the Great Apostasy.

By epikeia the Church supplies jurisdiction for legal consecrations and ordinations

The letter of the current laws decrees that only Catholic bishops with ordinary jurisdiction can legally consecrate bishops and legally ordain priests:

“Canon 956: In so far as the ordination of the seculars is concerned, that bishop alone is the proper minister who is the Ordinary of the dioceses in which the candidate for promotion to orders has his domicile and place of origin, or his domicile only.”

“Canon 957, § 1: Vicars and prefects Apostolic, and abbots and prelates *nullius* who have episcopal consecration are regarded equivalent to the bishops of the dioceses in the matter of ordination.”

PCC, commentary on Canon 957: “The prelates mentioned in this Canon have ordinary jurisdiction over their territory just as a bishop has over his dioceses.”⁴⁵

PCC, commentary on Canon 964: “The abbot must send his subjects who have made solemn profession and are to receive major orders to the bishop of the diocese where the abbey is located, issuing dimissorial letters to that effect. If the abbot is a titular bishop, he may, of course, himself confer the major orders on his solemnly professed subjects.”

PCC, commentary on Canon 963: “The law that nobody except the proper local Ordinary may licitly ordain a man is to be found in the Council of Nicea (in 325), and has been insisted upon by many Decrees of the Supreme Pontiffs in the course of centuries, and the same law is retained by the Code [1917 Code of Canon Law].”⁴⁶

In these days of the Great Apostasy, there is no way for a Catholic bishop to have or get ordinary jurisdiction until the Church has a pope to give him an office and thus ordinary jurisdiction. And without ordinary jurisdiction there is no way according to the letter of the law for a Catholic bishop to legally consecrate bishops and ordain priests. Therefore, by epikeia the Church Herself would supply jurisdiction to Catholic bishops to legally consecrate Catholic bishops and ordain Catholic priests during these days of the Great Apostasy.

The law itself proves that the Church can directly supply jurisdiction for acts to be legal and valid. For instance, by Canon 882 the Church directly supplies delegated jurisdiction to a Catholic priest to legally and validly hear confessions of penitents who are in danger of death

⁴⁵ PCC, v. 1, commentary on Canon 957, p. 569.

⁴⁶ PCC, v. 1, commentary on Canon 963, p. 572.

when he does not have ordinary jurisdiction or delegated jurisdiction from a competent authority. (See in this book [Canon 882 and delegated jurisdiction supplied by the Church](#), p. 23.) Extraordinary circumstances also prove that by epikeia the Church can directly supply jurisdiction for acts to be legal and valid when the law makes no provision. For example, in extraordinary circumstances the Church by epikeia directly supplies a Catholic priest with delegated jurisdiction to legally and validly hear the confessions of penitents who are not in danger of death when he does not have the required faculties. (See in this book [Epikeia and delegated jurisdiction supplied by the Church](#), p. 26.)

Responsibility of Catholic bishops to make sure the candidates are Catholic

A Catholic bishop must do all that is within his power to make sure that the candidates he ordains or consecrates are good Catholics:

Fourth Lateran Council: “Canon 26. Nominees for prelatures to be carefully screened - There is nothing more harmful to God’s church than for unworthy prelates to be entrusted with the government of souls. Wishing therefore to provide the necessary remedy for this disease, we decree by this irrevocable constitution that when anyone has been entrusted with the government of souls, then he who holds the right to confirm him should diligently examine both the process of the election and the character of the person elected, so that when everything is in order he may confirm him. For, if confirmation was granted in advance when everything was not in order, then not only would the person improperly promoted have to be rejected but also the author of the improper promotion would have to be punished. We decree that the latter shall be punished in the following way: if his negligence has been proved, especially if he has approved a man of insufficient learning or dishonest life or unlawful age, he shall not only lose the power of confirming the person’s first successor but shall also, lest by any chance he escapes punishment, be suspended from receiving the fruits of his own benefice until it is right for him to be granted a pardon. If he is convicted of having erred intentionally in the matter, then he is to be subject to graver punishment. Bishops too, if they wish to avoid canonical punishment, should take care to promote to holy orders and to ecclesiastical dignities men who will be able to discharge worthily the office entrusted to them.”

This responsibility of the Catholic bishop to examine the faith and life of candidates before he ordains or consecrates them also falls under his obligation as a Catholic to test if a person is a Catholic before he places himself in any kind of religious communion with that person. Therefore if a Catholic bishop does not do all that is in his power to make sure the candidate he ordains or consecrates is a Catholic and a good Catholic, he commits mortal sin whether or not the candidate is Catholic or a good Catholic. And if the candidate is either a bad Catholic or not Catholic, the bishop shares in the guilt of the sins of the sinful candidate he consecrates or ordains:

“Canon 973: The bishop shall not confer major orders on any candidate unless he is certain from positive proofs that the candidate is canonically qualified; otherwise the bishop not only sins very grievously, but also exposes himself to the danger of cooperating in the sins of another.”

PCC, commentary on Canon 973: “The Code demands that the candidate for sacred orders give *positive* proof of having the required qualifications. The Code here endorsed the practically unanimous teaching of theologians that it does not suffice that there be nothing serious to be said against a candidate (a negative sort of qualification), but that the candidate has to give positive evidence of conduct, mental ability, and general fitness for sacred orders. Most writers thus hold that a candidate is not to be admitted to sacred orders if his fitness is doubtful and the Code confirms this opinion by forbidding the bishop to confer sacred orders

on anyone, unless he is morally certain that the candidate has the qualifications demanded by Canon Law.”⁴⁷

And if the candidate is a bad Catholic or not Catholic or lacks any other necessary qualification, the ordination or consecration is illegal and the bishop commits mortal sin and becomes automatically excommunicated. And the non-Catholic candidate he ordains or consecrates is an illegal priest or illegal bishop:

“Canon 974. The following requisites are demanded for licit ordination: ... (2) moral character corresponding to the order a candidate is to receive. ... In the case of episcopal consecration, the law of Canon 331 is to be observed.”

“Canon 330. Before a person is elevated to the episcopate, proof must be furnished in the manner prescribed by the Holy See that the individual is qualified for the office.”

“Canon 331, § 1. The requisites for a candidate for the episcopate are: ... (4) he must possess good character, piety, zeal for souls, prudence and other qualifications to govern the dioceses in question; (5) he should have obtained the degree of doctor or licentiate in theology or Canon Law from a school approved by the Holy See, or must at least be well versed in these sciences. If the candidate is a religious, he must have received from his major superiors a similar degree, or at least a testimonial certifying of his learning.”

Responsibility of the candidates to make sure the bishops are Catholic

It is of the faith that Catholics are forbidden to knowingly receive any sacrament from non-Catholics, which includes Catholic candidates being ordained as priests or consecrated as bishops by non-Catholic bishops. Because this is of the faith, no exceptions can be allowed by dispensation or *epikeia* even if there is a dire need for priests and bishops in a given area. What follows are some Holy Offices decrees regarding this matter:

The Communication of Catholics with Schismatics, Holy Orders: “[p. 103] Clement VIII in his Instruction *Sanctissimus* of August 31, 1595,⁴⁸ stated that those who had received ordination at the hands of schismatic bishops who apart from their schismatic status were properly consecrated—the necessary form having been observed—did indeed receive orders, but not the right to exercise them. In this he repeated the doctrine of the glossators.⁴⁹ Benedict XIV in the Constitution *Etsi pastoralis* of May 26, 1742,⁵⁰ confirmed this doctrine of Clement VIII. ... Not only was the recognized validity of schismatic orders established, but further points were clarified. Schismatic bishops were not to be admitted for the conferring of orders or for the administration of any of the other sacraments. Persons ordained by schismatic bishops were, upon a proper rectification or amendment in their status, to be reconciled and absolved. An appropriate penance was to be imposed on them. If they had embraced any errors, they had previously to abjure them; if they had not embraced any errors, they had nevertheless to renounce the schism of their ordaining prelate. The abjuration was to be made either publicly or secretly, as the facts in the case directed. Before the ordained persons could exercise their Orders, it was necessary for them to receive from the Holy See a dispensation from the irregularity which they had incurred.⁵¹ ... [p. 105] On this same matter there was still another response of the Holy Office on November 21, 1709.⁵² No Armenian Catholic bishops were available for ordaining priests who were needed in Ispahan, and so it was asked whether sacred Orders could be received from schismatical or

⁴⁷ PCC, v. 1, commentary on Canon 973, p. 584.

⁴⁸ [169] *Fontes*, n. 179.

⁴⁹ [170] Ad c. 1, X, *de schismaticis et ordinates ab eis*, V, 8.

⁵⁰ [171] §VII, n. XIII—*Fontes*, n. 328.

⁵¹ [172] *Ibid.*, nn. XI, XIV, XV—*Fontes* n. 328.

⁵² [175] *Fontes*, n. 774; *Fonti*, II, 115.

heretical bishops. The Holy Office replied that in no way could that be allowed, and that those who had been ordained by such bishops were irregular and suspended from the exercise of their Orders. . . .The prohibition to receive holy Orders at the hands of a schismatic bishop is contained in the general prohibition against active religious communication as expressed in canon 1258.1. There is also an implicit prohibition contained in canon 2372, wherein it is stated that those who presume to receive Orders from a notorious schismatic automatically incur a suspension *a divinis* reserved to the Apostolic See.”⁵³

In these days of the Great Apostasy when there are no bishops with ordinary jurisdiction and no competent authorities to judge if a so-called Catholic is truly Catholic, a Catholic candidate for ordination or consecration must do all in his power to make sure that the bishop who ordains or consecrates him is Catholic. If the candidate does not, he commits mortal sin; and if the bishop is not Catholic because he is either a notorious apostate, heretic, or schismatic, the candidate commits mortal sin, shares in the guilt of the bishop’s crimes, is illegally ordained or consecrated, cannot legally act as a priest or bishop, and becomes automatically suspended:

“Canon 2372. Reception of Orders from Unworthy Prelates: All persons who presume to receive orders from a prelate who has been excommunicated, suspended, or interdicted by a declaratory or condemnatory sentence, or from a notorious apostate, heretic, or schismatic, automatically incur suspension *a divinis* reserved to the Apostolic See. Any person who has been ordained in good faith by such a man forfeits the right to exercise the order thus received until he obtains a dispensation from the prohibition.”

(See my book *Against the Thucytes*: “2) Catholics cannot legally receive Orders from notorious apostate, heretic, or schismatic bishops” and “5) No excuse for those who received Holy Orders from Bishop Thuc.”)

Catholic bishops cannot have ordinary jurisdiction or control over territory

In these days of the Great Apostasy, no Catholic bishop can have or get ordinary jurisdiction until a pope is ruling the Church. That means no Catholic bishop can claim control over territory because only the pope can give a Catholic bishop a territory and the ordinary jurisdiction that goes with it. Hence in these days of the Great Apostasy, when a Catholic bishop consecrates a Catholic bishop, he cannot give that bishop ordinary jurisdiction or control over a territory. Catholic bishops in these days of the Great Apostasy would be like the Catholic bishops in the early days of the Church (such as the apostles) who did not have control over any one territory but traveled to many territories and exerted their authority over the various flocks by ruling, sanctifying, and teaching them, as St. Paul did.

Catholic bishops must demand obedience from priests they ordain

Just because there are no Catholic bishops with ordinary jurisdiction or control over territory does not mean that Catholic priests need not obey the Catholic bishops who ordained them. The Church has always decreed that Catholic priests are under the authority of the Catholic bishops who ordained them unless they were authorized to move to another territory and placed under the authority of the bishop of that territory:

⁵³ *The Communication of Catholics with Schismatics*, Rev. Ignatius J. Szal, A.B., J.C.L. Imprimatur +D Cardinal Dougherty, Phil., April 2, 1948. Catholic University of America Canon Law Series #264. The Catholic University of America Press. pp. 103-105.

PCC, commentary on Canon 955: "It is evident that the personal qualifications of the candidates for ordination, their responsibility to a bishop as their superior, and their proper maintenance after ordination, are of the greatest importance for the dignity of the clerical state."⁵⁴

It was never the mind of the Church to let Catholic priests act without being obedient to a superior who rules and judges them. Hence Catholic bishops must demand obedience from all the Catholic priests they ordain and must rule and judge them. If the Catholic bishop does not do this, he and the priests he ordains commit the mortal sin of schism. And for letting these priests run wild without supervision, the Catholic bishop shares in all the crimes of the priests he ordained.

Catholic bishops must demand obedience from bishops they consecrate

During these days of the Great Apostasy when there is no pope, a Catholic bishop must demand obedience from all the Catholic bishops he consecrates and must rule and judge them, which in ordinary times he would not be able to do unless he was an archbishop, an apostolic prelate, or a cardinal. In the early days of the Catholic Church, all the Catholic bishops that St. Paul consecrated were obedient to him and above all to St. Peter, the pope. Just because there are no Catholic bishops with ordinary jurisdiction and control over territory does not give Catholic bishops and Catholic priests license to be free from being obedient to anyone or from answering to anyone when they sin. If this were allowed, the most reprobated bishops and priests would go un denounced or unpunished and would corrupt and scandalize the people with whom they come in contact. Indeed, we see enough proof of this among the heretical and schismatic Thucites and many others like them.

Catholic priests must demand obedience from their flocks

The duty of a Catholic priest in these days of the Great Apostasy when he does not have access to a Catholic bishop with ordinary jurisdiction is to be obedient to the Catholic bishop who ordained him as long as that Catholic bishop remains Catholic. If the bishop who ordained him was not Catholic, then the priest is not to be obedient to that bishop and also would have to abjure from his illegal ordination in order to be Catholic and to legally function as a Catholic priest.

The Catholic priest must rule, teach, sanctify, and discipline his flock the same way he would if he were under a Catholic bishop with ordinary jurisdiction. He must demand obedience from his flock and punish and banish any one of them when necessary. He must examine the faith of all persons who enter his church to attend Mass to see if they are Catholic. The Catholic priest must also examine newcomers to see if they were members of a false sect or attended Mass at a non-Catholic church. If the newcomers did any of these things, they are not Catholic and the priest must demand that they take a specific abjuration to enter the Catholic Church. (See my book *Abjuration from The Great Apostasy*.)

And if the newcomers seem to be Catholic because they were not members of a non-Catholic sect and did not attend Mass at a non-Catholic church, the priest must demand proof from them that they are Catholic by making them take a specific profession of faith in which they reject and condemn the heresies and other errors of the Great Apostasy. The Catholic priest

⁵⁴ PCC, v. 1, commentary on Canon 955, p. 563.

must never under any circumstances give the Holy Eucharist to anyone without doing all in his power to make sure they are Catholic in word and deed.

And the Catholic priest must keep strict care over his flock by making sure they are living a good Catholic life or at least striving in all sincerity to be good Catholics. And those who are not, he must rebuke and banish until they are willing to amend their evil ways.

Epikeia is needed for getting the next pope

When there is no pope and hence the Holy See is vacant, the current law decrees that cardinals must elect the next pope:

Constitutio of Pope Pius XII, *Vacantis Apostolicae Sedis*, December 8, 1945: “The right to elect the future Pope belongs solely to the Sacred College of Cardinals to the exclusion of any intervention by any other civil or ecclesiastical authority or dignity, or even by a General Council, which, if it is in session at the time, is ipso facto suspended on the death of the Pope until reconvened by the new Pope.” (AAS 38, 1946, p. 76.)

The law that decrees how the Catholic Church fills the vacant Holy See with a pope is a disciplinary law that can and has changed. By a past law a pope appointed his successor. And by another past law Catholic bishops, priests, and laymen elected the next pope:

Catholic Encyclopedia, Pope, 1907: “A brief historical review will show how the principle of election by the Roman Church has been maintained through all the vicissitudes of papal elections. St. Cyprian tells us in regard to the election of Pope St. Cornelius (251) that the provincial bishops, the clergy, and the people all took part in it: ‘He was made bishop by the decree of God and of His Church, by the testimony of nearly all the clergy, by the college of aged bishops [*sacerdotum*], and of good men’ (Ep. Iv ad Anton., n. 8). And a precisely similar ground is alleged by the Roman priests in their letter to Emperor Honorius regarding the validity of the election of Boniface I (A. D. 418; P. L., XX, 750).”

Therefore epikeia can be used in regard to the laws that govern the method by which the Catholic Church fills the vacant Holy See with a pope because they are disciplinary laws. During these days of the Great Apostasy, there are no cardinals. Consequently, the current law on electing the next pope is impossible to observe. If it were observed, there would be no way to fill the vacant Holy See with a pope because cardinals are required to elect the pope. Hence epikeia must be used to get the next pope. In using epikeia, one must first seek an older law that can be observed and use that law to fill the vacant Holy See with a pope.

In regard to the current law, the dilemma of the possible loss of all the cardinals was addressed and the solution was to observe extinct laws by which the whole Church or the Roman clergy would then elect the next pope:

Francisco de Vitoria (1480-1546), *De Potestate Ecclesiae*: “If by any calamity, war or plague, all Cardinals would be lacking, we cannot doubt that the Church could provide for herself a Holy Father. Hence such an election should be carried by all the Church and not by any particular Church. And this is because that power is common and it concerns the whole Church. So it must be the duty of the whole Church.”

Catholic Encyclopedia, Pope, 1907: “Should the college of cardinals ever become extinct, the duty of choosing a supreme pastor would fall, not on the bishops assembled in council, but upon the remaining Roman clergy. At the time of the Council of Trent Pius IV, thinking it possible that in the event of his death the council might lay some claim to the right, insisted on this point in a consistorial allocution.”

During these days of the Great Apostasy when there are no cardinals, one way to get the next pope is by the Roman clergy electing the pope. Another way is by the Catholic clergy, gathered from around the world, electing the next pope. If there are no Catholic clergy, then Catholic laymen can even elect the next pope. Or God Himself can choose the next pope in a miraculous way.

Miracles needed to confirm the next pope

Even though I know of no Catholic clerics in the world during these days of the Great Apostasy, non-Catholic clerics could abjure and enter the Catholic Church. Hence the Catholic Church would then have Catholic clerics who could then elect the next pope. But because of the confusion this would cause, it is most probable that God would have to confirm such an election in a miraculous way to show His approval before such a pope would be accepted by Catholics; that is, if God Himself does not choose the next pope.

No pope until Rome destroyed

I do not believe that the Holy See will be filled with a pope until God allows the Antichrist to destroy Vatican City and most of the apostate clergy residing in Rome. At that point, good-willed men who have been wavering will realize that the Vatican II Church is not the Catholic Church and its clerics are not Catholic. This paves the road for their acceptance of the next pope. A dual prophesy by Ezechiel that applied to the Old Covenant and now to the New Covenant describes the destruction of Vatican City and most of the clergy residing in Rome:

“And he cried in my ears with a loud voice, saying: The visitations of the city (Rome) are at hand, and every one hath a destroying weapon in his hands...And the Lord said to him: Go through the midst of the city, through the midst of Jerusalem (Rome): and mark Thau upon the foreheads of the men that sigh, and mourn for all the abominations that are committed in the midst thereof. And to the others he said in my hearing: Go ye after him through the city, and strike: let not your eyes spare, nor be ye moved with pity. Utterly destroy old and young, maidens, children and women: but upon whomever you shall see Thau, kill him not, and begin ye at my sanctuary (Vatican City). So they began at the ancient men (apostate bishops) who were before the house.” (Ezechiel 9:1-11)

To you whom God will pass over because you will mourn and weep for your apostasy, let this be a warning to you. The mere fact that God will not allow you to be killed proves there is still hope for you to abjure from your apostasy and enter the Catholic Church and then confess your sins. Let this be one of your prayers:

“And now, O Lord Almighty, the God of Israel, the soul in anguish, and the troubled spirit crieth to thee: Hear, O Lord, and have mercy, for thou art a merciful God, and have pity on us: for we have sinned before thee. For thou remainest for ever, and shall we perish everlastingly? O Lord Almighty, the God of Israel, hear now the prayer of the dead of Israel, and of their children, that have sinned before thee, and have not hearkened to the voice of the Lord their God, wherefore evils have cleaved fast to us. Remember not the iniquities of our fathers, but think upon thy hand, and upon thy name at this time: For thou art the Lord our God, and we will praise thee, O Lord: Because for this end thou hast put thy fear in our hearts, to the intent that we should call upon thy name, and praise thee in our captivity, for we are converted from the iniquity of our fathers, who sinned before thee. And behold we are at this day in our captivity, whereby thou hast scattered us to be a reproach, and a curse, and an offence, according to all the iniquities of our fathers, who departed from thee, O Lord our God.” (Baruch 3:1-8)

Special Considerations

Canon 2261 does not apply to non-Catholic clerics

“Canon 2261, §2. Except as provided in 2261, §3, the faithful can for any just cause ask for sacraments or sacramentals of one who is excommunicated, especially if there is no one else to give them; and in such cases the excommunicated person so asked may administer them and is not obliged to ask the reason for the request.”

Some priests and bishops defend their schismatic ordinations and consecrations by taking Canon 2261, §2, out of context. They **heretically** believe that Canon 2261 applies to excommunicated priests and bishops who are not Catholic, and hence they believe they can appeal to a non-Catholic priest or non-Catholic bishop to receive a sacrament—in this case the sacrament of orders from a non-Catholic bishop. Their erroneous belief has been condemned by the Catholic Church’s **solemn** magisterium, which decrees that Catholics are forbidden to knowingly receive any sacrament from non-Catholics. Hence Canon 2261 refers only to excommunicated Catholic bishops and Catholic priests, which means they are still Catholic after they have been excommunicated. (See in this book [Canon 2261, §2, and delegated jurisdiction supplied by the Church](#), p. 24.)

Canon 2372 forbids holy orders from notorious apostate, heretic, or schismatic bishops

Canon 2372 upholds the solemn magisterial dogma that Catholics are forbidden to receive any sacrament from non-Catholic bishops or non-Catholic priests. Canon 2372 decrees that Catholics cannot legally receive holy orders from bishops who are notorious apostates, heretics, or schismatics:

“Canon 2372. Reception of Orders from Unworthy Prelates: All persons who presume to receive orders from a prelate who has been excommunicated, suspended, or interdicted by a declaratory or condemnatory sentence, or from a notorious apostate, heretic, or schismatic, automatically incur suspension a divinis reserved to the Apostolic See. Any person who has been ordained in good faith by such a man, forfeits the right to exercise the order thus received until he obtains a dispensation from the prohibition.”

Canon 2261, §2, cannot abolish Canon 2372 and most importantly it cannot abolish the dogma that Catholics are banned from receiving any sacrament from non-Catholic clerics. Therefore Canon 2261, §2, cannot include the administration of the sacrament of holy orders by notorious apostate, heretic, or schismatic bishops. Canon 2372 restates a 1709 Holy Office decree:

The Communication of Catholics with Schismatics, Holy Orders: “[p. 103] Clement VIII in his Instruction *Sanctissimus* of August 31, 1595,⁵⁵ stated that those who had received ordination at the hands of schismatic bishops who apart from their schismatic status were properly consecrated—the necessary form having been observed—did indeed receive orders, but not the right to exercise them. In this he repeated the doctrine of the glossators.⁵⁶ Benedict XIV in the Constitution *Etsi pastoralis* of May 26, 1742,⁵⁷ confirmed this doctrine of Clement VIII. ...Not only was the recognized validity of schismatic orders established,

⁵⁵ [Footnote 169] *Fontes*, n. 179.

⁵⁶ [Footnote 170] Ad c. 1, X, *de schismaticis et ordinates ab eis*, V, 8.

⁵⁷ [Footnote 171] §VII, n. XIII—*Fontes*, n. 328.

but further points were clarified. Schismatic bishops were not to be admitted for the conferring of orders or for the administration of any of the other sacraments. Persons ordained by schismatic bishops were, upon a proper rectification or amendment in their status, to be reconciled and absolved. An appropriate penance was to be imposed on them. If they had embraced any errors, they had previously to abjure them; if they had not embraced any errors, they had nevertheless to renounce the schism of their ordaining prelate. The abjuration was to be made either publicly or secretly, as the facts in the case directed. Before the ordained persons could exercise their Orders, it was necessary for them to receive from the Holy See a dispensation from the irregularity which they had incurred.⁵⁸ ...[p. 105] On this same matter there was still another response of the Holy Office on November 21, 1709.⁵⁹ No Armenian Catholic bishops were available for ordaining priests who were needed in Ispahan, and so it was asked whether sacred Orders could be received from schismatical or heretical bishops. The Holy Office replied that in no way could that be allowed, and that those who had been ordained by such bishops were irregular and suspended from the exercise of their Orders. ...The prohibition to receive holy Orders at the hands of a schismatic bishop is contained in the general prohibition against active religious communication as expressed in canon 1258.1. There is also an implicit prohibition contained in canon 2372, wherein it is stated that those who presume to receive Orders from a notorious schismatic automatically incur a suspension *a divinis* reserved to the Apostolic See.”⁶⁰

Therefore, even if Canon 2261, §2, did apply to notorious apostate, heretic, or schismatic bishops administering some sacraments—which it does not—it does not apply to the sacrament of holy orders as proved by Canon 2372 and by the 1709 Holy Office answer which said that in no way could sacred Orders be received from schismatical or heretical bishops. In no way means **in no way!**

Canon 2261 does not apply to the sacrament of holy orders

“Canon 2261, §2. Except as provided in 2261, §3, the faithful can for any just cause ask for sacraments or sacramentals of one who is excommunicated, especially if there is no one else to give them; and in such cases the excommunicated person so asked may administer them and is not obliged to ask the reason for the request.”

Canon 2261, §2, does not apply to the sacrament of orders. Hence Canon 2261 does not even allow a bishop who is still Catholic after his excommunication to administer the sacrament of orders upon the request of a Catholic candidate.

Canon Law is written with the assumption that there is a visible hierarchy intact, even if the Holy See or a local see may be vacant. When a see becomes vacant under normal circumstances, a vicar capitular or general is appointed to run the see until a new pope or bishop is elected. For a layman to legally receive the sacrament of holy orders (become a priest), he must have a domicile in which he is obedient to a bishop with ordinary jurisdiction. And it is that bishop who must ordain him. (Canons 111-117) For a Catholic priest to become a legal bishop, he must be certain the consecrating bishop has a papal mandate from the pope (c. 953) before he can legally be consecrated. And he must be assigned to a place where he can legally function. Therefore it is not only a matter of receiving the sacrament of holy orders but also a matter of these other requirements that must be met in order to become a legal Catholic bishop or a legal Catholic priest. The lawgiver was well aware of these facts when he wrote Canon 2261, §2, and thus

⁵⁸ [Footnote 172] *Ibid.*, nn. XI, XIV, XV—*Fontes* n. 328.

⁵⁹ [Footnote 175] *Fontes*, n. 774; *Fonti*, II, 115.

⁶⁰ CCS, pp. 103-105.

never envisioned this canon to include the sacrament of holy orders because of these other necessities—dismissal letters, papal mandates, and domiciles. Canon 2261, §2, does not make provision for these necessities and therefore cannot apply to the sacrament of holy orders. Common sense dictates this, or there would be chaos in the Church by the making of priests or bishops without the approval of proper Church authorities. There would be no place where they could go and legally function, often conflicting with those who were given a mission and a place to legally function by proper Church authorities.

And if Canon 2261, §2, applies to the sacrament of holy orders, any layman without approval from anyone could simply ask an excommunicated bishop who is still Catholic to ordain him a priest and the excommunicated Catholic bishop would have the right to legally do so. And any Catholic priest without the approval of anyone could simply ask an excommunicated bishop who is still Catholic to consecrate him a bishop and the excommunicated Catholic bishop would have the right to legally do so. All a Catholic layman or Catholic priest would have to do is ask an excommunicated bishop who is still Catholic to ordain or consecrate him and the bishop would not be obliged to ask him the reason for the request—“in such cases the excommunicated person so asked may administer them and is not obliged to ask the reason for the request.” Thus if Canon 2261, §2, applies to holy orders, then Catholics would not need to be called and sent to be legal priests and legal bishops but instead any Catholic man whatsoever could demand to be made a priest or bishop from an excommunicated bishop who is still Catholic. Consequently, Canon 2261, §2, does not and can not apply to the sacrament of orders.

Epikēia and not Canon 2261, §2, can justify a Catholic bishop’s ordinations and consecrations

The fact that there is no hierarchy in the Catholic Church in these days of the Great Apostasy is a separate topic altogether that has nothing to do with the letter and the spirit of Canon Law 2261, §2, which was written with the assumption that there is a ruling hierarchy when this canon is utilized. Therefore in these days of the Great Apostasy, it is epikēia that allows a Catholic bishop to be exempted from the laws that normally would prohibit him from legally ordaining priests and consecrating bishops and hence allows him to legally ordain Catholic priests and legally consecrate Catholic bishops. (See in this book [The sacrament of holy orders is allowed by epikēia](#), p. 39.)

Epikēia applies to divine positive disciplinary laws

Contrary to the Bible, logic, and mercy, some theologians and others believe that epikēia cannot be used with divine positive disciplinary laws—that is, laws that come directly from God and do not deal with faith or morals. These bad-willed men are just like the evil Pharisees whom Jesus confronted when Jesus used epikēia to exempt Himself from the divine positive disciplinary law of no work on the Sabbath by healing on the Sabbath Day and by allowing His apostles to pick and eat corn on the Sabbath Day. (See in this book [Working on the Sabbath Day](#), p. 20, and [David ate the loaves of proposition](#), p. 20.) Other theologians hold the correct belief “that epikēia... may be used in reference to the divine law.”

HNUE: “*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.”⁶¹

They do not mean that epikeia applies to all divine laws but only to divine disciplinary laws because divine positive laws that deal with faith or morals are unchangeable laws. (See in this book [Dogmatic laws cannot change](#), p. 8.) The theologians who wrongly believe that epikeia cannot be used with divine positive disciplinary laws defend their error by referring to a truth and then making a wrong conclusion, which the Bible, logic, and mercy refute. The truth they refer to is that God knows all things. The wrong conclusion they make is that epikeia cannot be used with divine positive disciplinary laws because God sees all things and hence God would have put all the exceptions into the law itself. But this is proved false because Jesus, God in the flesh, used epikeia to exempt Himself from His own divine positive disciplinary laws—which means when He made these laws, He never mentioned these exceptions for the sake of brevity and to test if His chosen people knew the spirit of the law as well as the letter of the law:

HNUE: “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.”⁶²

Therefore when God makes divine positive disciplinary laws, He does not include all the allowable exceptions for the sake of brevity and to test if His chosen people understand the spirit of the law and not just the letter of the law. (See in this book [For the sake of brevity](#), p. 15, and [To test God’s people](#), p. 16.)

Epikeia applies to invalidating disciplinary laws

Invalidating laws annul (make null and void) an action for lack of certain formalities and requirements or render a person unqualified to act validly.⁶³

“Canon 11. Those laws only are to be considered invalidating or inhabilitating which explicitly or equivalently state that an action is null and void, or that a person is incapacitated from acting.”

For instance, the *Tametsi* decree of 1563 was an invalidating disciplinary law that made attempted marriages between Catholics invalid if a qualified Catholic minister did not preside over the marriages. Epikeia can be used with invalidating laws that do not deal with faith or morals because these laws are disciplinary laws:

HNUE: “*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, precisely the same reason explained by St. Thomas as 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... *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

⁶¹ HNUE, chap. 7, art. 2, sec. 1, pp. 299, 301.

⁶² HNUE, chap. 7, art. 2, sec. 1, p. 301.

⁶³ PCC, v. 1, commentary on Canon 11, p. 8.

strictly, the lawmaker could justly include in his law. To these general principles invalidating laws form no exception.”⁶⁴

HNUE: “De Smet ... himself follows the view which he believes... Alphonsus seems to counsel—namely, 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.”⁶⁵

HNUE: “(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 and 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... 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.”⁶⁶

In the history of the Church, *epikeia* was used by Catholics to be exempted from observing invalidating disciplinary laws. For instance, *epikeia* exempted Catholics from observing the *Tametsi* decree in areas where there was no access to a qualified Catholic minister:

HNUE: “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...”⁶⁷

(See in this book [Tametsi decree of 1563 and Holy Office letter of 1625 and Ne Temere decree of 1907](#), p. 27.)

Non-observance of the law by another name and method

While theologians believe that Catholics under certain conditions do not have to observe disciplinary laws, not all of them believe Catholics are exempted from observing these laws by *epikeia*. Some believe that Catholics do not have to observe these laws for reasons other than *epikeia*. While the method and reason of each opinion differs, the result is the same—Catholics do not have to observe disciplinary laws that under certain conditions become impossible or

⁶⁴ HNUE, chap. 8, art. 2, sec. 1, p. 382-384.

⁶⁵ HNUE, chap. 8, art. 2, sec. 3, pp. 402-403.

⁶⁶ HNUE, chap. 8, art. 3, sec. 1, pp. 409-410, 412-414.

⁶⁷ HNUE, chap. 8, art. 2, sec. 1, p. 383.

harmful or sinful to observe. For instance, some believe that a prudent interpretation of the law in these cases shows that the law itself does not even apply and hence there is no need for epikeia:

HNUE: “Vasquez states plainly that although divine positive law may be prudently interpreted (as an instance he refers to the oft-cited example of the decision of the Machabees to defend themselves by taking up arms on the Sabbath), there can be no place for epikeia strictly so-called in its regard. ... Vasquez has already declared that the action of the Machabees was the result of prudent interpretation, and does not exemplify the use of *epikeia*. Now he goes further. He implies that reference to this scriptural incident is not at all pertinent to the problem under discussion; for he denies that the act of self-defense can in any way be considered a servile work, and hence forbidden on the Sabbath.”⁶⁸

This opinion has no merit and tends toward the motive of the evil Pharisees in our Lord’s day that denied the use of epikeia for any reason. However, the opinion still allows one to be free from the law in question and to legally perform that act not covered by the law.

⁶⁸ HNUE, chap. 7, art. 2, sec. 2, pp. 303-304.