

The Ethical Principle of 'Epikēia'

It's 2 a.m. and Claire has been stuck at a red light for five minutes. She knows that it's against the law to run a red light. However, no other cars are in sight, and it seems ridiculous to wait for the light to turn green. Should she run the red light and continue her drive home?

Brian knows that public urination is against the law. However, there are no restrooms around, and he has to go to the bathroom very badly. He happens to have a susceptibility to bladder infections, and has been hospitalized a couple of times because of them. Should he go ahead and relieve himself in the nearby alley?

How to deal with these moral dilemmas?

Well, there's an ethical principle for that! It's called *epikēia*.

Epikēia is a Greek word meaning "reasonableness". Its classical source is Aristotle's *Nicomachean Ethics*, where he introduces the concept as a corrective of legal justice. Fr. Joseph Riley provides a description of Aristotle's understanding of *epikēia* [in his 1948 dissertation on the subject](#):

"[Aristotle] points out that the basic reason for the existence of such a concept 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."

In sum, no human law is perfect, simply because it is a *human* law. Legislators ideally do their best to draft and enact laws that apply to the majority of situations. But they are not omniscient; they cannot possibly take into account *all* situations. And when a situation happens to arise in which disobeying the written law either preserves or does not violate the intention of the lawgiver—which is presumably to preserve the common good—it is morally permissible to not observe the law.

Let's now return to the above examples. Laws state that cars are to stop at a red lights and wait for them to turn green, because doing otherwise would endanger the safety of others. But if there are no *others* around, and due caution has been observed, it wouldn't be morally wrong to proceed through the intersection before the light turns green.

And yes, as we know from history, allowing human beings to go to the bathroom in the streets can have serious public health consequences. But in an emergency situation, if someone's health is endangered, it is morally permissible to disregard the public urination law—provided it's done as modestly as possible.

Don't be surprised if you haven't heard of *epikeia* before. As Kevin O'Rourke [notes](#):

"[U]nder Anglo-Saxon law [which applies in the U.S. and Canada]... there is no exemption from a written law afforded in the law itself. Adaptation or mitigation of the written law must come through a new act of the legislature or the judgment of a court. Thus, we pride ourselves on living according to the rule of law."

And so, when you invoke *epikeia*, your action may not be morally wrong, but it could still be punishable. If you run a red light, and a police officer catches you, he's under no legal obligation to buy the *epikeia* defense. That said, cops often do let people off with mere warnings after taking into account circumstances.

St. Thomas Aquinas [classified](#) *epikeia* as a virtue, because it recognizes that it's sometimes necessary to set aside the law in order to protect justice and the common good. In an age where we see an increasing number of laws and regulations, and a decreased emphasis on prudence, *epikeia* helps remind us that laws are made for men, not men for laws.