The Exercise in Introduction of a Law

The exercise in introduction of a law is a speech supporting or attacking a proposed law (Theon 128–129; [Hermogenes] 27; Aphthonius 47; Nicolaus 78) or an already existing law (Theon 128–129; Nicolaus 78). Its inclusion among the *progymnasmata* was apparently controversial ([Hermogenes] 26; Aphthonius 46). This exercise differs from the earlier one in common topics, in that common topics exercises deal with acknowledged goods or evils, while the subject of this exercise is still in doubt (Nicolaus 77; cf. my introductory remarks to the exercise in thesis). In addition, it is more complex than a thesis in that a speaker is introduced (Aphthonius 47), but less complex than a hypothesis in that it lacks a specific context for the discussion ([Hermogenes] 26; Aphthonius 47; cf. Nicolaus 79).

The exercise in introduction of a law begins with prooemia (Theon 129; Aphthonius 47; Nicolaus 79) and argument from the contrary (Aphthonius 47), and then is elaborated according to the final headings, which Nicolaus divides into those based on written laws and those based on unwritten customs (77–78). Other theorists, omitting the written/unwritten distinction, recommend elaborating according to the heads of the legal ([Hermogenes] 27; Aphthonius 47), just, advantageous, possible (Theon 129; [Hermogenes] 27; Aphthonius 47), appropriate ([Hermogenes] 27), and clear (Theon 129; [Hermogenes] 27). Theon discusses many ways in which a law can be attacked on the basis of its lack of clarity (129–130, with Patillon and Bolognesi, 99). In addition to these headings, if a speaker is arguing against a law, he can also use the headings of the unnecessary, contradictory, unworthy, and shameful (Theon 129). Nicolaus believes that theorists such as these were confusing enthymemes with true headings (77–78).

The single example of this exercise in the collection is spurious, according to Norman, *The Julianic Orations*, xlix, and is attributed to Pseudo-Nicolaus by Foerster and Münsscher, “Libanios,” 2522. On the exercise in law, see Theon 128–130 (with the supplementary Armenian text of Patillon and Bolognesi, 99–102); [Hermogenes] 26–27; Aphthonius 46–51; and Nicolaus 77–79. On this set of exercises, see Schouler, *La tradition hellénique*, 1:136–38.
1. Συνηγορία νόμου τοῦ κελεύοντος τὰς τῶν ἀδελφῶν γαμετὰς μὴ γαμεῖν.

(1) Ἐφθασε μὲν ἡ φύσις τὸν νόμον καὶ τοὺς ἁμα γαμενότας εἰς ύμεναιον οὐκ ἔδε συνελθείν, βεβαιοὶ δὲ ὅμως τὴν φύσιν ὁ νόμος καὶ δι᾽ ἑκατέρων ἀμφο προῆλθε, φύσις μὲν νόμω καταβάλλουσα γένεσιν, νόμος δὲ βεβαιῶν ἂ τῇ φύσει δοκεῖ. δεὶ δὲ ἐπὶ τὸ νόμῳ βραχέα φιλοσοφήσαι.

(2) Τῶν ὄντων ὄντως ἅπαντα γένη φύσει μὲν ὅμως ἂπὸ γάμου προῆλθε, γάμῳ δὲ ὅμως συνάπτεται. ο μὲν γὰρ θηριώδης καὶ ἀλόγιστος βίος ἀφηρημένος φύσει τὸ κρίνειν πάντα μὲν γάμοις συγχέει, πάντα δὲ ἀλῆλοις πλησιαζειν εἰ. οίς καὶ συνάπτεται μὲν παῖς ἢς προελήλυθε, γίνεται δὲ πατήρ ἢ συνήλθε μιγνύμενος, καὶ μαθεῖν οὐκ ἔδε παρὰ τῆς ὁμίλως ὃ γέγονεν ἐκαστον. ἄδηλον δὲ παῖς καὶ ἄδηλον διιστάμενον εἰς τὴν συγγένειαν, ὁ παῖς ἔδε τις καὶ παῖς καὶ παῖς πατὴρ ὅσος γάμος δοκεί. (3) οὐ μὴν τοῦ λόγον μετειληφότες τοιούτως γάμοις παραπλῆσαι, ἄλλως ἔρισται παῖς καὶ διέστη πατήρ καὶ διακέκριται μήτηρ καὶ τὸ προαχθὲν οὐκ ἐδέ τω τετίμηκε. (4) καὶ τὰ μὲν ἄλλα συγγένειαν ποιεῖ συναπτόμενα, τὰ δὲ συγγενὶ συγγένειαν βεβαιοὶ διστάμενα. ο λάς εἰδὼς ὁ τῶν παρόντων νόμον εἰσενεγκὼν ἀδελφοὺς οὐκ ἔδε ταῖς τῶν ἀδελφῶν συναφθῆναι συνοίκοις.

(5) Ναι, φησίν, ἀλλ’ ἐπικουρίας δεῖ χηρευούσαις ταῖς γυναιξιν. ἀδικεῖς, ἀνθρωπε, τὴν συμμαχίαν ἠδοναὶς ὅριζομενος, ὥσπερ οὐκ ἐνοὶ συμμαχεῖν, εἰ μὴ γάμος παρὴν. ἔξω ύμεναίοις ἐπιφέρεις τὴν χάριν ἀμείνως. ἐνοὶ τὴν συγγένειαν εὐνοίᾳ μᾶλλον ἢ τῷ γάμῳ τιμῶν. τὸ μὲν γὰρ εὐνοῦν πρὸς χάριν δοκεῖς πεπραχέναι τοῦ γένους, τὸ δὲ γάμῳ συμμαχεῖν συναπτόμενος αὐτῆς εἶναι παρασκεύαζες τῆς ἠδονῆς. (6) τὶς θερεῖαν ἔρεις γυναικός, ἐνθά τοῦ συνόντος ἀδελφὸς καταλείπεται; μενέτω πατήρ τοῖς παρ’ ἑκείνου γεγονός παιοί καὶ μὴ συγχωρείτεις τῆς χηρείας αἰσθάνεσθαι <ταύτην ἐκ> τῶν παρ’ αὐτοῦ συμμαχῶν. ἄδηλον ποιεῖτω τὴν τύχην ἢ χάρις, καὶ τὴν συμφορὰν
Introduction of a Law 1: In support of a law bidding men not to marry their deceased brothers’ wives.24

(1) Nature has anticipated law and does not allow those born together to join in marriage, but law nevertheless reinforces nature, and both advance through each other, nature establishing an origin for law, but law reinforcing what seems best to nature. And it is necessary to philosophize briefly upon the law.

(2) All races of creatures that actually exist naturally originate in marriage alike, but nevertheless are joined by marriages not alike; for the unreasoning animal’s way of life, naturally robbed of the power of discretion, mixes everyone together in marriages, and allows everyone to mate with one another. By this, a male child is also joined with the female from whom he came, and he becomes a father by intercourse with her with whom he has mated, and this prevents each from learning what is born as a result of his intercourse. And the idea of “child” and “father” is unclear among them, all those who decide to join in marriage. (3) However, if they partake of reason they do not have marriages that resemble these;25 instead, “child” is definite, “father” is distinct, and “mother” is discrete, and an offspring does not know how to join with the one that raised it, and it honors the family relationship inasmuch as it remains distinct. (4) And the rest create a family relationship by joining together, but families reinforce the family relationship by staying apart. Knowing this well, the one who introduced the present law is preventing men from being joined with their brothers’ wives.

(5) “Yes,” one might say, “but wives need help if they become widows.” You, sir, are wrong to define assistance in terms of pleasure, as if it were impossible to lend assistance unless there is a marriage. You can better offer charity outside the context of marriage. Be someone who honors the family relationship with goodwill rather than with marriage; for you seem to have performed an act of goodwill as a favor to the extended family, but by joining with her, you are making this assistance through marriage to be a thing of pleasure. (6) Why are you going to mention the wife’s widowhood, when the husband’s brother is left behind? Let him remain a father to the children born of that man, and by assisting <with> his own resources, let him not allow <her> to perceive her widowhood. Let charity make her fortune inconspicuous. And let him alleviate her misfortune by helping her widowhood, and

24. = Pseudo-Nicolaus (Walz, Rh. Gr. 1.419,1–420,32). There is no ancient Greek law forbidding such unions.
25. The translation here supplies what is demanded by the context. The text literally reads, “… they do not resemble such marriages as these.”
ἐπικουφιζέτω τῇ χηρείᾳ ἐπικουρῶν καὶ μῆ ποιεῖτω γυναῖκα μὲν δοκεῖν ἀποβλέπειν εἰς ἡδονάς, αὐτὸν δὲ γάμῳ συγγενείας ἀλλότριον. οἷς γὰρ συνάπτεται, διεῖλε τὸ γένος.

(7) Ναί, φησίν, ἀλλὰ γυναιξὶν ἡδοναὶ πρόχειροι. κρείττους δὲ τῶν οὐ προσηκόντων οἱ συγγενεῖς. ἀμείνους εἰς παράπαν οἱ συγγενεῖς καὶ τὸ παρ’ αὐτῶν κομιζόμενον ἕκ τοῦ προσήκοντος γίνεται δίκαιον. (8) οὐποτε τεθέαμαι μάλλον τὸ παρανομεῖν ἐπαινούμενον. τί δὲ τῶν γυναικῶν κατηγορεῖς ἡδονὰς καὶ ταύτας βεβαίοις συναπτόμενοι; εἰ γυναίκες νοςῆσασαι πάσχουσιν, οἱ προσήκοντες εἰργουσι καὶ κωλυταὶ γίνονται τῆς ἐκείνων ἀκρασίας, οὐ σύμμαχοι. (9) καὶ ἕμοιγε δοκεῖς οὐδὲν ἐπαισθάνεσθαι τῶν ἐν γάμῳ δεινῶν. τί γὰρ δεῖ τούτων χηρείαν μὲν ἔλεεῖν προσποιεῖσθαι καὶ παῖδων ὀρφανίαν οἰκτείρειν, εἰτα τὰς συμφορὰς ἐπιδιπλασιάζειν αὐτὰς συναπτόμενον; ὁ χηρείαν εἰσάπαξ μή συγχωρῶν δευτέραν ἐργάζεται καὶ παῖδας ὀρφανοὺς ὀδυρόμενος ἐπείρους ὀρφανοὺς πραγματεύεται. οἷς γὰρ γὰρ ἐργαζόταται δευτέραν, δευτέρας συμφοράς ἀπεργάζεται καὶ ποιεῖ γάμον οὐ δυστυχήματος κώλυμα, τῶν ὄντων δὲ δυστυχημάτων μάλλον ἐπίδοσιν. (10) μέγα τοῖς ἀνθρώποις τὸ γένος καὶ συγγένεια συνάπτειν οἴδε τὰ διιστάμενα. πατέρες μὲν γὰρ ἐκ τοῦ γάμου καθίστανται, προέρχονται δὲ δι’ ὑμεινάς ἀδελφοί πρὸς ἀλλήλους προσήκοντες καὶ συζυγίᾳ μιᾷ πολὺς προέρχεται τῶν σωμάτων κατάλογος. (11) καὶ συμμαχεῖν μὲν ἀλλήλοις, ἢν ποτε δέ, προήρηται, προανακόπτουσι δὲ τὰς τῶν ἐπιώντων ἐπιβουλάς, καὶ συγγένεια γίνεται ἡ πλείστη τῆς ἐπικουρίας συντέλεια καλῶς ὀρίζομένοις <καὶ> βεβαίως τὰ νόμον τῆς φύσεως οὐ παραβαίνοντα νόμιμα.
let him not make the woman seem to be looking toward pleasure, and let him not alienate himself from the family by marrying her; for inasmuch as he joins with her, he destroys the extended family.

(7) “Yes,” one might say, “but pleasures are readily available to women. And family members are better than those who are not related. Family members are altogether better, and a child raised by them becomes just from their being related.” (8) I have never seen acting illegally being praised more. Why do you condemn the pleasures of women and reinforce them by joining with one? If women suffer from this disease, their relatives shut them in and become preventers of their lack of self-control, not assistants. (9) And to me, at least, you seem to be aware of none of the terrible things in marriage. For why must one pretend to pity the widowhood of these women and lament the orphanhood of their children, but then double their misfortunes by joining with them? The man who does not absolutely concede this point brings about a second widowhood and, by bewailing the orphaned children, produces another group of orphans;26 for inasmuch as he brings about a second marriage, he completes a second group of disasters, and he makes marriage not a hindrance to misfortune, but an increase of existing misfortunes. (10) The extended family is important to people, and the family relationship knows how to join together the disparate elements; for fathers are established by marriage, and brothers related to one another come forth through weddings, and through a single conjugal union comes forth a great roster of bodies. (11) And they choose to assist one another, if ever it is needed, and they beat back the plots of attackers, and the family relationship becomes the greatest joint contributor of help for those who nobly <and> firmly define customs for themselves that do not violate the law of nature.

26. I.e., in that he will eventually die himself.