

## 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 Münscher, “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 ἅμα γεγονότας εἰς ὑμέναιον οὐκ ἔᾶ συνελθεῖν, βεβαιοῖ δὲ ὅμως τὴν φύσιν ὁ νόμος καὶ δι' ἑκατέρων ἄμφω προῆλθε, φύσις μὲν νόμῳ καταβάλλουσα γένεσιν, νόμος δὲ βεβαιῶν ἅ τῇ φύσει δοκεῖ. δεῖ δ' ἐπὶ τῷ νόμῳ βραχέα φιλοσοφῆσαι.

(2) Τῶν ὄντων ὄντως ἅπαντα γένη φύσει μὲν ὁμοίως ἀπὸ γάμου προῆλθε, γάμῳ δὲ ὅμως οὐχ ὁμοίῳ συνάπτεται. ὁ μὲν γὰρ θηριώδης καὶ ἀλόγιστος βίος ἀφηρημένος φύσει τὸ κρίνειν πάντα μὲν γάμοις συγγέει, πάντα δὲ ἀλλήλοις πλησιάζειν ἔᾶ. οἷς καὶ συνάπτεται μὲν παῖς ἢ προελήλυθε, γίνεται δὲ πατὴρ ἢ συνῆλθε μιγνύμενος, καὶ μαθεῖν οὐκ ἔᾶ παρὰ τῆς ὁμιλίας ὁ γέγονεν ἕκαστον. ἄδηλον δὲ παρ' αὐτοῖς καὶ παῖς καὶ πατὴρ ὅσοις γάμος δοκεῖ. (3) οὐ μὴν τοῦ λόγου μετειληφότες τοιοῖσδε γάμοις παραπλήσιοι, ἀλλ' ὠρισταὶ παῖς καὶ διέστη πατὴρ καὶ διακέκριται μήτηρ καὶ τὸ προαχθὲν οὐκ οἶδε τῷ κεκομικότητι συνάπτεσθαι καὶ τὴν συγγένειαν οἷς διέστη τετίμηκε. (4) καὶ τὰ μὲν ἄλλα συγγένειαν ποιεῖ συναπτόμενα, τὰ δὲ συγγενῆ συγγένειαν βεβαιοῖ διυστάμενα. ἅ καλῶς εἰδῶς ὁ τὸν παρόντα νόμον εἰσενεγκῶν ἀδελφοὺς οὐκ ἔᾶ ταῖς τῶν ἀδελφῶν συναφθῆναι συνοίκους.

(5) Ναί, φησὶν, ἀλλ' ἐπικουρίας δεῖ χηρευούσαις ταῖς γυναιξίν. ἀδικεῖς, ἄνθρωπε, τὴν συμμαχίαν ἠδοναῖς ὀριζόμενος, ὥσπερ οὐκ ἐνὸν συμμαχεῖν, εἰ μὴ γάμος παρῆν. ἔξω ὑμεναίων ἐπιφέρεις τὴν χάριν ἀμείνω. ἔσο τὴν συγγένειαν εὐνοία μᾶλλον ἢ τῷ γάμῳ τιμῶν. τὸ μὲν γὰρ εὖνουν πρὸς χάριν δοκεῖς πεπραχῆναι τοῦ γένους, τὸ δὲ γάμῳ συμμαχεῖν συναπτόμενος αὐτῆς εἶναι παρασκευάζεις τῆς ἠδονῆς. (6) τί δὲ χηρεῖαν ἐρεῖς γυναικός, ἔνθα τοῦ συνόντος ἀδελφὸς καταλείπεται; μενέτω πατὴρ τοῖς παρ' ἐκείνου γεγονόσι παισὶ καὶ μὴ συγχωρεῖτω τῆς χηρείας αισθάνεσθαι <ταύτην ἐκ> τῶν παρ' αὐτοῦ συμμαχῶν. ἄδηλον ποιεῖτω τὴν τύχην ἢ χάρις. καὶ τὴν συμφορὰν

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NOT TO MARRY THEIR DECEASED BROTHERS' WIVES.<sup>24</sup>

(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;<sup>25</sup> 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

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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 χηρεία ἐπικουρῶν καὶ μὴ ποιείτω γυναῖκα μὲν δοκεῖν ἀποβλέπειν εἰς ἡδονάς, αὐτὸν δὲ γάμῳ συγγενείας ἀλλότριον. οἷς γὰρ συνάπτεται, διεῖλε τὸ γένος.

(7) Ναί, φησίν, ἀλλὰ γυναιξιν ἡδοναὶ πρόχειροι. κρείττους δὲ τῶν οὐ προσηκόντων οἱ συγγενεῖς, ἀμείνους εἰς παράπαν οἱ συγγενεῖς καὶ τὸ παρ' αὐτῶν κομιζόμενον ἐκ τοῦ προσήκοντος γίνεται δίκαιον. (8) οὐπω τεθέαμαι μᾶλλον τὸ παρανομεῖν ἐπαινούμενον. τί δὲ τῶν γυναικῶν κατηγορεῖς ἡδονὰς καὶ ταύτας βεβαιοῖς συναπτόμενος; εἰ γυναῖκες νοσήσασαι πάσχουσι, οἱ προσήκοντες εἴργουσι καὶ κωλυταὶ γίνονται τῆς ἐκείνων ἀκρασίας, οὐ σύμμαχοι. (9) καὶ ἔμοιγε δοκεῖς οὐδὲν ἐπαισθάνεσθαι τῶν ἐν γάμῳ δεινῶν. τί γὰρ δεῖ τούτων χηρείαν μὲν ἐλεεῖν προσποιεῖσθαι καὶ παίδων ὄρφανίαν οἰκτεῖρειν, εἴτα τὰς συμφορὰς ἐπιδιπλασιάζειν αὐταῖς συναπτόμενος; ὁ χηρείαν εἰσάπαξ μὴ συγχωρῶν δευτέραν ἐργάζεται καὶ παῖδας ὄρφανούς ὀδυρόμενος ἑτέρους ὄρφανούς πραγματεύεται. οἷς γὰρ γάμον ἐργάζεται δεύτερον, δευτέρας συμφορὰς ἀπεργάζεται καὶ ποιεῖ γάμον οὐ δυστυχήματος κώλυμα, τῶν ὄντων δὲ δυστυχημάτων μᾶλλον ἐπίδοσιν. (10) μέγα τοῖς ἀνθρώποις τὸ γένος καὶ συγγένεια συνάπτειν οἶδε τὰ δισταμένα. πατέρες μὲν γὰρ ἐκ τοῦ γάμου καθίστανται, προέρχονται δὲ δι' ὑμεναίων ἀδελφοὶ πρὸς ἀλλήλους προσήκοντες καὶ συζυγία μιᾷ πολὺς προέρχεται τῶν σωμάτων κατάλογος. (11) καὶ συμμαχεῖν μὲν ἀλλήλοις, ἣν που δέη, προήρηνται, προανακόπτουσι δὲ τὰς τῶν ἐπιόντων ἐπιβουλὰς, καὶ συγγένεια γίνεται ἢ πλείστη τῆς ἐπικουρίας συντέλεια καλῶς ὀριζόμενοις <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;<sup>26</sup> 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.

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