245 To Robert Barnes [Wittenberg, September 3, 1531]

Grace and Peace in the Lord

My Antony: here you finally have also my opinion on the case of the King of England, since you insist on it with such great perseverance.

To begin with, as I have said, I approve of the decision of the faculty of Louvain, especially regarding the latter question, and the King may abide by it with a sufficiently safe conscience; in fact, he has to abide by it if he wants to be on the safe side. Under no circumstances will he be free to divorce the Queen to whom he is married, the wife of his deceased brother,³² and thus make the mother as well as the

daughter³³ into incestuous women.

Even if the King might have sinned³⁴ by marrying the wife of his deceased brother, and even if the dispensation granted by the Roman pope might not have been valid³⁵ (I do not debate this now), nevertheless it would be a heavier and more dreadful sin [for the King] to divorce the woman he had married; and this especially for the reason that then the King, as well as the Queen and the Young Queen,³⁶ could be forever charged with, and considered as, being incestuous people.

To Divorce his wife is to make the mother and daughter incestuous women.

Even if it was sin(Lev 18:16, 20:21), it would be a greater sin to divorce. Even if Pope's dispensation from Canon law(Lev 18:16) wasn't valid, it would be a great sin to divorce.

According to my opinion, therefore, those who urge the King to the divorce for this reason alone torture his conscience in vain.

³² The brother to whom reference is made here and throughout the letter is Henry's brother Arthur. In November 1501, he was married to Catherine of Aragon. He died in 1502, apparently without having had marital relations with Catherine; at least this is what the Queen and her supporters continuously affirmed. See *EHD 5*, 710; *WA*, Br 6, 176.

³³ I.e., Mary Tudor, who was born on February 18, 1516.

³⁴ One argument in defense of the divorce was drawn from Lev. 18:16 and 20:21; these passages were interpreted as referring to the marriage of a living *and* of a deceased brother's wife. Since these passages were considered to be divine law, the King's marriage was considered to be a matter of sin, a fact which in turn ostensibly bothered the King's conscience. The divorce was considered to be the only way out of this dilemma. See *EHD 5*, 706 ff.; Doernberg, *op. cit.*, p. 83. As Luther's arguments here, and later (see p. 310), demonstrate, Luther took the King's scruples of conscience quite seriously, in fact, so seriously that he had doubts about the King's desire for an heir as motivation for the divorce. See also note 39.

³⁵ Since according to the Canon Law, which was based on Lev. 18:16 at this point, the marriage to a (deceased) brother's wife was prohibited, the pope had to grant a special dispensation for Henry not to abide by the Canon Law. On December 26, 1503, Pope Julius II issued the permission for Henry to marry Catherine of Aragon, the widow of Henry's brother Arthur. The advocates of the divorce argued that the papal dispensation was invalid because the pope had no right to excuse from obedience to a divine law, as set forth in Lev. 18:16. For the way in which the *Corpus luris Canonici* dealt with a marriage to a deceased brother's wife, see H. Feine, *Kirchliche Rechtsgeschichte: Die Katholische Kirche* (4th ed.; Köln-Graz, 1964), pp. 431 f.; *English Historical Review* 19 (1904), 632 ff.

³⁶ See note 39.

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If he has sinned by marrying, then this sin is past, and like all other sins of the past is amended through repentance; but the marriage should not be torn apart for this reason, and such a heavy future sin ought not

to be permitted. For how many marriages are there in the world which have been made through sinning? And yet they ought not and may not be put asunder. So much for this one reason.

Regarding the other reason—whether you are fabricating it, or whether it is true—that the King is searching for a son, an heir to the kingdom, but that the Queen gives birth only to girls.³⁸ etc., [I reply:] Who doesn't see that this is an even less valid argument? Who will assure the King either that this present Queen will not give birth to a boy (if age does not hinder it), or that the other Queen,³⁹ the one whom he is to marry, will give birth to boys? Nevertheless, even if it would be certain that the other Queen would give birth to boys, it still will not be permissible to divorce the former Queen, especially not as an incestuous woman, and thus equally to put the

mark of incest forever on the [already born] offspring, that is, to punish them without any cause with this extremely heavy punishment. Before I would approve of such a divorce I would rather permit the King to marry still another woman and to

Seeking an heir is not valid reason for divorce, I would approved of second marriage first (at least it has precedence).

If a past sin (seek repentance), don't

follow it with a future sin(divorce).

have, according to the examples of the patriarchs and kings, two women or queens at the same time. 40

The opponents bring forth, however, that it is contrary to divine law for a man to marry his deceased brother's wife. Leviticus 18 [:16]. To this I reply first of all: If they want to abide by the law of Moses, and also force us to live under the authority of this legislator, then what they

will accomplish is that in this case the King will be held responsible not only for keeping the Queen to whom he is married, but also, if she had not [yet] been remarried to someone else, for marrying her by

If under Moses' law, then all of Moses' laws.

all means possible, and for begetting an offspring to his brother, since the deceased brother did not leave any children by this woman. This is clearly and definitely stated in Deuteronomy 25 [:5]. For if we are forced to observe one law of Moses, then by the same reason we also ought to be circumcised, and ought to observe the whole law, as Paul argues in Galatians 5 [:3]. Now,

³⁸ Catherine of Aragon had given birth to seven children, among them three boys; all the children, except for Mary (see note 33), died during infancy.

³⁹ I.e., Anne Boleyn. It cannot be established how much detailed knowledge—if any—Luther had about the relationship between Henry VIII and Anne Boleyn.

⁴⁰ This last sentence is missing in all witnesses of the (B) version of the text (that version which was to be sent to the Landgrave; see Introduction). Did Luther eliminate this sentence on purpose? Or did he simply forget it? In any case, Bugenhagen remembered this sentence, and consequently he added in his manuscript copy (see Introduction), in the last paragraph of the whole letter, a sentence which reads in translation: "She [i.e., the Queen] should rather permit the King to marry a second queen according to the example set by the patriarchs, who had many wives even prior to the law; but she herself should not agree to be excluded from the royal matrimony and from the title of queen of England." Enders, *Briefwechsel* 9, 88, n. u. The idea of solving Henry's problem by suggesting or approving bigamy seems to have originated with Melanchthon, who as early as August 23 in his brief discussed this issue in detail; *C. R.* 2, 526. The question whether this solution of the problem was original with the Wittenbergers, or simply reflected Henry's own ideas, has to remain open. As Enders, *Briefwechsel* 9, 91, n. 15, points out, as early as 1528 Henry had asked the Curia whether under certain circumstances bigamy was permissible, and Rome was not at all opposed to giving an affirmative answer.

however, we are no longer under the law of Moses, but are subject in these matters to the laws of the state, just as, prior to Moses, Abraham and Nahor were. They married the daughters of their brother; this was a relationship which Moses afterwards prohibited.⁴¹ And Jacob married two sisters,⁴² also in opposition to Moses' law, who later prohibited such marriages for his people.⁴³

Therefore that law of Moses, which beforehand was not valid and which after Christ again ceased to be valid as positive law, does not bind the King, and does not demand the divorce. But that law of God and that statement of divine

law⁴⁴ according to which matrimony is established as something which ought to be maintained forever, until death, binds the King. For the sake of this law, Christ abolished the letter of divorce handed down from Moses when he said: "From the beginning it was not so."⁴⁵

Moses' law was not valid before Ex. 20 and not after Christ. Divine Law until death binds the King. Christ abolished divorce. Divorce is sin.

Therefore only this argument is left, that the King, if he has sinned by marrying his deceased brother's wife, has sinned against a man-made law, or a law of the state. If he would divorce the Queen, however, he would indeed sin against the divine law.⁴⁶ If the law of God is in conflict with the law of man, then the law of man has to yield, so that one does not sin against the law of God; the law of God does not have to yield so that one does not sin against the law of man. An offense against the law of man may either be quashed, or the need to obey this law may be nullified, so that we are not forced to sin against God's Divine Law trumps(nullifies) Civil Law. law or nullify the validity of God's law.⁴⁷

This, however, is the situation regarding the divine law, namely, that the superior law nullifies the inferior one. For instance: It was a divine law to observe the Sabbath;⁴⁸ yet another divine law, that is, the law of circumcision,⁴⁹ nullified this law concerning the Sabbath, and permitted, even more, required circumcising exactly on the Sabbath (as often as the Sabbath was the eighth day after birth), as Christ himself argues in John 7 [:22]. Consequently the law concerning the Sabbath had to yield to the law concerning circumcision; one sinned against the law concerning the Sabbath, or rather the law concerning the Sabbath vielded, and in this case was nullified. Even more, on each Sabbath in the morning and in the evening sacrifices were made and all the works of the priests were performed in the Temple; and yet the priests were without guilt, as Jesus states in Matthew 12 [:5]. Even circumcision yielded

⁴¹ In Gen. 11:29 it is reported that Abraham married Sarai, and his brother Nahor married Milcah, who was the daughter of Abraham's and Nahor's brother, Haran, and the sister of Haran's other daughter, Iscah. According to Clemen (WA, Br 6, 182, n. 7), Luther follows here the rabbinical tradition (which had been adopted by Jerome and other Christian scholars; see WA, Br 13, 200, addition to WA, Br 6, 182, n. 7) which identifies Iscah with Sarai, so that Abraham would have married a daughter of Haran, just as Nahor did.

⁴² I.e., Leah and Rachel; Gen. 29:23, 28.

⁴³Lev. 18:18.

⁴⁴ Gen. 2:24; Matt. 19:6.

⁴⁵ Matt. 19:8.

⁴⁶See note 44.

⁴⁷ Indirectly Luther deals in this paragraph with the dispensation issued by the pope (see note 35). He considers the way in which the Canon Law interprets Lev. 18:16, and in which the Canon Law is used to challenge the validity of the King's marriage, to be in conflict with the divine and the natural law as expressed in Matt. 19:6 and Gen. 2:24. For Luther, therefore, the Canon Law (the manmade law) had to yield to the divine law, and the papal dispensation was not only valid but absolutely necessary.

⁴⁸ Exod. 20:8.

⁴⁹ Gen. 17:10 f.

to a new law of God by which the people were ordered to go out from Egypt;⁵⁰ during all the

forty years that this new law was in effect, they did not circumcise, and did this without [committing] sin.⁵¹ Further, it had been divine law that the Bread of

Divine Law trumps another Divine law.

the Presence ought to be eaten only by the priests.⁵² And yet David, a layman, ate it without committing sin, as if he were ordered by another law of God, that is, the law to love one's neighbor who is in need.⁵³ There are many such examples in which one divine law nullifies another.

What else are magistrates, and those who wield the sword and enforce the law by killing [or] imprisoning those who are guilty, [or] confiscating their property, doing other than nullifying these divine laws: "You shall not kill; you shall not steal"?⁵⁴ This is the same as if by another divine law these magistrates were ordered to kill, imprison, [or] punish those who are guilty. These actions would not be permitted unless the law, "You shall not kill," is nullified by another

law. How much more in this case does that manmade law, ⁵⁵ "you shall not marry your

deceased brother's wife," have to yield to that former, superior law, "A man shall not abandon his wife, and the two shall be one flesh."⁵⁶ Even if this statement, "You shall not marry your deceased brother's wife," were a divine law, it would nevertheless have to yield and be nullified because of the law concerning matrimony, which is a superior law, as has been stated above concerning the examples which demonstrate just how often one divine law nullifies another one.

Let us nevertheless assume (which certainly is not true) that the law of Moses is still valid and binds us Gentiles when it states in Leviticus 18 [:16]: "You shall not uncover the nakedness of your brother's wife." What are the opponents making out of this text? The text, of course, speaks of a living brother, not a deceased one. Since the Lev. Deals with a Living brother

contradictory law in Deuteronomy 25 [:5] orders that a

brother ought to marry his deceased brother's wife, it becomes clear that [Leviticus 18:16] deals with a living brother (who could have had one or perhaps several wives at the same time). So for instance John the Baptist, on the basis of this passage (as is known), charges Herod that he is not permitted to have the wife of his brother Philip, who was [still] living.⁵⁷ Therefore on the basis of this passage the doctors of the opposition could accomplish nothing that is sound, even if the law of Moses [still] bound us Gentiles. How much less can they accomplish now since Moses' law does not bind us Gentiles!⁵⁸

⁵⁸ For this paragraph, see also Luther's arguments in his *Against the Heavenly Prophets* (*WA* 18, 67 ff.; LW 40, 84 ff.), and *LJB* 16 (1934), 51 ff.

If Canon law, then it yields to Divine Law.

⁵⁰ See Exod. 3:17, 5:1, 6:13.

⁵¹ Josh. 5:5 ff.

⁵²Lev. 24:5 ff.; Exod. 25:23 ff.; Num. 4:7.

⁵³ I Sam. 21:6; Matt. 12:3 f.

⁵⁴ Exod. 20:13, 15.

⁵⁵ I.e., Lev. 18:16 as used in the Canon Law (see notes 35, 47), and by the advocates of the divorce.

⁵⁶See note 44.

⁵⁷ See Mark 6:18. "Among the reasons cited by the advocates of the divorce was also the testimony of John the Baptist against Herod, which, by citing Tertullian, *Adv. Marcion.* c. 34, was interpreted to mean that John designated each marriage with the wife of a brother to be sin, even if the latter had already died." So Enders, *Briefwechsel* 9, 91, n. 9.

You will reply: If someone continues this argumentation then he will end up teaching⁵⁹ that we also are not prevented by any law of God from marrying daughters, sisters, or mothers, since the law of Moses prohibits this, but the law of Moses now no longer binds us Gentiles. I answer that such marriages are prohibited and considered incestuous by natural law. This is sufficiently proven by the fact that in Scripture before, during, and after [the time in which] the law [of Moses was valid,] no example [for the permission of such marriages] can be found, and without

example and law nothing may be undertaken. Precisely by this fact God has sufficiently demonstrated that he condemns such marriages. But there are laws and examples for marrying your deceased brother's wife.

The opponents argue that it follows from the law of Deuteronomy 25 [:5] that someone could marry, or would be obligated to marry his own daughter; so, for instance, if Othniel⁶⁰ at his death had left his wife Achsah, who was the daughter of his brother Caleb, then Caleb, as Othniel's brother, would have been obligated to marry his own daughter. Who does not see the evil effort

in this argument to support an evil cause? [The opponents argue] as if they did not know, or ought not to know, that one law nullifies another whenever they contradict each other, as stated above. Therefore even if through the law of Deuteronomy 25 [:5] Caleb would have been obligated to marry his brother's wife, yet because this wife of his brother was his own daughter he was prohibited from marrying her by another, superior law, [and was ordered] to stay away from her. So the law of Deuteronomy 25 [:5] yields to the other law, that is, to the natural law, and simultaneously also to the Mosaic law of Leviticus 18 [:16].

Dad Mom Caleb Othniel Achsah

Natural Law prohibits

Therefore it is impossible for the opponents to establish, by means of this law in Deuteronomy 25 [:5], the validity of that law in Leviticus 18 [:16], which deals with a living brother—or at least speaks ambiguously—and simply to condemn every marriage according to the law of Deuteronomy 25 [:5]. They do not see that by this condemnation they totally nullify the law concerning the marriage of a deceased brother's wife. Yet this law is confirmed through

that noble example of Ruth, who cites this law^{61} (even though Boaz was not her brother), and by the testimony of the Gospel of the Seven Brothers who were married

Living brother	
Brother = kinsman	

to one and the same woman.⁶² One may not quibble that in Ruth's case "brother" means "kinsman"; otherwise this same sophistry will also be valid in case of Leviticus 18 [:16]. And further, in Deuteronomy 25 [:5] the text itself does not permit this interpretation, since [in this passage] the word "brother" is so often repeated, and laws are given concerning "brothers who live together." This sophistry is insufficient to quiet consciences; therefore it also should not be permitted to disturb consciences.⁶³

⁵⁹ Literally: "You will say: In this way you will teach."

⁶⁰ Judg. 1:13 f.

⁶¹ Ruth 4:5, 10; it is, however, not Ruth who refers to this law, but Boaz.

⁶² Matt. 22:23 ff.

⁶³ I.e., one cannot use Lev. 18:16 for "disturbing" the King's conscience (that he would consider his marriage sinful; see note 34), or for "justifying" the divorce.

But here the opponents say that the law of Deuteronomy 25 [:5] was a law concerning

ceremonial matters, which ought to yield to the law of Leviticus 18 [: 16], which was a law concerning morals,

since ceremonial matters have ceased to be valid, but matters concerning morals have not ceased to be valid. To this I reply: Let those corrupt interpreters say whatever they wish without sound judgment; we contradict them [with the following argument]: The law of Deuteronomy 25 [:5] has certainly been a law concerning morals, because as a law of the state it was indeed instituted for the conservation of families, for the preservation of legacies, and for the begetting of heirs, that is, for the augmenting and strengthening of the common good, just as it certainly serves the common good and is moral to till the soil at this or that time, [and] in this or that way, so that the soil brings forth more fruit, since by using such a method goods are produced. 'At Moses' time there was no contradiction in the laws since both laws were valid, and were observed. Therefore both are abolished now. Consequently the opponents should stop insisting on the validity [only] of the law of Leviticus 18 [:16], or should maintain both laws as being valid.

At the risk of losing his salvation, and under the threat of eternal damnation, therefore, the King is to be held responsible for retaining the Queen to whom he is married. This is proven by the following argument: First of all, neither according to natural law nor according to divine law is it definitely prohibited to marry one's brother's wife, but only according to positive law. For, as I have said, the legislator Moses is dead and invalid for us.

Matrimony is a matter of divine and of natural law. In cases where the divine and the positive laws contradict each other, the positive law must yield to the divine law. For this reason Christ, too, nullified the law of divorce given by Moses in order to establish the validity of the divine law concerning matrimony. If, therefore, the King of England has sinned by marrying his deceased brother's wife, then he has sinned against a man-made law, or a law of the state. If the emperor⁶⁴ and the pope, provided that the latter rules through his worldly tyranny,⁶⁵ have suspended their laws for the King, then the King has not sinned at all, because that same God who approves of the law of the state promulgated by the emperor also approves the emperor's suspension of the emperor's law. For God has given the emperor the authority to make and suspend laws, and that I might say so, the keys⁶⁶ of binding and freeing people in the territory which is subject to the emperor. If the King should divorce the Oueen, however, he will most gravely sin against the divine law, which states: "What God has joined together, let no man put asunder."67 "Man," that is, no man-made laws may separate those whom God has joined, either by ordinance or by permission, because God's joining, whether done through the law or through human action, stands higher than any man-made ordinance. Therefore if these laws now contradict each other, then one should be careful that the King of England does not observe a man-made law and sin against the divine law, but that he observe the divine law; he may be forgiven if he has sinned against a man-made law. Suppose now the divorce goes through, she is [still] the queen, and will be the queen of England, and an injustice before God and man will have been done to her. (Luther's Works, Vol. 50)

Moral Law over Ceremonial Law

Both are abolished.

⁶⁴ Obviously Luther did not mean here that Henry VIII was subject to the laws promulgated by the emperor of the Holy Roman Empire: Luther apparently used "emperor" as a synonym for "any secular legislator."

⁶⁵ I.e., if the pope has any secular jurisdiction, either by right or concession. For Luther's understanding of the difference between the church's secular and spiritual jurisdiction, see LW 49, 382 ff.

⁶⁶ See Matt. 16:19.

⁶⁷See note 44.